

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(2) is not binding precedent of the Board.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. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TIMOTHY D. BRADY,
MICHAEL P. KELLY, BRIAN F. RUSSELL
and
ERIC S. McINTOSH

Appeal No. 1999-0523
Application 08/797,523¹

ON BRIEF

Before COHEN, STAAB and NASE, Administrative Patent Judges.

COHEN, Administrative Patent Judge.

DECISION ON APPEAL

¹ Application for patent filed February 7, 1997.

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This is an appeal from the final rejection of claims 1, 2, 4 through 9, and 11, and from the refusal of the examiner to allow claim 3, as amended (Paper No. 6) subsequent to the final rejection (Paper No. 5). Claim 10, the only other claim remaining in the application, stands objected to by the examiner (Paper No. 5, Paragraph No. 6).

Appellants' invention pertains to a shelving system. An understanding of the invention can be derived from a reading of exemplary claims 1 and 11, copies of which appear in the APPENDIX to the brief (Paper No. 11).

As evidence of anticipation and obviousness, the examiner has applied the documents listed below:

Ferdinand et al. (Ferdinand) 1968	3,392,689	July 16,
Cohen	3,858,988	Jan. 7, 1975
Halstrick 1989	4,796,541	Jan. 10,

The following rejections are before us for review.

Claims 1 through 6 and 11 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Cohen.

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Claim 7 stands rejected under 35 U.S.C. § 103 as being unpatentable over Cohen in view of Halstrick.

Claims 8 and 9 stand rejected under 35 U.S.C. § 103 as being unpatentable over Cohen and Halstrick, as applied to claims 1 and 7 above, further in view of Ferdinand.

The full text of the examiner's rejections and response to the argument presented by appellants appears in the answer (Paper No. 12), while the complete statement of appellants' argument can be found in the brief (Paper No. 11).

OPINION

In reaching our conclusion on the issues raised in this appeal, this panel of the board has carefully considered appellants' specification and claims, the applied patents,² and the respective viewpoints of appellants and the examiner.

² In our evaluation of the applied references, we have considered all of the disclosure of each document for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

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As a consequence of our review, we make the determinations which follow.

We reverse each of the examiner's rejections of appellants' claims. Our reasoning appears below.

At the outset, we appreciate from a consideration of each of appellants' independent claims 1 and 11, read in light of the underlying specification and drawing, that a shelving system is set forth that requires, inter alia, a shelf supporting shoulder projecting from a side wall of a second shelf rail, with a first slot in the shoulder for receiving the tongue of a first shelf rail and a second slot in the sidewall for receiving a tab of the first shelf rail.

Turning now to the Cohen reference, applied by the examiner in the anticipation rejection, we find that this reference clearly lacks a teaching of the required "shelf supporting shoulder" of claims 1 and 11. Contrary to the view of the examiner (answer, page 6), we are of the opinion that one versed in the art simply would not have viewed an edge of a lower wall of a slot as a shoulder configuration. For this reason, the rejection of appellants' claims 1 through 6 and

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11 must be reversed. We also reverse each of the respective rejections of appellant's claim 7 and claims 8 and 9 under 35 U.S.C. § 103

since the additionally applied Halstrick and Ferdinand patents are not seen to overcome the deficiency of the Cohen reference.

REMAND TO THE EXAMINER

We remand this application to the examiner to consider the patentability of the claimed subject matter under 35 U.S.C. § 102(b) and 35 U.S.C. § 103 based upon the teaching of Gasner (U.S. Patent No. 3,510,010), of record in the application, alone and/or in combination with other known prior art. As can be

discerned from a review of the Gasner patent (Fig. 2), this document fairly teaches, inter alia, a post 10 including a wing portion 22 (shoulder) projecting from a front face 18 (side wall) of the post, with a slot 30 in the wing portion (shoulder).

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In summary, this panel of the board has reversed each of the examiner's rejections under 35 U.S.C. § 102(b) and 35 U.S.C. § 103. Additionally, we have remanded the application to the examiner for consideration of the matter specified, supra.

The decision of the examiner is reversed.

REVERSED AND REMANDED

	IRWIN CHARLES COHEN)	
	Administrative Patent Judge)	
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PATENT)	BOARD OF
	LAWRENCE J. STAAB)	APPEALS AND
	Administrative Patent Judge)	INTERFER-
ENCES)	
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)	
	JEFFREY V. NASE)	
	Administrative Patent Judge)	

ICC:psb

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