

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 11

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte VITAS G. BIRGELIS

Appeal No. 96-1441
Application 08/096,458¹

ON BRIEF

Before ABRAMS, McQUADE and CRAWFORD, Administrative Patent Judges.

McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

This appeal is from the final rejection of claims 1 through 3, 7, 16 and 18.² Claims 4 through 6, 8 through 15,

¹ Application for patent filed July 26, 1993.

² Claim 16 has been amended subsequent to final rejection.

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19 and 20, the only other claims pending in the application,
stand withdrawn

from consideration pursuant to 37 CFR § 1.142(b) as being
directed to non-elected species.

The subject matter on appeal relates to "an appliance
having one or more shelves supported by an interior liner of
the appliance" (specification, page 1). Claim 1 is
illustrative and reads as follows:

1. A liner for a cabinet of a refrigeration device
comprising:

a pair of substantially planar parallel sidewalls, a rear
wall, a top wall and a bottom wall integrally forming an
interior of the refrigeration device;

said sidewalls each having at least one slot integrally
formed therein supporting at least one shelf therein such that
said shelf is supported in a horizontal plane by a bottom
surface of at least one of said slots, each of said at least
one slots extending into a plane of the sidewalls away from
the interior of the refrigeration device; and

a limit means in each of said slots preventing said shelf
supported on said bottom surface from moving in at least one
direction.

The references relied upon by the examiner as evidence of
obviousness are:

Trevitt

115,542

May 30, 1871

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Jenkins

4,904,032

Feb. 27, 1990

Claims 1 through 3, 7, 16 and 18 stand rejected under 35 U.S.C. § 103 as being unpatentable over Jenkins in view of Trevitt.

Jenkins discloses

a refrigerator cabinet 10 having a fresh food compartment 11 and a freezer compartment 12. The fresh food compartment 11 is defined by a liner 14, which is preferably a vacuum formed plastic. The liner 14 includes a top wall 15, a rear wall 16, a pair of substantially parallel side walls 17 and 18, and a bottom wall 19. The walls 15-19 constitute walls of the fresh food compartment 11, which is a cooling compartment.

The side wall 17 has a plurality of shelf supports 20 molded integrally therewith during formation of the liner 14, and the side wall 18 (see Fig. 10) has a plurality of shelf supports 21 molded integrally therewith during formation of the liner 14. Each of the shelf supports 20 and 21 extends longitudinally with each of the shelf supports 20 on the side wall 17 being in the same horizontal plane as one of the shelf supports 21 on the side wall 18.

Each of the shelf supports 20 includes an upper surface 22 (see FIGS. 8 and 9) and a lower surface 23. Each of the shelf supports 21 (see FIG. 7) has

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an upper surface 24 and a lower surface 25 (see FIG. 10) [column 2, line 63 through column 3, line 15].

Jenkins' shelf supports 20, 21 are specifically designed to accommodate three different types of shelves, i.e. fixed shelves, slidable shelves and cantilevered half-shelves (see the Background and Summary of the Invention sections of Jenkins' specification in columns 1 and 2). To this end, the supports include, inter alia, projections 45, 47 extending downwardly therefrom for abutting against rods 43, 46 on slidable shelves 40 to limit the outward sliding movement of such shelves (see column 3, line 54 through column 4, line 11).

Trevitt discloses a case having a plurality of compartments or pigeon-holes for holding assorted documents and/or books. The compartments are defined by vertical end walls and partitions X containing grooves a and horizontal shelves S slidably fitted into the grooves.

In explaining the rejection on appeal, the examiner states that

Jenkins provides a cabinet with an interior surface defined by a liner 14 with parallel sidewalls 17,

rear wall, top wall, and bottom wall. The sidewalls each have slots integrally formed thereon defined by the spaces between shelf supports 20. Thus defined, surface 22 is a bottom surface of said slot and supports any one of a variety of shelves. Jenkins lacks slots which extend into the plane of the sidewalls away from the interior of the cabinet. Trevitt has a cabinet similar to the refrigerator cabinet of Jenkins in that it is designed to support a plurality of shelves. Trevitt further teaches slots extending into the planes of the sidewalls of the cabinet for slidably receiving and supporting the shelves. It would have been obvious to have provided the slots of Jenkins extending into the plane of the sidewalls as taught by Trevitt instead of being provided by protruding ledges extending out of the plane of the sidewalls as provided by Jenkins, because doing so would have provided the advantage of additional insulating space in the liner of Jenkins between adjacent slots. Regarding claims 1 and 16-17, Jenkins teaches limit means 45, 47 in the slot comprising a protrusion which engages a protrusion on the shelf as shown in figures 6-10 and which prevents a shelf from moving in at least one direction [final rejection, Paper No. 5, pages 2 and 3].

The examiner further explains that

to provide the shelf supports as slots extending into, or as ribs on, the plane of a sidewall is also a matter of design choice. Furthermore, whether ribs are considered as spaces between slots or simply ribs on a sidewall becomes a matter of interpretation and may depend on the width of the ribs as compared to the width of the slots they define. Therefore, it is considered obvious to apply the stronger motivation of broadening the surface on the liner between the slots of Jenkins to provide the advantage of more volume and insulation between the slots and between the cabinet and liner.

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Trevitt has the size and position relationship between slots and planar surfaces of the sidewalls which would enable this advantage when applied to Jenkins. Trevitt is relied upon simply to show that it is known in the art to structurally provide the slots extending into the plane of a sidewall [answer, Paper No. 10, pages 4 and 5].

Claims 1 and 16, the two independent claims on appeal, define each of the slots in the sidewalls of the claimed liner as "extending into a plane of the sidewalls away from the interior" of the associated refrigeration device (claim 1) or cabinet (claim 16) and as having a limit means for preventing shelf movement in at least one direction. As implicitly conceded by the examiner, neither Jenkins nor Trevitt meets these claim limitations. The examiner's attempt to overcome the individual deficiencies of these references in this regard in the manner explained above is not well taken.

Rejections based on 35 U.S.C. § 103 must rest on a factual basis. In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 177-78 (CCPA 1967). In making such a rejection, the examiner has the initial duty of supplying the requisite factual basis and may not, because of doubts that the

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invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. Id.

To the extent that the shelf supports 20, 21 on the sidewalls 17, 18 of Jenkins' liner 14 can be viewed as defining slots therebetween, the examiner concedes that such slots do not extend into a plane of the sidewalls away from the interior of the refrigeration device or cabinet as recited in claims 1 and 16. Nonetheless, the examiner concludes that to modify the Jenkins liner so as to provide for this recited feature would have been suggested by Trevitt and/or an obvious matter of design choice. The combined teachings of Jenkins and Trevitt, however, do not provide the factual basis necessary to support the examiner's conclusion. The document/book case disclosed by Trevitt has little in common with the refrigerator cabinet liner disclosed by Jenkins. The only suggestion for combining the disparate teachings of these two references in the manner proposed by the examiner stems from impermissible hindsight knowledge derived from the appellant's own disclosure. The examiner's rationale that such modification would provide the liner with more insulating

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space is speculative and has no basis in the references. Nor is there any basis in the references for the examiner's conclusion that the proposed modification of Jenkins' liner would have been an obvious matter of design choice. Indeed, the proposed modification would appear to run counter to Jenkins' objective of providing shelf supports capable of accommodating different types of shelves.

In this light, it is apparent that the examiner has resorted to speculation, unfounded assumptions and/or hindsight reconstruction to supply the above noted deficiencies in the reference evidence of obviousness. Accordingly, we shall not sustain the standing 35 U.S.C. § 103 rejection of claims 1 and 16, or of claims 2, 3, 7 and 18 which depend therefrom, as being

unpatentable over Jenkins in view of Trevitt.

The decision of the examiner is reversed.

REVERSED

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Administrative Patent Judge)	
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