

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PATRICK A. BRAUN and TRENT A. STONE

Appeal No. 98-1026
Application 08/423,067¹

ON BRIEF

Before McCANDLISH, Senior Administrative Patent Judge MEISTER,
and STAAB, Administrative Patent Judges.

STAAB, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of 1-7 and 11-22, all the claims pending in the application.

¹ Application for patent filed April 17, 1995.

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Appellants' invention pertains to a bin (24) for mounting on a refrigerator door, and in particular to a bin having a plastic container portion (29) and a plastic collar portion (46) bonded to the rim of the container portion. The collar portion includes a section of hollow enclosed beam construction (50) covering the front of the bin. According to the specification, this construction "forms a sturdy yet light weight surrounding member which is crush and dent resistant and provides a convenient and easy grasping handle for removing the bin 24" (specification, page 6). Claim 1 is illustrative of the appealed subject matter and reads as follows:

1. A bin for mounting to a refrigerator door, comprising:

a plastic container portion having an open top face; and

a plastic collar having an overall profile to match the open face of said container portion and a front trim portion having an impact resistant hollow enclosed beam construction, and said collar bonded to said open face of said container portion.

The references of record relied upon by the examiner in support of rejections under 35 U. S. C. § 103 are:

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| Bender | 3,439,634 | Apr. 22, 1969 |
| Levenhagen | 3,734,341 | May 22, 1973 |

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Marschak

4,322,006

Mar. 30, 1982

Claims 1, 3-7, 11-15 and 17-21 stand rejected under 35 U. S. C. § 103 as being unpatentable over Levenhagen in view of Bender. Claims 2, 16 and 22 stand similarly rejected with further reliance on Marschak.

With respect to the rejection of claim 1 et al., it is the examiner's position that

Levenhagen covers all the structural features as set forth by the applicant except for the trim portion having a hollow enclosed beam construction. However, the prior art of Bender discloses a hollow peripheral channel for a trim portion. Therefore, it would seem that one of ordinary skill in the art could modify Levenhagen's invention by constructing the front trim portion with a hollow enclosed beam as taught by Bender. [Answer, page 4.]

Appellants' argument in response to this rejection may be summarized as follows:

. . . first, Bender is not within the scope and content of the prior art because it is non-analogous art; second, there is no teaching or suggestion in either Levenhagen or Bender to make the alleged combination other than by use of hindsight reconstruction; and, finally, even when combined Levenhagen and Bender fail to teach or suggest all of the claimed elements in the rejected claims. [Brief, paragraph spanning pages 5 and 6.]

OPINION

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Having carefully considered appellants' specification and claims, the teachings of the applied references, and the respective positions expressed by appellants and the examiner, it is our determination that the standing § 103 rejections of the appealed claims cannot be sustained. Our reasons follow.

First, we do not agree with the examiner's finding that Levenhagen discloses a bin comprising a collar that is "bonded" to the open face of the container portion. It is a well settled maxim of patent law that, in proceedings before the PTO, claims must be given their broadest reasonable interpretation consistent with the specification, and that the claim language cannot be read in a vacuum, but instead must be read in light of the specification as it would be interpreted by one of ordinary skill in the pertinent art. *See, for example, In re Sneed*, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983). A commonly accepted meaning for the verb "bond" is "[t]o join securely, as with cement or glue."² Based on this definition, and consistent with appellants' specification, which discloses that the bin is a two-piece

² *Webster's II New Riverside University Dictionary* copyright © 1984 by Houghton Mifflin Company.

assembly comprising a container portion and a collar portion that are separately molded and then bonded together by an adhesive, or plastic welded (specification, page 4), we do not believe one of ordinary skill in the art would consider the rim element 26 of Levenhagen as being "bonded" to the body of the container. Instead, consistent with Levenhagen's disclosure, the artisan would consider Levenhagen's rim element and container body to be a one-piece, unitary, monolithic structure that does not meet the "bonded" limitation of the claims.

Second, even if we were to agree with the examiner that the Bender reference constitutes analogous art and is thus a proper reference for consideration in approaching the question of obviousness, we do not find any teaching, suggestion, or inference therein for making the modification to the nestable and stackable container of Levenhagen proposed by the examiner. Bender pertains to an inexpensive and light weight construction for a pool table comprising two thin sheets 16, 18 of relatively flexible thermoplastic material that are vacuum formed and then joined together to form a central planar support surface 40 and a box-like marginal portion 132

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surrounding the support surface. The box-like marginal portion forms a ball return for conveying pocketed balls to a central ball receiving station 82. The disparate nature of the Levenhagen and Bender references is clear upon even a cursory inspection of the drawings thereof. In an nutshell, there is no suggestion in either of the references, or need in view of their divergent objectives and structures, for their combination.

In our view, it is only through the use of hindsight knowledge gleaned from first reading appellants' disclosure that the Levenhagen and Bender references can be combined to arrive at the subject matter of appealed claims 1, 3-7, 11-15 and 17-21. We are therefore unable to agree with the examiner that one of ordinary skill in the art would have arrived at the subject matter of these claims based on the teachings of Levenhagen and Bender. It follows that the standing rejection thereof cannot be sustained.

We have also carefully reviewed the Marschak reference additionally relied upon by the examiner in rejecting claims

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2, 16 and 22 but find nothing therein to make up for the deficiencies of Levenhagen and Bender noted above. Therefore, the standing rejection of these claims also cannot be sustained.

The decision of the examiner is reversed.

REVERSED

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| HARRISON E. McCANDLISH, Senior) |) | |
| Administrative Patent Judge |) | |
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| |) | |
| |) | BOARD OF PATENT |
| JAMES M. MEISTER |) | |
| Administrative Patent Judge |) | APPEALS AND |
| |) | |
| |) | INTERFERENCES |
| |) | |
| LAWRENCE J. STAAB |) | |
| Administrative Patent Judge |) | |

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LJS/pgg
Thomas J. Roth
Whirlpool Corporation
Maildrop 2200
2000 North M 63
Benton Harbor, MI 49022-2692