

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte KURT M. SOMMERMEYER and JAMES RASE

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Appeal No. 99-0096  
Application 08/640,236<sup>1</sup>

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ON BRIEF

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Before CALVERT, McQUADE and CRAWFORD, Administrative Patent Judges.

McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Kurt M. Sommermeyer et al. appeal from the final rejection of claims 1 through 7, 9 and 10. Claim 8, the only other claim pending in the application, stands objected to as

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<sup>1</sup> Application for patent filed April 30, 1996.



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U.S.C. § 102(e) as being anticipated by Brosfske and under 35  
U.S.C.

§ 103(a) as being obvious over Brosfske.

Reference is made to the appellants' brief (Paper No. 7) and to the examiner's answer (Paper No. 10) for the respective positions of the appellants and the examiner with regard to the merits of these rejections.

Brosfske discloses a cargo stabilizer installed in the box 12 of a pickup truck 10. The stabilizer includes, inter alia, a pair of elongated channel-shape side rails 24 respectively secured to the sidewalls 16 of the pickup box, a plurality of channel-shape crossbars 26 extending between the side rails 24 and a telescoping bar 42 composed of members 50, 52 extending between adjacent crossbars 26 (see Figures 2 and 14). The side rails 24, crossbars 26 and telescoping bar 42 contain respective sets of spaced holes which allow these members to be adjustably secured to one another via pin assemblies 29.

Turning first to the standing 35 U.S.C. § 102(e) rejection, anticipation is established only when a single

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prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). It is not necessary that the reference teach what the subject application teaches, but only that the claim read on something disclosed in the reference, i.e., that all of the limitations in the claim be found in or fully met by the reference. Kalman v. Kimberly Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

As pointed out by the appellants (see page 3 in the brief), their invention comprises, inter alia, an elongated bar having an elongated slot extending therealong and a tie-down bracket which is mounted in the slot and can be secured at any point in the slot. Claims 1 and 10, the two independent claims on appeal, recite these elements. The examiner considers the claim limitations relating to the elongated bar to read on Brosfske's middle channel-shape crossbar 26 and the claim limitations relating to the tie-down bracket to read on Brosfske's telescoping bar 42 and its constituent members 50, 52 (see page 4 in the answer).

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Although the channel-shape crossbar 26 defines an elongated slot and the telescoping bar 42 is mounted in this slot, the telescoping bar cannot be secured at any point in the slot as required by claims 1 and 10. As disclosed, Brosfske's telescoping bar can be secured in the crossbar slot only at the discrete spaced locations defined by the set of pin assembly holes in the crossbar. Since Brosfske does not disclose any other structure which meets the claim limitations in question, the examiner's finding of anticipation must fall. Accordingly, we shall not sustain the standing 35 U.S.C. § 102(e) rejection of claims 1 and 10, and of claims 2 through 7 and 9 which depend from claim 1, as being anticipated by Brosfske.

In addition to not teaching a combination having an elongated bar and tie-down bracket as recited in claims 1 and 10, Brosfske would not have suggested same to one having ordinary skill in the art. Therefore, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of claims 1 and 10, and of dependent claims 2 through 7 and 9, as being obvious over Brosfske.

The decision of the examiner is reversed.

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REVERSED

IAN A. CALVERT	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
JOHN P. McQUADE	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
MURRIEL E. CRAWFORD	)	
Administrative Patent Judge	)	

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