The opinion in support of the decision being entered today was not written
for publication and is not binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte JOHN P. BIONDO, DENNIS C. LAPHAN, DONALD R. MAIER,
WILLIAM F. NETH and CHARLES F. WINBURN

Appeal No. 2003-1289
Application No. 09/028,796

ON BRIEF

Before ABRAMS, McQUADE, and NASE, Administrative Patent Judges.

NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 22 to 24, 26 and 27. Claims 25 and 28 to 36, the only other claims pending in this application, have been allowed.

We AFFIRM.

BACKGROUND

The appellants' invention relates generally to burial caskets, and more particularly to a casket with a memorabilia compartment forming a part thereof (specification, p. 1). The claims under appeal read as follows:

> 22. A casket having a memorabilia compartment for the placement, display and storage therein of personal effects and memorabilia of memorialization of a deceased, said casket comprising:
> a casket shell;
> a cap pivoted to said shell: and
> an openable and closable memorabilia compartment forming a part of said cap, said memorabilia compartment being so positioned and configured as to provide convenient access to mourners paying respects to the deceased for placing personal effects and memorabilia therein for viewing by the mourners.
>
> 23. A casket having a memorabilia compartment, said casket comprising:
> a casket shell;
> a cap closable upon said shell; and
> a memorabilia compartment forming a part of said cap.
>
> 24. The casket of claim 23, wherein said memorabilia compartment is openable and closable.
>
> 26. A casket having a memorabilia compartment, said casket comprising:
> a casket shell having an interior volume therein;
> a cover member covering at least a portion of said interior volume of said shell; and
> a memorabilia compartment forming a part of said cover member.
>
> 27. A casket having a memorabilia compartment, said casket comprising:
> a casket shell having an interior volume therein;
> a cover member covering at least a portion of said interior volume of said shell; and
> means for containing memorabilia forming a part of said cover member.

Claims 23 and 26 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 1,027,453[1] to Wible.

Claims 22 to 24, 26 and 27 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 504,009[2] to Whitney.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer (Paper No. 14, mailed July 18, 2000) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 13, filed April 28, 2000) and reply brief (Paper No. 15, filed September 19, 2000) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

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[1] Issued May 28, 1912.

[2] Issued August 29, 1893.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegaal Bros. Inc. v. Union Oil Co., 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir.), cert. denied, 484 U.S. 827 (1987). The inquiry as to whether a reference anticipates a claim must focus on what subject matter is encompassed by the claim and what subject matter is described by the reference. As set forth by the court in Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984), it is only necessary for the claims to "'read on' something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or 'fully met' by it."

The anticipation rejection based on Wible

We sustain the rejection of claims 23 and 26 under 35 U.S.C. § 102(b) as being anticipated by Wible.

Wible's invention relates to burial cases or caskets. Figure 1 is a perspective view of the complete casket. Figure 2 is a transverse section thereof, and, Figure 3 is a longitudinal section thereof. As shown in the drawings, the casket includes a body 1 and a lid 2 adapted to be fitted upon the body 1. Lid 2 is provided with an elongated opening 3 in the top thereof. A window 4 is slidably mounted below the opening 3 in

guides 5, which guides are of greater length than the opening 3, whereby the window 4 may be drawn aside and a body within the casket viewed. The opening 3 above the window 4 is adapted to receive a plate (not shown) when the casket is placed in the ground.

The appellants argue (brief, p. 5; reply brief, p. 2) that the anticipation rejection of claims 23 and 26 based on Wible should be reversed since Wible's casket does not include a "memorabilia compartment." We do not agree.

In our view, the claimed "memorabilia compartment" is readable on Wible's compartment[3] which is defined by opening 3 in lid 2 above window 4 as shown in Figures 1-3 of Wible. As to the use of the adjective memorabilia to describe the compartment, it is our determination that this adjective sets forth only a statement of intended use and does not distinguish the structural apparatus claimed (i.e., the claimed casket) over the casket of Wible. In that regard, the manner or method in which an apparatus is to be utilized is not germane to the issue of patentability of the machine

[3] The examiner (answer, pp. 3-4) provides a definition for the term "compartment" which the appellant has not contested. Accordingly, we accept that definition as the broadest reasonable meaning of "compartment" in its ordinary usage as it would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the appellants' specification. See In re Morris, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). See also In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983).

itself. See In re Casey, 370 F.2d 576, 580, 152 USPQ 235, 238 (CCPA 1967). A statement of intended use does not qualify or distinguish the structural apparatus claimed over a reference. See In re Sinex, 309 F.2d 488, 492, 135 USPQ 302, 305 (CCPA 1962). There is an extensive body of precedent on the question of whether a statement in a claim of purpose or intended use constitutes a limitation for purposes of patentability. See generally Kropa v. Robie, 187 F.2d 150, 155-59, 88 USPQ 478, 483-87 (CCPA 1951) and the authority cited therein, and cases compiled in 2 Chisum, Patents § 8.06[1][d] (1991).

For the reasons set forth above, the decision of the examiner to reject claims 23 and 26 under 35 U.S.C. § 102(b) as being anticipated by Wible is affirmed.

The anticipation rejection based on Whitney

We sustain the rejection of claims 22 to 24, 26 and 27 under 35 U.S.C. § 102(b) as being anticipated by Whitney.

Whitney's invention relates to improvements in wreath rests for coffins and caskets. Figure 1 is a top plan of a coffin with the head cap removed, showing the position of the wreath rest when closed. Figure 2 is a longitudinal section of the head of a coffin showing the wreath rest closed and the cap on. Figure 3 a similar section

showing the cap removed and the wreath rest opened in position to be used to support a wreath, or other floral design or such emblem as may be desired to be placed thereon. As shown in the drawings, the casket includes a body A; a glass cover B at the head; a suitable molding C at the head; and a wreath rest D which consists of a flat board of any desired outline arranged to fit within the molding C and rest when closed upon the glass cover B. The wreath rest D is hinged at one end to the molding C by hinges d so that it may be removed if necessary. A cover E shown in Figure 2 is used when the wreath rest and the coffin are closed.

The appellants argue (brief, pp. 6-7; reply brief, p. 2) that the anticipation rejection of claims 22 to 24, 26 and 27 based on Whitney should be reversed since Whitney's casket does not include a "memorabilia compartment." We do not agree.

In our view, the claimed "memorabilia compartment" is readable on Whitney's compartment[4] which is defined by the opening in the molding C above the glass cover B as shown in Figures 1-3 of Whitney. This compartment is openable and closable by cover E. As to the use of adjective memorabilia to describe the compartment, it is our determination that this adjective sets forth only a statement of intended use and does not distinguish the structural apparatus claimed (i.e., the claimed casket) over the

[4] Id.

casket of Whitney for the same rationale as set forth above in our discussion of the anticipation rejection based on Wible.

For the reasons set forth above, the decision of the examiner to reject claims 22 to 24, 26 and 27 under 35 U.S.C. § 102(b) as being anticipated by Whitney is affirmed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 23 and 26 under 35 U.S.C. § 102(b) as being anticipated by Wible is affirmed and the decision of the examiner to reject claims 22 to 24, 26 and 27 under 35 U.S.C. § 102(b) as being anticipated by Whitney 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

NEAL E. ABRAMS Administrative Patent Judge	)	
JOHN P. McQUADE Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
JEFFREY V. NASE Administrative Patent Judge	)	

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