

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte RAY HADLEY

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Appeal No. 2003-0673  
Application 09/795,307

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ON BRIEF

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

DECISION ON APPEAL

Ray Hadley appeals from the final rejection of claims 5 through 8, all of the claims pending in the application.

THE INVENTION

The invention relates to "a cart with wheels and a handle for transporting recycling bins" (specification, page 1).

Representative claim 8 reads as follows:

8. A cart and bin assembly comprising:  
a cart having a frame with a plurality of holding frame portions each of which is adapted to hold a recycle bin;  
each of said plurality of holding frame portions having an opening with sides that extend into the frame of the cart and are slanted inwardly and downwardly,

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a plurality of recycle bins for different recyclable materials, one of said bins being mounted in each of said plurality of holding frame portions,

each of said recycle bins having sides that engage the sides of the holding frame portion in which mounted which the sides of the recycle bin being configured to complement the inwardly and downwardly slanted side of the holding frame portion,

a plurality of rollable members mounted to the frame of said cart, and

a handle mounted to said frame and extending upwardly from the frame of the cart.

#### THE PRIOR ART

The references relied on by the examiner to support the rejections on appeal are:

O'Malley	4,984,704	Jan. 15, 1991
Weck et al. (Weck)	6,224,072	May 1, 2001

#### THE REJECTIONS

Claim 8 stands rejected under 35 U.S.C. § 102(b) as being anticipated by O'Malley.

Claims 5 through 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over O'Malley in view of Weck.

Attention is directed to the brief (Paper No. 9) and answer (Paper No. 11) for the respective positions of the appellant and examiner regarding the merits of these rejections.<sup>1</sup>

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<sup>1</sup> In the final rejection (Paper No. 7), claims 5 and 8 also stood rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,357,029 to Marini et al. Upon reconsideration, the examiner has since withdrawn this rejection (see page 5 in the answer).

DISCUSSION

I. The 35 U.S.C. § 102(b) rejection of claim 8

O'Malley discloses an apparatus for supporting containers adapted to receive different categories of trash, e.g., glass, metal cans, paper and garbage, for recycling. The apparatus includes a frame 10 composed of various pieces of hollow tubing, and a pair of wheels 19, a handle 20 and a plurality (four) of trash container supports 26 connected to the frame. Each trash container support 26 comprises a rectangular horizontal retainer 27 and a vertical retainer 28 dimensioned to receive a trash container 29.

Anticipation is established only when a single 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 framed by the appellant (see pages 8 and 9 in the brief), the dispositive issue with respect to the rejection of claim 8 is whether O'Malley meets the limitations in the claim requiring each of the holding frame portions to have "an opening with sides that extend into the frame of the cart and are slanted inwardly and downwardly," and each of the recycle bins to have "sides that engage the sides of the holding frame portion in which mounted which the sides of the recycle bin being configured to complement the inwardly and downwardly slanted side of the holding frame portion." The examiner finds (see pages 4 and 6 in the answer) that each of O'Malley's trash container supports 26 constitutes such a holding frame portion and that each of O'Malley's trash containers 29 constitutes such a recycle bin. The appellant counters (see pages 8 and 9 in the brief) that this is not the case because the O'Malley apparatus "holds the bins by using an enlarged lip around the top surface of the bin 29 which lip overlaps the upper edge of the . . . holding frame" (brief, page 9).

Although O'Malley does not expressly describe the enlarged lip around the top surface of each bin or container 29, the drawing figures in the reference belie the appellant's contention that this lip overlaps the upper edge of a holding frame (one of

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O'Malley's container supports 26) to hold the bin in place. These drawing figures also provide reasonable support for the examiner's determination that each of O'Malley's trash container supports 26, with its rectangular horizontal retainer 27 and vertical retainer 28, embodies "an opening with sides that extend into the frame of the cart and are slanted inwardly and downwardly" as recited in claim 8, and that each of O'Malley's trash containers 29 embodies "sides that engage the sides of the holding frame portion in which mounted which the sides of the recycle bin being configured to complement the inwardly and downwardly slanted side of the holding frame portion" as also recited in claim 8. Thus, the appellant's position that the subject matter recited in claim 8 distinguishes over that disclosed by O'Malley by virtue of the foregoing claim limitations is not persuasive.

We shall therefore sustain the standing 35 U.S.C. § 102(b) rejection of claim 8 as being anticipated by O'Malley.

## II. The 35 U.S.C. § 103(a) rejection of claims 5 through 7

Claim 5 depends from claim 8 and requires the handle to have an upper horizontally disposed portion and two lower vertically disposed portions having lower ends mounted in holes within the frame. Claim 6 depends from claim 5 and further defines the

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lower ends of the handle as having spaced ring ridges. Conceding that O'Malley does not respond to these limitations, the examiner turns to Weck.

Weck discloses a cart designed to transport household items such as groceries, beverages and wearing apparel. The cart 20 comprises a base 22, four caster assemblies 24, 26, 28 and 30, an inverted U-shaped handle 44, and receptacles 32, 34, 36 and 38 in the base for selectively receiving the lower ends of the handle's vertical legs 40 and 42. As shown in Figure 7, and more clearly in Figure 10, each of the lower ends of the vertical legs includes a flange 102 having a radially extending ear 106 which engages the upper face of the base and a spring-biased button 94 which engages the lower face of a washer 108 fixed to the bottom face of the base to retain the leg within a receptacle.

In proposing to combine O'Malley and Weck to reject claims 5 and 6, and claim 7 which depends from claim 6, the examiner concludes that it would have been obvious to one of ordinary skill in the art at the time the invention was made "to modify the handle of O'Malley with the improvement of a handle as taught by Weck et al. to provide ring ridges which are able (easily) to release the handle, for convenience" (answer, page 5). It is not entirely clear from this explanation how the examiner is

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proposing to modify the O'Malley handle 20 in view of the Weck handle 44. Suffice to say, however, that there is nothing in the combined teachings of the two references which would have suggested providing O'Malley's apparatus with a handle as set forth in claims 5 and 6.

Accordingly, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of claims 5 through 7 as being unpatentable over O'Malley in view of Weck.

#### SUMMARY

The decision of the examiner to reject claims 5 through 8 is affirmed with respect to claim 8 and reversed with respect to claims 5 through 7.

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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

NEAL E. ABRAMS	)	
Administrative Patent Judge	)	
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LAWRENCE J. STAAB	)	
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JOHN P. MCQUADE	)	
Administrative Patent Judge	)	

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JOSEPH H. MCGLYNN  
6111 SADDLE HORN DRIVE  
FAIRFAX, VA 22030