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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KENNETH R. SMITH

Appeal No. 2004-0697
Application No. 09/950,535

ON BRIEF

Before COHEN, FRANKFORT and MCQUADE, Administrative Patent Judges.

MCQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Kenneth R. Smith appeals from the final rejection (Paper No. 7) of claims 12 through 14 and 16. Claim 15, the only other claim pending in the application, stands objected to as depending from a rejected base claim.

THE INVENTION

The invention relates to "a handle for a wheeled food service table where the handle is pivotable between an operative

and an inoperative position" (specification, page 1).

Representative claim 12 reads as follows:

12. The combination of a pivotal handle and a wheeled food service table comprising:

a table having a top surface, an underside, and a plurality of wheels attached to said underside of said table;

a handle;

means for pivotably attaching said handle to said table, said means for attaching being secured to said table adjacent an edge thereof and said means for attaching allowing said handle to rotate more than 180° from an operative position above said top surface of said table to an inoperative position adjacent said underside of said table;

a spring clip located on said underside of said table away from said means for attaching, said clip adapted to secure said handle to said underside of said table in said inoperative position; and

means for releasably locking said handle in said operative position.

THE PRIOR ART

The references relied on by the examiner to support the final rejection are:

Griffith	2,571,442	Oct. 16, 1951
Messier	2,603,500	Jul. 15, 1952
Smith	4,856,810	Aug. 15, 1989

THE REJECTIONS

Claim 12 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Messier in view of Smith.

Claims 13, 14 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Messier in view of Smith and Griffith.

Attention is directed to the brief (Paper No. 11) and answer (Paper No. 12) for the respective positions of the appellant and examiner regarding the merits of these rejections.

DISCUSSION

Messier, the examiner's primary reference, discloses a combination picnic table and wagon comprising a main casing 10, castors 17 attached to the bottom 16 of the casing, extension leaves 23 and 24 hinged to the top of the casing for defining, with the upper surface of the casing, a table top, legs 31 hinged to the bottom corners of the casing for supporting the casing in an elevated position, a pull handle 36 hinged to a bracket 35 mounted on the bottom of the casing, and a clip on the front of the casing for holding the pull handle in an adjacent stowed position.

The examiner concedes (see page 3 in the answer) that Messier's table/wagon combination does not respond to the limitations in independent claim 12 requiring (1) a means for pivotably attaching the handle to the table which allows the handle to rotate more than 180° to an inoperative position

adjacent the underside of the table and (2) a means for releasably locking the handle in an operative position. Implicit in this concession is that the Messier combination also fails to respond to the related limitations in the claim requiring (3) the operative position to be above the top surface of the table and (4) a spring clip located on the underside of the table to secure the handle in the inoperative position. To cure these shortcomings, the examiner turns to Smith.

Smith discloses "a collapsible cart for use in moving miscellaneous items of cargo" (column 1, lines 6 and 7). The cart 10 includes a floor panel 12, side panels 14 and 16 and end panels 18 and 20 pivotally connected to the floor panel, wheels 22 attached to the bottom of the floor panel, and a tow bar/handle 24 pivotally connected to brackets 34 and 36 affixed to the bottom of the floor panel for movement between an upright ready position (see dotted lines 24a in Figure 1) and a stowed position beneath the floor panel (see Figure 2). The tow bar/handle can be locked in the upright ready position by the lug and keyway structure shown in Figures 3 through 5 and in the stowed position by the clip 60 shown in Figure 2. Smith teaches (see column 1, lines 46 through 51) that the subject cart fulfills the need for a collapsible transport cart that

facilitates transporting various items of cargo while being sufficiently lightweight and collapsible to be routinely stored in an automobile trunk or other limited storage space.

In proposing to combine Messier and Smith to reject claim 12, the examiner submits that

> [b]ased on the teachings of Smith, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the table of Messier to replace the means for attaching the handle to allow the handle to pivot more than 180 degrees from an operative position to an inoperative position adjacent the underside of the table and a means for releasably locking the handle in the inoperative and operative position[s] to permit hidden stowage of the handle and to provide ease in transporting various items of cargo, while being sufficiently lightweight and collapsible to be routinely stored in an automobile trunk or other limited storage space, as taught in Smith in column 1, lines 46-51 [answer, page 4].

Given the relatively bulky and non-collapsible nature of Messier's main casing 10, however, the Messier table/wagon combination is not particularly amenable to hidden stowage of the pull handle 36 adjacent the underside of the casing. Moreover, even if modified in view of Smith in the manner proposed, the Messier combination would not be any more lightweight and collapsible than it already is, and hence would not be more readily stored in an automobile trunk or other limited space. Furthermore, even as so modified, Messier's table/wagon would not have a handle whose operative position is above the top surface

of the table as recited in claim 12. Thus, the examiner's rationale for combining Messier and Smith to reject this claim finds no reasonable support in the fair teachings of these references. The only suggestion for combining the two in the manner proposed stems from hindsight knowledge impermissibly derived from the appellant's disclosure.

Accordingly, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of claim 12 as being unpatentable over Messier in view of Smith.

As Griffith's disclosure of a mobile grocery receptacle does not overcome the foregoing deficiencies of Messier and Smith relative to the subject matter recited in parent claim 12, we also shall not sustain the standing 35 U.S.C. § 103(a) rejection of dependent claims 13, 14 and 16 as being unpatentable over Messier in view of Smith and Griffith.

Finally, the application is remanded to the examiner to reconsider the patentability of the appealed claims with a focus on Smith as the closest and most pertinent prior art. By way of example, should the examiner determine that Smith's transport cart meets, either expressly or under principles of inherency, each and every element of the invention set forth in claim 12, a 35 U.S.C. § 102(b) rejection of this claim would be in order.

SUMMARY

The decision of the examiner to reject claims 12 through 14 and 16 is reversed, and the application is remanded to the examiner for further consideration.

REVERSED AND REMANDED

IRWIN CHARLES COHEN Administrative Patent Judge	)	
CHARLES E. FRANKFORT Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
JOHN P. MCQUADE Administrative Patent Judge	)	

JPM/gjh

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