

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(2) is not binding precedent of the Board.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. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte BERL M. THOMAS

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Appeal No. 96-1323  
Application 08/295,118<sup>1</sup>

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ON BRIEF

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Before McCANDLISH, Senior Administrative Patent Judge, and  
FRANKFORT and NASE, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

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<sup>1</sup> Application for patent filed August 24, 1994.

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DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 6, which are all of the claims in this application. On page 1 of the examiner's answer (Paper No. 10), the examiner has indicated that the rejections of claim 6 have been withdrawn and that claim 6 would be "allowed if rewritten to include all [of] the limitation[s] of claim 1 from which it depends." Accordingly, only the examiner's rejections of claims 1 through 5 remain for our consideration on appeal.

Appellant's invention is directed to a molded plant tray made from expanded polystyrene foam. Claim 1 is representative of the subject matter on appeal and a copy thereof, as it appears in the Appendix to appellant's brief, is attached to this decision.

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

Todd 1972	3,667,159	June 6,
Hinds et al. (Hinds) 1978 (British Patent Specification)	1,511,256	May 17,

Claims 1 through 5 stand rejected under 35 U.S.C.  
§ 102(b) as being anticipated by Hinds.

Claims 1 through 5 stand additionally rejected under  
35 U.S.C. § 103 as being unpatentable over Hinds in view of  
Todd, and alternatively, as being unpatentable over Todd in  
view of Hinds.

Rather than attempt to reiterate the examiner's full  
explanation of the above-noted rejections and the conflicting  
viewpoints advanced by the examiner and appellant regarding  
the rejections, we make reference to the examiner's answer

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(Paper No. 10, mailed October 25, 1995) for the examiner's reasoning in support of the rejections, and to appellant's brief (Paper No. 9, filed October 3, 1995) for appellant's arguments thereagainst.

OPINION

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

rejection of claims 1 through 5 under § 102 is well founded and will be sustained. We have also determined that the examiner's rejections under 35 U.S.C. § 103 of claims 1 through 5 are well founded and will likewise be sustained. Our reasoning in support of these determinations follows.

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Looking first at the examiner's rejection of claims 1 through 5 under § 102(b), we are in agreement with the examiner that the molded, expanded polystyrene plant tray of Hinds is fully responsive to that set forth in the claims on appeal, and that the plant tray of Hinds is fully capable of being used with some form of drive member which would engage in the generally U-shaped grooves in the bottom wall of the tray therein, notwithstanding that the plant tray of Hinds is not specifically disclosed for such use. In this regard, we note that the molded plant tray of Hinds described at page 2, lines 40-45, as having square openings or plant cells therein, instead of the round openings or cells seen in Figure 1 of this reference, would appear to be identical to that seen in appellant's Figures 1 through 4 of the present application, with the sole possible exception being that the generally U-shaped grooves in the tray

of Hinds would be more squared in cross-section than are those seen in appellant's drawing figures.

Appellant's argument that the integrally molded tray of Hinds lacks "drive member receiving groove means" and "alignment means," each defined on the bottom surface of the plant tray by portions of the intermediate walls and portions of the side walls that make up the molded tray and open-ended plant cells therein, is simply not understood. It is clear to us that in an arrangement like that seen generally in Figure 1 of Hinds, but with square plant cells as described on page 2, lines 40-45, and square flange portions extending around each of the plant cell drain openings as explained in the paragraph bridging pages 1 and 2 of Hinds, the tray therein would have a plurality of (e.g., three) longitudinally extending generally "U-shaped" grooves intermediate the four rows of plant cell openings and a partial groove extending about the periphery of the tray, and a plurality of (i.e., nine) generally "U-shaped" grooves positioned in perpendicular relationship to the longitudinally extending grooves. All of these grooves in the tray of Hinds would be defined or formed on the bottom surface of the tray by "portions of" the intermediate walls and "portions of" the side walls that

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make up the integrally molded tray and open-ended plant cells therein and would be spaced and oriented in the same manner as set forth in appellant's claim 4 on appeal.

The central one of the nine transversely extending generally U-shaped grooves of this embodiment in Hinds would be located equidistant from the two parallel side/end walls of the tray and have a central axis which would be perpendicular to the central axes of the longitudinally extending grooves or "drive member receiving groove means" of the tray, and thus is seen to be fully responsive to appellant's claimed "alignment means" required in claims 3 and 5 on appeal. As for the converging side walls of each plant cell defined in claim 2 on appeal, this is clearly disclosed in Hinds at, for example, page 2, lines 85-89.

With respect to the above determinations, we observe that the law of anticipation does not require that the reference specifically teach what the appellant has disclosed and is claiming but only that the claims on appeal "read on"

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something disclosed in the reference, i.e., all limitations of the claim are found in the reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert.

denied, 465 U.S. 1026 (1984). In the present case, all the limitations of claims 1 through 5 on appeal are found in Hinds, either expressly or under principles of inherency, and those claims are clearly anticipated thereby. Accordingly, we will sustain the examiner's rejection of claims 1 through 5 under 35 U.S.C. § 102(b) based on Hinds.

We will also sustain the examiner's rejection of claims 1 through 5 under 35 U.S.C. § 103 based on Hinds in view of Todd, wherein Todd (e.g., Figures 1 and 2) merely gives us a better visual impression of what the above expressly described embodiment of Hinds would look like with square plant cells, as is already described in Hinds at page 2, lines 40-45, but not shown in the drawings thereof. Neither Hinds nor Todd actually shows in their drawings the grooves in the bottom surface as required in the claims on

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appeal, but as noted above, it is clear to us that the flanges discussed in the paragraph bridging pages 1 and 2 of Hinds would result in the bottom surface of the tray therein having essentially the same groove arrangement as seen in appellants' Figures 1 through 4, except with slightly more squared U-shaped grooves.

The examiner's alternative rejection of claims 1 through 5 under 35 U.S.C. § 103 based on Todd in view of Hinds is also sustained. Like the examiner, we are of the view that the collective teachings of Todd and Hinds would have made it obvious to one of ordinary skill in the art at the time of appellant's invention to provide the molded tray of Todd with the flanged portions discussed in Hinds so as to gain the advantages expressly noted in Hinds regarding such flanged portions being positioned about the drain holes of the plant cells of the tray. See Hinds page 1, line 84, through page 2, line 8. Again, it is our opinion that the resulting molded plant tray structure of the combination of Todd and Hinds would be identical to that set forth in appellant's claims on

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appeal, with the grooves formed in the bottom surface of the tray of the combination having a somewhat more squared U-shaped configuration.

To summarize:

We have affirmed the examiner's rejection of claims 1 through 5 under 35 U.S.C. § 102(b) as being anticipated by Hinds.

We have also affirmed the examiner's rejection of claims 1 through 5 under 35 U.S.C. § 103 as being unpatentable over Hinds in view of Todd, and the alternative rejection based on Todd in view of Hinds.

The decision of the examiner is accordingly affirmed.

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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

	HARRISON E. McCANDLISH	)	
	Senior Administrative Patent Judge	)	
		)	
		)	
		)	BOARD OF
PATENT		)	
	CHARLES E. FRANKFORT	)	APPEALS
AND		)	
	Administrative Patent Judge	)	
INTERFERENCES		)	
		)	
		)	
		)	
	JEFFREY V. NASE	)	
	Administrative Patent Judge	)	

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APPENDIX

1. A molded plant tray comprising a main body member having a top surface, a bottom surface and a plurality of side walls extending between said top surface and said bottom surface;

a plurality of intermediate walls interconnecting said side walls and positioned in substantially perpendicular relationship to said side walls with a plurality of open-ended plant cells defined between said intermediate walls and said side walls;

said plant cells being arranged in a rectangular grid and each including a drain hole located at the bottom surface of said main body member and a plant medium receiving opening located at the top surface of said main body member;

drive member receiving groove means being defined on the bottom surface of said main body member by portions of said intermediate walls and portions of said side walls; and

alignment means being defined on the bottom surface of said main body member by portions of said intermediate walls and portions of said side walls.