

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. 33

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte DIETER KELLER

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Appeal No. 2004-0118  
Application No. 09/214,663

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ON BRIEF

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

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-4 and 8-18 which are all of the claims pending in this application.

We AFFIRM-IN-PART.

### BACKGROUND

The appellant's invention relates to a plastic fuel tank. An understanding of the invention can be derived from a reading of exemplary claim 1, which has been reproduced below.

The single prior art reference of record relied upon by the examiner in rejecting the appealed claims is:

Luigi                      European Patent Application 0 064 310                      Nov. 10, 1982

Claims 1-4 and 8-18 stand rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Luigi.<sup>1</sup>

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejection, we make reference to the Answer (Paper No. 29) for the examiner's complete reasoning in support of the rejection, and to the Corrected Appeal Brief (Paper No. 28) and the Reply Brief (Paper No. 30) for the appellant's arguments thereagainst.

### OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art reference, and to the

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<sup>1</sup>A rejection of claims 1-4 and 8-18 as being anticipated by Bergesio U.S. Patent No. 4,453,564 was withdrawn in the Answer.

respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

The appellant's invention is directed to a plastic fuel tank that is produced by welding together an upper plastic shell and a lower plastic shell which have been produced by injection molding and are positioned an exact distance from one another by the use of spacers placed within the tank, with the spacers coming into abutting relationship with one another when the two portions of the tank are welded together.

The invention is recited in claim 1 in the following manner:

A plastic fuel tank with a bottom and with an upper closing wall, defined in that it is produced by welding together an upper plastic shell having the upper closing wall and a lower plastic shell forming the bottom, in that the two plastic shells have been produced by injection molding, and in that, in order to adhere to an exact distance between the upper closing wall and the bottom, spacers coming into abutment during the welding operation are provided in the fuel tank in the region of the weld seam.

All of the claims stand rejected under 35 U.S.C. § 102(b) as being anticipated by Luigi. Anticipation is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of the claimed invention. See, for example, In re Paulsen, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994) and In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990). Anticipation by a prior art reference does not require either the inventive concept of the claimed subject matter or recognition of inherent properties that

may be possessed by the reference. See Verdegaal Bros., Inc. v. Union Oil Co., 814 F.2d 628, 633, 2 USPQ2d 1051, 1054 (Fed. Cir.), *cert. denied*, 484 U.S. 827 (1987). Nor does it require that the reference teach what the applicant is claiming, but only that the claim on appeal "read on" something disclosed in the reference, *i.e.*, all limitations of the claim are found in the reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), *cert. denied*, 465 U.S. 1026 (1984).

With regard to claim 1, the examiner has taken the position that the claimed "spacers" read on the baffles 13 shown on the right side of Luigi's Figure 1, and that these spacers are located "in the region of the weld seam" which is, according to Luigi, at flanges 11 (see page 2, lines 17 and 18). We find ourselves in agreement with the examiner that the subject matter recited in claim 1 is anticipated by Luigi.

The reference discloses at the right side of Figure 1 a baffle 13 comprising two spacer parts that come together to establish an exact distance between the upper wall and the bottom of the tank. We point out here that the appellant has not directed us to any portion of the specification which would support a conclusion that "in the region of the weld" (emphasis added) would be so defined or interpreted by one of ordinary skill in the art as to exclude a baffle located such as that shown on the right side of Figure 1 from meeting this requirement of claim 1. Moreover, we further note that as depicted in Figure 1 Luigi's weld seam 11 extends around the entire circumference of the tank, and since elements 13 have been defined as "baffles" (page 4), it is our view that one of

ordinary skill in the art would consider them to extend across at least a substantial part of the width of the tank in order to perform the designated function. Such being the case, at least the ends of both baffles 13 also would appear to meet the limitation of being “in the region of the weld seam.”

The rejection of claim 1 is sustained. In view of the fact that the appellant has chosen to have claims 4, 8, 9, 12 and 15 stand or fall with claim 1 (Corrected Appeal Brief, page 5), we also will sustain the rejection of these claims.

Claim 2 adds to claim 1 the requirement that the spacers “are integrally formed on the upper plastic shell and/or the lower plastic shell.” As the appellant has argued, Luigi does not disclose that the spacers are so formed, and we therefore find Luigi not to be anticipatory of the subject matter recited in claim 2. This being the case, the rejection of claim 2 cannot be sustained. We are not persuaded otherwise by the reasoning presented by the examiner on page 3 of the Answer.

We reach the same conclusion with regard to claim 3, which states that the spacers “are designed as separate components which can be inserted into the plastic shells before these are welded together,” for while it would appear from the explanation on page 5 that the spacers are in place before the shells are welded together, Luigi is silent as to whether the spacers are separate components. We further note that the examiner has not commented on the appellant’s argument on this matter in the Answer.

Claims 10 and 11 depend from independent claim 9. They add, respectively, the integral and separate limitations regarding the relationship between the spacers and the shells that are added to independent claim 1 by claims 2 and 3. On the basis of the same reasoning that we set forth above regarding claims 2 and 3, we also will not sustain the rejection of claims 10 and 11. Nor, it follows, will we sustain the rejection of claims 13 and 14, which depend from claims 10 and 11.

Independent claim 16 recites, inter alia, “multiple lower stays” and “multiple upper stays . . . wherein the lower stays and upper stays engage one another . . . to form spacers in the region of the weld seam.” Thus, this claim requires the presence of multiple stays, all of which are in the “region” of the weld seam. The common applicable definition of “stay” is “one that serves as a prop.”<sup>2</sup> The appellant would have us consider “stay” to be limited to a “columnar-type support,” but has provided no evidence in support of this definition. From our perspective, therefore, each of Luigi’s baffles 13, which serve as “props” between the top and bottom of the tank, thus satisfy the limitation that there be “multiple” lower and upper stays. For the reasons set forth in our discussion of claim 1, we also take the position here that both of Luigi’s baffles 13 are “in the region of the weld seam.”

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<sup>2</sup>See, for example, Merriam Webster’s Collegiate Dictionary, p. 1150 (10<sup>th</sup> Ed., 1996).

From our perspective, Luigi anticipates the subject matter recited in claim 16, and we will sustain the rejection. The like rejection of claims 17 and 18 also is sustained, since the appellant has chosen to group them with claim 16.

In arriving at the above conclusions, we have carefully considered all of the appellant's arguments, as they pertain to the claims whose rejections we have sustained. However, with regard to these claims, the arguments have not convinced us that the decision of the examiner was in error. It is true that the examiner did not specify - element by element - each and every limitation recited in each of the claims. However, the appellant did not argue the separate patentability of each of the fifteen claims on appeal, but in fact provided arguments only with regard to "in the region of the weld seam," which appears in claims 1 and 15 of Group I, "integrally formed," which appears in claims 2 and 10 of Group II, "separate components," which appears in claims 3 and 11, and the structure of the stays, which is recited in claim 16 of Group IV (Corrected Brief, pages 6-11; Reply Brief, pages 3-5). It is our view that the examiner's position regarding where the limitations are found in Luigi is readily discernible from the statement of the rejection and the responses to the appellant's arguments which appear in the final rejection (Paper No. 24) and the Answer, considered with Luigi's disclosure and drawings. With regard to the allegations in the Reply Brief regarding the examiner's failure to point out the "recess" of claims 12-14 or the "tenon" of claims

17 and 18, we note that the appellant has grouped these claims with other claims, rather than urge that they are separately patentable based upon these limitations.

CONCLUSION

The rejection of claims 1, 4, 8, 9, 12 and 15-18 is sustained.

The rejection of claims 2, 3, 10, 11, 13 and 14 is not sustained.

The decision of the examiner is affirmed-in-part.

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

NEAL E. ABRAMS	)	
Administrative Patent Judge	)	
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	)	BOARD OF PATENT
LAWRENCE J. STAAB	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
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JOHN P. McQUADE	)	
Administrative Patent Judge	)	

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