

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No.15

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JOHN GUSDORF, FRED D. OBERHAUS  
and MOHAMMAD MASSOUDNIA

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Appeal No. 98-1979  
Application 08/505,465<sup>1</sup>

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ON BRIEF

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Before COHEN, ABRAMS and NASE, Administrative Patent Judges.

COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 17 through 24. These claims constitute all of the claims remaining in the application.

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<sup>1</sup> Application for patent filed July 21, 1995.

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Appellants' invention pertains to an adjustable shelving system. An understanding of the invention can be derived from a reading of exemplary claim 17, a copy of which appears in the Appendix to the brief (Paper No. 11).

As evidence of obviousness, the examiner has applied the documents listed below:

Glaberson et al 1965 (Glaberson)	3,221,893	Dec. 7,
Doherty 1975	3,918,670	Nov. 11,
Stroh 1976	3,993,002	Nov. 23,
Zimmerman 22, 1989	4,858,773	Aug.
Brewster 1991	5,039,046	Aug. 13,

The following rejections are before us for review.

Claims 17, 18, and 21 through 23 stand rejected under 35 U.S.C. § 103 as being unpatentable over Stroh in view of Zimmerman.

Claim 19 stands rejected under 35 U.S.C. § 103 as being

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unpatentable over Stroh in view of Zimmerman, further in view of Doherty.

Claim 20 stands rejected under 35 U.S.C. § 103 as being unpatentable over Stroh in view of Zimmerman, further in view of Glaberson.

Claim 24 stands rejected under 35 U.S.C. § 103 as being unpatentable over Stroh in view of Zimmerman, further in view of Brewster.

The full text of the examiner's rejections and response to the argument presented by appellants appears in the answer (Paper No. 12), while the complete statement of appellants' argument can be found in the briefs (Paper No. 11).

#### OPINION

In reaching our conclusion on the obviousness issue raised in this appeal, this panel of the board has carefully

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considered appellants' specification and claims, the applied patents,<sup>2</sup> and the respective viewpoints of appellants and the examiner. As a consequence of our review, we make the determinations which follow.

The respective rejections of the claims on appeal under 35 U.S.C. § 103 must be reversed since the evidence proffered by the examiner fails to support a conclusion of obviousness.

Independent claim 17 is drawn to an adjustable shelving system comprising, inter alia, first and second side brace elements, a plurality of interchangeable shelves positioned between the side brace elements, each of the side brace elements comprising a side wall having formed therein a plurality of spaced openings having a keyhole configuration, retention means for the shelves comprising a knob, with the

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<sup>2</sup> In our evaluation of the applied patents, we have considered all of the disclosure of each document for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

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respective knobs located within a keyhole opening, the shelves during installation being bent inwardly to locate their knobs within the keyhole opening.

We understand claim 17, consistent with the underlying disclosure, as requiring brace elements with keyhole configuration openings in a side wall, in contrast with, for example, openings in a front wall. Claim 17 also sets forth that the claimed shelves, during installation, bend inwardly to locate the knobs of the shelves within a keyhole opening. As to this method recitation in article claim 17, we note that to the extent that process limitations distinguish products over the prior art they must be given the same consideration as traditional product characteristics. See In re Luck, 476 F.2d 650, 653, 177 USPQ 523, 525 (CCPA 1973). With the above principle in mind, we appreciate from our reading of the noted method recitation that it simply denotes that the claimed shelves have the physical characteristic of being capable of being bent inwardly.

We turn now to the prior art applied in the rejection of

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claim 17.

Among other things, the patent to Stroh teaches (Figs. 3 and 9) openings 21 in the front face of vertical upright members 14 that receive lugs 55 of brackets 51 clamped to shelves 40. As to the Zimmerman document, it discloses a foldable cooling/baking rack wherein shelving elements 20 are positioned between posts 14 and 18. The shelving is pivoted to posts 14 (for folding the shelving relative to posts 14) and detachably connected to posts 18 via enlarged end caps 56 on shelving beam 22 received by openings 58 (large diameter portion 60 and relatively small diameter portion 62 as seen in Fig. 3a) in the posts 18.

When we set aside what appellants have disclosed in the present application, it is at once quite apparent to us that the combined teachings of Stroh and Zimmerman simply would not have been suggestive of the particular adjustable shelving system of claim 17, i.e., a shelving system wherein each of the side brace elements comprises a side wall having formed therein a plurality of spaced openings having a keyhole

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configuration, retention means for the shelves comprising a knob, with the respective knobs located within a keyhole opening, and wherein the shelves have the physical characteristic of being capable of being bent inwardly such that the shelves, during installation, can be bent inwardly to locate their knobs within the keyhole opening. The patents to Doherty, Glaberson, and Brewster, while fairly suggestive of angled hoops, interlocking brace sections, and coated wire, respectively, nevertheless do not overcome the basic deficiencies of the Stroh and Zimmerman references, as specified above. Since the evidence applied by the examiner would not have

been suggestive of the claimed invention, the respective rejections of appellants' claims must be reversed.

In summary, this panel of the board has:

reversed the rejection of claims 17, 18, and 21 through 23 under 35 U.S.C. § 103 as being unpatentable over Stroh in view of Zimmerman;

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reversed the rejection of claim 19 under 35 U.S.C. § 103  
as being unpatentable over Stroh in view of Zimmerman and  
Doherty;

reversed the rejection of claim 20 under 35 U.S.C. § 103  
as being unpatentable over Stroh in view of Zimmerman and  
Glaberson; and

reversed the rejection of claim 24 under 35 U.S.C. § 103  
as being unpatentable over Stroh in view of Zimmerman and  
Brewster.

The decision of the examiner is reversed.

REVERSED

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IRWIN CHARLES COHEN	)	)
Administrative Patent Judge	)	
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	)	BOARD OF PATENT
NEAL E. ABRAMS	)	)
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
	)	
JEFFREY V. NASE	)	
Administrative Patent Judge	)	

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