

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte KEITH F. WOODRUFF and DONALD E. BRADLEY

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Appeal No. 96-3002  
Application 08/164,295<sup>1</sup>

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ON BRIEF

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

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 and 15. Claims 2 to 6, 8 to 11, 13, 14, 16 to 19 and 21, the other claims in the application, have been allowed.

Claim 15 is representative of the subject matter involved:

Claim 15. A container for liquid and semi-liquid product, said container comprising:

a first inner tank for holding said product,

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<sup>1</sup> Application for patent filed December 9, 1993.

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a second outer tank for removably receiving therein said inner tank,

said container including port means for supplying said product to said inner tank,

said container including means for discharging said product from said inner tank,

said outer tank having an upper surface and a plurality of projections extending upwardly from said upper surface,

said outer tank having a lower surface and a plurality of supporting legs extending downwardly from said lower surface,

said upwardly extending projections on said outer tank being substantially aligned with said downwardly extending supporting legs on said outer tank.

The references applied against claims 1 and 15 are:

Ata et al. (Ata)	4,746,034	May 24, 1988
Coleman	4,960,227	Oct. 2, 1990

Claims 1 and 15 stand finally rejected under 35 U.S.C. § 103 as unpatentable over Coleman in view of Ata.

The basis of the rejection is set forth by the examiner on page 3 of the answer and need not be repeated here. Appellants' position, in essence, is summarized in the paragraph bridging pages 8 and 9 of their brief as follows:

These combined features of appealed Claims 1 and 15, when each claim is viewed as a whole, are not taught or suggested by either the Coleman or the Ata et al patents. The Coleman patent discloses only a container structure including inner and outer tanks, but does not suggest or recognize Applicant's [sic] claimed means for stacking multiple containers. The Ata et al patent discloses means for stacking container structures, but does not suggest a container including

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inner and outer tanks or the advantages associated therewith.

Appellants cite a number of cases to the effect that the suggestion to combine the references cannot be derived from appellants' own disclosure, and that there must be a suggestion in the prior art of the desirability of combining the references.

After fully considering the record in light of the arguments presented in appellants' brief and reply brief, and in the examiner's answer, we conclude that the subject matter recited in claims 1 and 15 is unpatentable under 35 U.S.C. § 103.

We do not agree with appellants that there is no suggestion in the prior art to combine Coleman and Ata. As the examiner points out on page 5 of his answer, Ata specifically discloses at column 1, lines 15 to 18 and 51 to 63, the provision of supporting legs 18 on the bottom of a container, and upwardly extending projections (leg positioners) 20 on the upper surface of the container, so that the container can be stacked with a second like container. Ata also teaches that the stacking of containers is desirable and advantageous, in that it "allows the use of a base unit and a recyclable top unit," and "also results in a saving in warehouse space." See column 3, lines 18 to 31. In view of this teaching of Ata, we consider that it would have been obvious to one of ordinary skill in the art to provide the

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container of Coleman with legs and upwardly extending projections, in order to allow it to be stacked. Such modification of the Coleman container would not involve impermissible hindsight or "using Applicant's own disclosure as a guide for combining the references" (reply brief, page 4), but rather would be readily suggested by Ata's disclosure (supra) of the advantages to be gained by stacking containers.

Accordingly, the rejection of claims 1 and 15 will be sustained.

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Conclusion

The examiner's decision to reject claims 1 and 15 is affirmed.

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

AFFIRMED

IAN A. CALVERT	)	
Administrative Patent Judge	)	
	)	
	)	
NEAL E. ABRAMS	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
LAWRENCE J. STAAB	)	
Administrative Patent Judge	)	

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