

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(2) is not binding precedent of the Board.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. 9

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CAROLYN LETERSKY

Appeal No. 96-2100
Application 08/149,844¹

ON BRIEF

Before STONER, *Chief Administrative Patent Judge*, and STAAB and NASE, *Administrative Patent Judges*.

STONER, *Chief Administrative Patent Judge*.

DECISION ON APPEAL

Carolyn Letersky ("appellant") appeals from the final rejection of claims 1, 3, 4 and 6, all of the claims pending in

¹ Application for patent filed November 9, 1993.

this application, under 35 U.S.C. § 103 as obvious over the prior art.² We *affirm-in-part*.

The claimed invention relates to a shelving construction for use in a student's school locker, as well as to a method of placing a shelf in a locker. Claims 1 and 4 define these two aspects of the invention as follows:

1. A method of placing a shelf in a storage compartment, comprising the steps of:

providing a locker-style of storage compartment having interior sidewalls;

selecting a pair of shelf members having opposed ends, the distance between the opposed ends being substantially equal to the distance between the interior sidewalls of the storage compartment;

selecting a pair of support members having opposed ends, the distance between the opposed ends corresponding to a desired shelf height;

pivotally connecting adjacent opposed ends of the shelf members and the support members to form a laterally unstable collapsible parallelogram frame, [sic, ;]

² A rejection of claim 6 under 35 U.S.C. § 112, second paragraph, found in the final Office action has not been repeated in the examiner's answer. Apparently the examiner considers this rejection to have been overcome by the "amendment" included in the copy of claim 6 as reproduced in the appendix to the brief. We note that the record does not show that this amendment has been formally presented or entered. Nevertheless, because the examiner has indicated that the correct reading of the claims is that which is found in the appendix to the brief, we shall treat the reading of claim 6 in the brief as being the correct one for purposes of deciding this appeal.

Appeal No. 96-2100
Application 08/149,844

positioning a brace member intermediate the support members, the brace member having a first end engaging one of the shelf members and a second end engaging the other of the shelf members, thereby enhancing the weight bearing capacity of the shelf members;

collapsing the parallelogram frame to permit insertion into the storage compartment; and

bringing the support members into engagement with the interior sidewalls of the storage compartment thereby orienting the shelf members perpendicular to the support members with the opposed ends of the shelf members engaging the interior sidewalls of the storage compartment to provide lateral support to the parallelogram frame.

4. In combination:

a locker-style storage compartment having interior sidewalls; and

a shelf unit for a storage compartment, comprising:

a. a pair of shelf members, each of the shelf members being of equal length and having opposed ends; and

b. a pair of support members, each of the support members being of equal length and having opposed ends, adjacent opposed ends of the shelf members and the support members being pivotally connected thereby forming a laterally unstable collapsible parallelogram frame, a brace member being positioned intermediate the support members, the brace member having a first end engaging one of the shelf members and a second end engaging the other of the shelf members, thereby enhancing the weight bearing capacity of the shelf members;

the shelf unit being collapsible for insertion into the locker-style storage compartment, with the support members and the opposed ends of the shelf members engaging the interior sidewalls to provide lateral stability to the parallelogram frame.

Appeal No. 96-2100
Application 08/149,844

Claims 1, 3 and 4 stand rejected under 35 U.S.C. § 103 as unpatentable over Silver (U.S. Pat. 3,872,975, granted Mar. 25, 1975) in view of Hill (U.S. Pat. 2,132,785, granted Oct. 11, 1938) "taken with or without" Weldon-Ming (U.S. Pat. 4,519,318, granted May 28, 1985). Claim 6 stands similarly rejected, the examiner additionally relying upon Sheffer (U.S. Pat. 4,651,651, granted Mar. 24, 1987). So far as claims 1, 3 and 4 are concerned, the examiner is of the view that Silver's disclosed structure differs from that claimed by the appellant only in that Silver lacks a brace member and a specific teaching of being placed in a compartment, assuming that such placement is a requirement of these claims. Finding in Hill a teaching of such a brace member and in Weldon-Ming a suggestion to place shelving within a compartment, the examiner concludes that the appellant's claimed subject matter recited in claims 1, 3 and 4 would have been obvious to one having ordinary skill in the art. Regarding claim 6, the examiner finds in Sheffer a teaching that connective structures using tongue and groove structures are "old and well known" making the modification of Silver's structure to produce the claimed invention obvious to the worker having ordinary skill

Appeal No. 96-2100
Application 08/149,844

in the art. Rather than reiterate the examiner's statement of these rejections, we direct attention to pages 4 and 5 of the answer.

In response to the examiner's section 103 rejections, the appellant makes only the following two arguments. First, the appellant argues that:

the steps recite positioning the brace and then collapsing the parallelogram frame to position it within the storage compartment. This is an unusual sequencing of method steps, normally when bracing has been added it precludes a structure from being collapsed. . . . It is respectfully submitted that the Hill reference does not render obvious the unique sequence of the method steps recited in Claim 1 [brief, pages 5-6; emphasis in the original].

Second, the appellant argues,

The particular structure of brace member 48 disclosed in the present application that permits parallelogram frame 38 to be collapsed for insertion into the student locker is claimed in combination claim 6. This includes "T" shaped slotted openings 54 in shelf members 14 and 16 along with "I" shaped cross-members 58 at each of first end 50 and second end 52 of brace member 48. . . .

* * *

It is to be noted that the claim in question, claim 6, recites a structure that permits the parallelogram frame to be partially collapsed. This is unusual for as a rule the purpose of bracing is, as stated by Sheffer, to add "rigidity to the overall structure" [brief, pages 6-7].

Appeal No. 96-2100
Application 08/149,844

Appeal No. 96-2100
Application 08/149,844

We shall sustain the examiner's rejection of claims 1, 3 and 4, but not the rejection of claim 6. The appellant's argument notwithstanding, nothing in method claims 1 and 3, much less in the structure defined in claim 4, requires that the brace member be positioned in advance of the collapse of the frame. That is, the "unique sequence" upon which the appellant predicates patentability is not a requirement of the claims. Moreover, the open "comprising" language of claim 1 would not preclude additional steps, including steps of removing and reinstalling the brace member.

By contrast, claim 6 specifically requires that the slotted openings in the shelf members be slightly larger than the cross-members at the ends of the brace member so as to permit the parallelogram frame of the shelf unit to be partially collapsed. Nothing in the references relied upon by the examiner teaches or suggests such a relationship of a slot and cross members, much less one so dimensioned as to permit partial collapse.

In summary, the rejection of claims 1, 3 and 4 is affirmed, while the rejection of claim 6 is reversed. Accordingly, the decision of the examiner is *affirmed-in-part*.

Appeal No. 96-2100
Application 08/149,844

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

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BRUCE H. STONER, JR., Chief)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
LAWRENCE J. STAAB)	
Administrative Patent Judge)	APPEALS AND
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JEFFREY V. NASE)	
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Appeal No. 96-2100
Application 08/149,844

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