

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 9

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte TOM CLARK

Appeal No. 2002-2254
Application No. 09/456,046

ON BRIEF

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

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 and 3 to 7, which are all of the claims pending in this application.

We AFFIRM-IN-PART.

BACKGROUND

The appellant's invention relates to a grease collection mat for placement under the barbecue grill (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

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

Clark	4,512,044	Apr. 23, 1985
Sandaj et al. (Sandaj)	5,868,270	Feb. 9, 1999

Claims 1, 3 and 4 stand rejected under 35 U.S.C. § 102(a) as being anticipated by Sandaj.

Claim 6 stands rejected under 35 U.S.C. § 103 as being unpatentable over Sandaj .

Claims 5 and 7 stand rejected under 35 U.S.C. § 103 as being unpatentable over Sandaj in view of Clark.

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. 8, mailed May 29, 2002) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 7, filed March 14, 2002) 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.

The anticipation rejection

We sustain the rejection of claims 1, 3 and 4 under 35 U.S.C. § 102(a).

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.

Verdegaal Bros. Inc. v. Union Oil Co., 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir.), cert. denied, 484 U.S. 827 (1987). The inquiry as to whether a reference anticipates a claim must focus on what subject matter is encompassed by the claim and

what subject matter is described by the reference. As set forth by the court in Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984), it is only necessary for the claims to "'read on' something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or 'fully met' by it."

Claim 1 reads as follows:

An apparatus for placement underneath a barbecue grill for catching and collecting grease and splatter, comprised of:
a base mat, said base mat being of a generally rectangular shape;
a front drip edge, said front drip edge fastened along the front edge of said base mat;
a rear drip edge, said rear drip edge fastened along the rear edge of said base mat;
a left grease barrier, said left grease barrier fastened along a left right edges [sic, a left edge] of said base mat;
a right grease barrier, said right grease barrier fastened along a right edge of said base mat; and
wherein said front drip edge, said rear drip edge, said right grease barrier, said left grease barrier, and said base mat form an open upper volume where grease drippings and splatter may accumulate and eventually be discarded.

Sandaj describes a discharge container mat for use under most barbecues in order to over come the problems associated with the dripping and spilling of grease and fat which falls from barbecues, mostly during the cooking process. The discharge container mat, by virtue of a combination of multiple projections in the surface of the

mat and a retaining wall, provides a means of effectively catching and retaining such drips. As shown in the embodiment depicted in Figures 1-5, the mat 5 has an overall rectangular shape. The weight of a barbecue grill rests on the mat and assists in fixing the mat in place. The mat includes a retaining wall 15 which allows the mat to act as a container for fluids which drip or fall onto the surface. The retaining wall of the mat 15 can be angled, curved (see Figures 3 and 4) or vertically disposed to the horizontal surface of the mat. The mat has a generally flat bottom provided with projections from the receiving surface 20, such as a grid of pyramids 25 (see Figure 2). The height of the retaining wall can be higher or lower than the height of the pyramids. In the preferred embodiment shown in Figure 1 the height of the walls and the pyramids is uniform while in the alternative embodiment of Figures 6-7 the height of the wall 45 is greater than the folds 40. Sandaj teaches (column 2, lines 40-44) that

[t]he location of the retainer walls is important only insofar as they should create a container or collector for holding the spilled or dripping greasy liquids or oils. The shape of the perimeter of the mat may be any desired shape, but a preferred embodiment is rectangular in over all design.

The appellant argues (brief, p. 4) that a primary tenet in determining whether a reference anticipates under 35 U.S.C. § 102(a) is that "only the CLAIMED designs are to be compared." The appellant then asserts that the following features are not taught by Sandaj: (1) a front drip edge, a rear drip edge, a left grease barrier, and a right grease barrier forming an open upper volume where grease drippings and splatter may

accumulate and eventually be discarded; and (2) the left grease barrier and the right grease barrier are of a semi-hemispherical cross-section to allow the wheels of the grill to easily roll over.

We agree with the examiner that claims 1 and 3 are readable on Sandaj as set forth by the examiner in the answer (pp. 3-5). Thus, we find the appellant's arguments to be unpersuasive.

First, we note that the appellant cited no authority, and we are not aware of any authority supporting the appellant's primary tenet that in determining whether a reference anticipates under 35 U.S.C. § 102(a) that "only the CLAIMED designs are to be compared." As clearly set forth in 35 U.S.C. § 102(a)¹ all that is necessary for an anticipation rejection under Section 102(a) is that the claimed invention was **described** in a printed publication in this country before the invention thereof by the appellant. Thus, the full disclosure of Sandaj must be considered, not just the subject matter claimed by Sandaj.

¹ Section 102(a) reads: A person shall be entitled to a patent unless -- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent.

Second, the claimed front drip edge, rear drip edge, left grease barrier and right grease barrier forming an open upper volume where grease drippings and splatter may accumulate and eventually be discarded is readable on the retaining wall 15 of Sandaj. As shown from the perspective of Figure 1, the retaining wall 15 has a front drip edge portion, a rear drip edge portion, a left grease barrier portion and a right grease barrier portion which together form an open upper volume where grease drippings and splatter may accumulate and eventually be discarded.

Lastly, the claimed left grease barrier and right grease barrier being of semi-hemispherical cross-section to allow the wheels of the grill to easily roll over is readable on the curved retaining wall 15 of Sandaj. As shown best in Figures 3 and 4, the curved retaining wall 15 has a semi-hemispherical cross-section that would permit the wheels of the grill 12 to easily roll over.

For the reasons set forth above, the decision of the examiner to reject claims 1 and 3 under 35 U.S.C. § 102(a) is affirmed.

The appellants have grouped claims 1, 3 and 4 as standing or falling together.² Thereby, in accordance with 37 CFR § 1.192(c)(7), claim 4 falls with claims 1 and 3.

² See page 4 of the appellant's brief.

Thus, it follows that the decision of the examiner to reject claim 4 under 35 U.S.C. § 102(a) is also affirmed.

The obviousness rejection of claim 6

We will not sustain the rejection of claim 6 under 35 U.S.C. § 103.

Claim 6 reads as follows:

An apparatus for placement underneath a barbecue grill for catching and collecting grease and splatter, comprised of:
a base mat, said base mat having a circular shape;
a single circular grease barrier, said circular grease barrier being permanently fastened around a perimeter of said base mat to form a grease accumulation area in a center of said apparatus; and
wherein said circular grease barrier has a semi-hemispherical cross section to facilitate the wheels of a conventional barbecue rolling over it.

In the rejection of claim 6, the examiner determined (answer, pp. 3-4) that Sandaj does not limit the shape of the mat to be rectangular and that the claimed circular shaped mat would have been obvious at the time the invention was made to a person of ordinary skill in the art. The appellant argues (brief, p. 6) that the claimed circular grease barrier having a semi-hemispherical cross section to facilitate the wheels of a conventional barbecue rolling over it is not suggested by Sandaj.

Based on our analysis and review of Sandaj and claim 6, it is our opinion that there are at least two differences.³ The first difference is that the base mat has a circular shape. The second difference is a single circular grease barrier permanently fastened around a perimeter of the base mat to form a grease accumulation area in a center of the apparatus. While the examiner may be correct that the first difference would have been obvious at the time the invention was made to a person of ordinary skill in the art since Sandaj teaches that the shape of the perimeter of the mat may be any desired shape, the examiner has not determined that the second difference would have been obvious at the time the invention was made to a person of ordinary skill in the art. Thus, the examiner has not determined that the subject matter of claim 6 would have been obvious at the time the invention was made to a person of ordinary skill in the art. Moreover, it is our opinion that the teachings of Sandaj alone would not have made it obvious at the time the invention was made to a person of ordinary skill in the art to have modified Sandaj's mat to have both a base mat with a circular shape and a single circular grease barrier permanently fastened around a perimeter of the base mat to form a grease accumulation area in a center of the apparatus. In that regard, we note that Sandaj's rectangular mat does not have a single rectangular grease barrier

³ After the scope and content of the prior art are determined, the differences between the prior art and the claims at issue are to be ascertained. Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966).

permanently fastened around a perimeter of the base mat to form a grease accumulation area in a center of the apparatus

For the reasons set forth above, the decision of the examiner to reject claim 6 under 35 U.S.C. § 103 is reversed.

The obviousness rejection of claims 5 and 7

We will not sustain the rejection of claims 5 and 7 under 35 U.S.C. § 103.

As to claim 7, we have reviewed the reference to Clark additionally applied in the rejection of claim 7 (dependent on claim 6) but find nothing therein which makes up for the deficiency of Sandaj discussed above regarding claim 6. Accordingly, the decision of the examiner to reject claim 7 under 35 U.S.C. § 103 is reversed.

As to claim 5, the appellant argues (brief, p. 6) that the claimed aperture formed in a recess formed in the center of the left grease barrier to allow the apparatus to be hung from a nail or hook on a wall is not suggested from the teachings of Sandaj and Clark. We agree. In that regard, while Clark teaches a portable shower and bath mat having a large hole 14 enabling the mat to be hung from a standard shower head for storage, we fail to find therein any motivation or suggestion to have provided the mat of

Sandaj with an aperture formed in a recess formed in the center of the left grease barrier. Accordingly, the decision of the examiner to reject claim 5 under 35 U.S.C. § 103 is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1, 3 and 4 under 35 U.S.C. § 102(a) is affirmed and the decision of the examiner to reject claims 5 to 7 under 35 U.S.C. § 103 is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JOHN P. McQUADE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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