

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. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD LEE SACCANI

Appeal No. 2002-1807
Application No. 09/247,419

ON BRIEF

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

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 5 and 18-26. Claims 2-4, 11, 12, 27 and 28 have been canceled, claims 29 and 30 have been allowed, and claims 6-10 and 13-17 have been objected to as containing allowable subject matter but being dependent upon a rejected claim.

We REVERSE.

BACKGROUND

The appellant's invention relates to a shopping cart. An understanding of the invention can be derived from a reading of exemplary claim 1, which has been reproduced below.

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

Nicholl <u>et al.</u> (Nicholl)	2,812,187	Nov. 5, 1957
Hummer	3,184,248	May 18, 1965
Bowers <u>et al.</u> (Bowers)	5,288,089	Feb.22, 1994

Claims 1, 5 and 18-21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Nicholl.

Claims 22 and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nicholl in view of Hummer.

Claims 24-26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nicholl in view of Bowers.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the Answer (Paper No. 16) for the examiner's complete reasoning in support of the rejections, and to the Brief (Paper No. 14) and Reply Brief (Paper No. 17) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

Claim 1

The appellant's invention is directed to an improved shopping cart wherein the entire basket is movable vertically with respect to the frame that supports it when a load is placed in the basket, the result being to lower the center of gravity of the cart to make the cart more safe. Claim 1 reads as follows:

1. A shopping cart comprising:
 - a frame;
 - a basket mounted on the frame; and
 - biasing means for allowing the entire basket to move in relation to the frame when a load is placed in the basket.

The Rejection Under Section 102

The examiner has rejected claims 1, 5 and 18-21 as being anticipated by Nicholl. Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of the claimed invention. See, for example, RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). A reference anticipates a claim if it

discloses the claimed invention such that a skilled artisan could take its teachings in combination with his own knowledge of the particular art and be in possession of the invention. In re Graves, 69 F.3d 1147, 1152, 36 USPQ2d 1697, 1701 (Fed. Cir. 1995), cert. denied, 116 S.Ct. 1362 (1996), quoting from In re LeGrice, 301 F.2d 929, 936, 133 USPQ 365, 372 (CCPA 1962). Applying this guidance of our reviewing court to the situation at hand leads us to conclude that this rejection should not be sustained. Our reasoning follows.

Nicholl is directed to a shopping cart having a basket with a fixed upper portion and a movable lower portion. The examiner has found that the “basket” in Nicholl comprises the “combination of items 30-37” (Answer, page 3), which comprises the movable lower portion, and on this basis has concluded that the reference discloses all of the subject matter recited in claim 1. While the examiner acknowledges that Nicholl describes the “basket” as comprising a movable lower portion and a fixed upper portion (Answer, page 6), he has taken the position that he is not bound by this description, and his interpretation limiting the term “basket” to the lower movable portion is not improper in that the claim is in “comprising” format, which does not exclude the presence of other elements (Answer, pages 6-8). The appellant argues that this is a misinterpretation of the Nicholls disclosure, for the movable lower portion does not comprise the “entire basket” and therefore Nicholl’s “entire basket” is not movable with respect to the frame, as is required by this claim.

It is clear to us from the appellant's disclosure that the "basket" of the invention comprises four side panels and a bottom panel, for a single numeral (20) has been used to designate the basket in the drawings (see, in particular, Figures 1 and 4), and the individual panels have not been separately described in the text or noted in the drawings. It is our view that this is in keeping with what one of ordinary skill in the art would interpret to be the basket of a shopping cart, which is the subject matter to which the claims are directed. Therefore, it is our view that the term "basket," as used in the claims, should be interpreted as meaning a receptacle having four side panels and a bottom panel.

That is not the case in Nicholl, wherein the "basket" is defined as comprising two components, one of which is fixed with respect to the frame and the other movable with respect thereto, with neither containing four side panels and a bottom panel. This is abundantly clear from the description provided in columns 2 and 3, where it is stated that "[t]he upper portion of the basket" is attached to frame members 4 (column 2, lines 63-67; emphasis added), and that "[t]he movable component of the basket . . . is slightly smaller than and conforms in shape to the fixed portion of the basket" (column 3, line 40 et seq.; emphasis added). Furthermore, it is our view that neither of the separate portions in and of itself is capable of functioning as a shopping cart "basket," that is, a receptacle capable of receiving and holding articles in the manner that is necessary for such a device, for the fixed upper portion has no bottom panel and the movable lower

portion has no rear panel. In this regard, containment of articles in the rear of the movable portion of the basket is provided by a back panel of the fixed portion, which comprises a plurality of vertical wires 11 attached to the frame and extending below the lower edge of the side panels of the fixed basket. As the movable portion of the basket moves downward under the weight of the articles placed therein, the fixed wires function as a back panel for both the fixed and movable portions of the basket. Moreover, as downward movement occurs, the side and front panels of the fixed upper portion augment the side panels of the movable lower portion to increase the capacity of the basket, which is the principal objective of the Nicholl invention (column 1, lines 29-37).

It is our opinion that the examiner's interpretation of the Nicholl reference is improper in view of the description of the invention provided in the patent as well as what would be understood from the patent by one of ordinary skill in the art. This being the case, Nicholl does not disclose or teach a shopping cart in which the "entire basket" moves in relation to the frame when a load is placed in the basket, and therefore does not anticipate the subject matter recited in claim 1. The Section 102 rejection of claim 1, as well as the like rejection of dependent claims 5 and 18-21, is not sustained.

The Rejections Under Section 103

The first of these rejections is that claims 22 and 23 would have been obvious to one of ordinary skill in the art in view of the combined teachings of Nicholl and Hummer,

and the second is that claims 24 and 26 would have been obvious in view of Nicholl and Bowers. The test for obviousness is what the combined teachings of the prior art would have suggested to one of ordinary skill in the art. See, for example, In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). It is our view that this test is not met by either rejection, and we will not sustain them.

Claim 21 adds to claim 1 the requirement that the shopping cart have a child seat, and claim 22 further states that the child seat comprise a flexible hammock. Hummer was applied for these teachings. However, even considering Nicholl in the light of Section 103, the deficiency pointed out above with regard to its application to claim 1 is not overcome by Hummer. This being the case, Nicholl and Hummer fail to establish a prima facie case of obviousness with regard to the subject matter of claims 21 and 22.

Claims 24-26 have been rejected as being obvious in view of Nicholl and Bowers, the latter being applied for teaching equipping a shopping cart with a brake. Be that as it may, Bowers fails to cure the defect in Nicholl regarding the subject matter of claim 1, and therefore this rejection cannot be sustained.

CONCLUSION

None of the rejections are sustained.

The decision of the examiner is reversed..

IRWIN CHARLES COHEN
Administrative Patent Judge

NEAL E. ABRAMS
Administrative Patent Judge

JOHN D. McQUADE
Administrative Patent Judge

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