

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN HARRINGTON

Appeal No. 96-0919
Application 08/027,922¹

ON BRIEF

Before ABRAMS, STAAB, and McQUADE, Administrative Patent Judges.
McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

This appeal is from the final rejection of claims 54 and 55. Claims 1 through 6, 10 through 12, 14, 32 through 35, 50 and 51, the only other claims pending in the application, stand allowed.

The invention relates to "a combined trash and recycling center" (specification, page 1). Claims 54 and 55 read as follows:

¹ Application for patent filed March 8, 1993. According to the appellant, the application is a continuation of Application 07/737,330, filed July 29, 1991, now abandoned.

54. A receptacle comprising:

a housing having an interior recess and a top section with an open aperture;

a first top having a frame removably connected to said top section, said first top substantially covering said open aperture, wherein said first top is adapted to be removed from said top section and replaced with a second top;

a can crusher mounted on a top surface of said first top; and

means, laterally spaced from said can crusher, for passing articles through said first top into said interior recess without moving said frame of said first top.

55. A receptacle as in Claim 54 wherein said can crusher is removably mounted on said top surface.

The reference relied upon by the examiner as evidence of obviousness is:

Deiters

5,048,413

Sep. 17, 1991
(filed Mar. 29, 1990)

Claims 54 and 55 stand rejected under 35 U.S.C. § 103 as being unpatentable over Deiters.

Reference is made to the appellant's main and reply briefs (Paper Nos. 25 and 27) and to the examiner's answer (Paper No. 26) for the respective positions of the appellant and the examiner as to the propriety of this rejection.

Deiters discloses a receptacle apparatus comprising a housing in the form of a receptacle 12 having an interior recess

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and a top section with an open aperture, a top in the form of a platform 18 removably connected to the top section so as to substantially cover the open aperture, a can crusher mounted on the top surface of the platform, and means in the form of an opening 40 in the platform for passing crushed cans through the platform and into the interior recess. The can crusher consists of a crusher housing 34, a ram 52 and a ram head 50. In operation, a can is inserted into the crusher housing and the ram is actuated to move the ram head toward the can so as to crush it against the front wall of the housing. Upon retraction of the ram head, the crushed can drops by gravity through the opening 40 into the receptacle 12. Deiters teaches that this construction provides for "a minimum of handling [of the cans] . . . and thus a minimum of exposure to the operator. Such is important when the cans may have contained toxic, caustic, flammable or other dangerous material" (column 3, lines 35 through 39).

Claim 54 recites a receptacle comprising, inter alia, "means, laterally spaced from said can crusher, for passing articles through said first top into said interior recess." The examiner has found that this "means" is met by Deiters' opening 40 (see page 4 in the answer). The examiner explains that

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[t]he [Deiters] housing 34 serves as a means to protect the elements of which it surrounds, that being the cylinder [ram] 52 and piston [ram head] 50. The elements which go into motion to perform the actual crushing of the can 38 are the cylinder and piston. While the housing has a significant roll [sic, role] in the overall device, it can be argued that the actual crushing of the can could take place with only the cylinder and piston mounted on the top. Thus, it is feasible to read as the can crusher the cylinder and piston and not include the housing. With this view in mind it can be stated that the opening 40 is indeed laterally spaced from the can crusher [answer, pages 5 and 6].

The appellant argues, however, that the Deiters "opening (40) is clearly located beneath the can crusher; not laterally spaced from the can crusher" (main brief, page 3) because "[t]he housing (34) in Deiters is a necessary part of the crushing mechanism" (reply brief, page 1).

The position taken by the appellant in this regard is well founded. Deiters expressly describes housing 34 as a "crusher housing" (column 2, line 38). It is also apparent from the Deiters disclosure (see column 2, line 62 et seq.) that the housing 34 is an integral and necessary component of the can crusher. In this light, the examiner's determination that the recitation of the can crusher in claim 54 can be read on Deiters' "cylinder and piston and not include the housing" (answer, page 5) is completely unreasonable. Since the examiner's finding that the Deiters opening 40 is laterally spaced from the can crusher

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is predicated on this erroneous determination, it too is flawed. Reasonably construed, Deiters' opening 40 is beneath its associated can crusher, and is not laterally spaced therefrom. Thus, the opening 40 does not meet the recitation in claim 54 of "means, laterally spaced from said can crusher, for passing articles through said first top into said interior recess." Moreover, since minimizing the handling of cans is a principle object of the Deiters construction, one of ordinary skill in the art would not have found it obvious to laterally space the opening from the can crusher. Thus, Deiters does not teach, and would not have suggested, a receptacle as recited in claim 54.

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Accordingly, we shall not sustain the standing 35 U.S.C.
§ 103 of claim 54, or of claim 55 which depends therefrom.

The decision of the examiner is reversed.

REVERSED

NEAL E. ABRAMS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
LAWRENCE J. STAAB)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
JOHN P. McQUADE)	
Administrative Patent Judge)	

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APJ McQUADE

APJ ABRAMS

APJ STAAB

DECISION: **REVERSED**

Typed By: Jenine Gillis

DRAFT TYPED: 18 Jun 98

Revision: 19 Aug 97

FINAL TYPED: