

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 17

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 D. ROSS

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Appeal No. 2002-0209  
Application 09/299,452

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ON BRIEF

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Before FRANKFORT, McQUADE, and BAHR, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 7. Claim 8, the only other claim pending in the application, stands objected to as being dependent

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upon a rejected base claim, but has been indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Appellant's invention is directed to a palletized container for bulk materials including a bulk bag having a flexible bottom and flexible sides, with an inflatable stand mounted to the bag bottom. As noted on page 1 of the specification, these bags are usually made of flexible reticulated materials such as woven polypropylene and are capable of holding large, heavy quantities of bulk materials, typically weighing a ton or more. By providing a bulk bag and integral inflatable stand, appellant avoids the need for using a conventional wooden pallet for support of the bulk bag, and provides a container wherein prior to and between uses, the container may be compactly stored with its sides furled and its stand deflated. Independent claims 1 and 5 are representative of the subject matter on appeal and a copy of those claims can be found in the CLAIMS appendix attached to appellant's brief.

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The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Ziemba	4,116,344	Sep. 26, 1978
Taylor	5,685,644	Nov. 11, 1997

Claims 1 through 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Taylor in view of Ziemba.

Rather than reiterate the examiner's explanation of the above-noted rejection and the conflicting viewpoints advanced by the examiner and appellant regarding the rejection, we make reference to the examiner's answer (Paper No. 14, mailed August 13, 2001) for the examiner's reasoning in support of the rejection, and to appellant's brief (Paper No. 13, filed June 19, 2001) for the arguments thereagainst.

#### OPINION

In reaching our decision on the obviousness issues raised in this appeal, we have carefully considered appellant's specification and claims, the applied references, and the respective viewpoints advanced by appellant and the examiner. As

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a consequence of our review, we have made the determination that the examiner's rejection of the appealed claims under 35 U.S.C. § 103(a) will not be sustained. Our reasons for this determination follow.

Appellant argues, and we strongly agree, that Taylor and Ziemba, whether considered alone or in combination, do not teach, and would not have reasonably suggested to one of ordinary skill in the art at the time of appellant's invention, a bulk bag and integral inflatable stand as set forth in the claims before us on appeal. Like appellant, we consider that it is only by looking to the disclosure of the present application that one of ordinary skill in the art would have found a suggestion to selectively combine the applied references in the manner urged by the examiner to arrive at appellant's claimed subject matter.

In our opinion, the examiner's position represents a clear case of impermissible hindsight reconstruction of the claimed invention based upon appellant's own teachings. In that regard, we note, as our court of review indicated in In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992), that it is impermissible to use the claimed invention as an instruction manual

or "template" in attempting to piece together isolated disclosures and teachings of the prior art so that the claimed invention is rendered obvious. Moreover, and more to the point in the present appeal, we observe that the mere fact that some prior art reference (i.e., Taylor) may be modified in the manner suggested by the examiner does not make such a modification obvious unless the applied prior art suggested the desirability of the modification. See In re Gordon, 773 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir 1984). Here, the prior art relied upon by the examiner contains no such suggestion.

At best, it would appear that the applied prior art references would have provided a suggestion to entirely replace the pallet (42) seen in Figure 6 of Taylor with a system of separate, individually inflatable, elongate tubes (10) and a separate deck or platform (28) temporarily placed on the tubes to allow stacking or storage of goods thereon, as taught in Ziemba.

Since we have determined that the teachings and suggestions found in Taylor and Ziemba would not have made the subject matter as a whole of independent claims 1 and 5 on appeal obvious to one of ordinary skill in the art at the time of appellant's invention,

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we must refuse to sustain the examiner's rejection of those claims under 35 U.S.C. § 103(a). It follows that the examiner's rejection of dependent claims 2 through 4, 6 and 7 will likewise not be sustained.

Accordingly, the decision of the examiner to reject claims 1 through 7 under 35 U.S.C. § 103(a) is reversed.

REVERSED

CHARLES E. FRANKFORT	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
JOHN P. McQUADE	)	
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
	)	
JENNIFER D. BAHR	)	
Administrative Patent Judge	)	

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