The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GERALD R. KOEFELDA
and WILLIAM P. APPS.

Appeal No. 2004-1603
Application 09/626,517

ON BRIEF

Before PAK, DELMENDO, and JEFFREY T. SMITH, Administrative Patent Judges.

PAK, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1 through 23 and 25 through 29, which are all of the claims pending in the present application.

APPEALED SUBJECT MATTER

The subject matter on appeal is directed to a bottle crate particularly designed for, *inter alia*, efficient automated handling, durability and strength. See the specification, pages 1 and 2. Further details of the appealed subject matter are recited in representative claims 1, 12, 20, 28 and 29 which are reproduced below:

1. A crate for bottles comprising:

a floor member; and

first and second pairs of opposed sidewalls integrally formed with the floor member, each sidwall including a side band member defined by an upper edge and lower edge, the lower edge spaced above the floor member by a predetermined distance to define a sidewall nesting area therebelow, the upper and lower edges having a contour directed downwardly to form a corner band portion having a corner upper edge and corner lower edge, wherein each nesting area matingly receives a corresponding side band member of a crate nested subjacent thereto.

12. A crate for bottles comprising:

a base, and

a sidewall structure extending upwardly from the based and attached thereto, the sidewall structure including a continuous band member having a pair of opposed side band portions, a pair of opposed end band portions, and corner band portions disposed between each adjacent side band portion and end band portion, the band member defined by an upper edge and lower edge, wherein the lower edge at the side band portions and end band portions is spaced above the base a predetermined distance to define a corresponding nesting area therebelow for receiving the corresponding side band portion and end band portion when in a nesting orientation with a similar crate, the upper edge at the

side band portions and end band portions being directed downwardly such that the upper edge at the corner band portion is disposed below the plane of the upper edge at the side band portions and end band portions in order to define a corner pocket above the corner portion upper edge.

20. A crate for bottles comprising:

a floor member;

a pair of opposed end walls, each including an end band member;

a pair of opposed sidewalls integrally formed with the floor member and the first pair of opposed sidewalls, each sidewall including a side band member defined by an upper edge and lower edge, the lower edge spaced above the floor member by a predetermined distance to define a sidewall nesting area therebelow, the upper and lower edges directed downwardly in the plane of its respective sidewall to form with an adjacent end band member a corner band portion therebetween, wherein each side band member is matingly received within a corresponding nesting area; and

a corner projection member extending upward from the corner band portion and received within a corresponding opening formed in a corner lower surface when nested below a similar crate.

28. A crate for bottles comprising:

a base having an upper surface; and

first and second pairs of opposed sidewalls connected to each other to form a unitary wall construction extending from the base, each of the side walls having an inner wall mounted to the base and an outer wall spaced from the inner wall and disposed above the base upper surface, the outer wall having a lower edge forming a nesting area therebelow for receiving the corresponding sidewalls when in a nesting orientation with a similar crate, the upper edge of adjacent sidewalls directed downwardly to form an upper edge of a corner band portion which is disposed below the plane of the upper edge of the sidewalls.

29. A crate for bottles comprising:

a floor member having a plurality of bottle support area; and

first and second pairs of opposed sidewalls integrally formed with the floor member, each sidewall including an outer surface defining a band member having an upper edge and a lower edge, the lower edge spaced above the floor member by a predetermined distance to define a sidewall nesting area therebelow, wherein each nesting area matingly receives a corresponding band member of a crate nested subjacent thereto, and each sidewall further including an inner surface having a plurality of elongate members extending inwardly therefrom between adjacent bottle support areas for connecting the inner surface to the floor member.

PRIOR ART

Apps (Apps' 819)	5,060,819	Oct. 29, 1991
Apps et al. (Apps' 249)	Des. 378,249	Mar. 4, 1997

Rehrigh Pacific Company's 16/20 oz. Splash Crate, two pages including five pictures of different perspectives of the Splash Crate (Approximately Mar. 1998 according to the appellants) (hereinafter referred to as "Splash").

REJECTION

Claims 1 through 23 and 25 through 29 stand rejected under 35 U.S.C. § 102(b) as anticipated by the disclosure of Apps' 249. Claims 1, 2, 4 through 12, 14 through 20, 23 and 25 through 29 stand rejected under 35 U.S.C. § 102(b) as anticipated by the disclosure of Apps' 819. Claims 1, 2, 6 through 10, 12 and 16 through 19 stand rejected under 35 U.S.C. § 102(b) as anticipated by the disclosure of Splash.

OPINION

We have carefully reviewed the claims, specification and applied prior art references, including all of the arguments advanced by the examiner and the appellants in support of their respective positions. This review has led us to conclude that the examiner's Section 102(b) rejections are not well founded. Accordingly, we reverse the examiner's Section 102(b) rejections for essentially those reasons set forth in the Brief and the Reply Brief. We add the following primarily for emphasis.

In proceedings before the U.S. Patent and Trademark Office, claims in an application must be given their broadest reasonable interpretation, taking into account any enlightenment by way of definition or otherwise found in the specification. *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023,1027 (Fed. Cir. 1997). "No claim may be read apart from and independent of the supporting disclosure on which it is based." *See In re Cohn*, 438 F.2d 989, 993, 169 USPQ 95, 98 (CCPA 1971).

Applying the above principles to the presently claimed subject matter, we determine that the term "side band member" or "band member" recited in claims 1, 12, 20 and 29 means "a side or other base portion (independent of projections) for supporting projections". This interpretation is supported by the specification and the doctrine of claim differentiation. See the

specification in its entirety and dependent claims 3, 13 and 21. On the other hand, the term “sidewalls” recited in claims 1, 2, 20, 28 and 29 includes both “side band members” and projections. See the specification in its entirety and the claims themselves.

Having the interpreted the claims on appeal as indicated *supra*, we agree with the appellants that Apps’ 819, Apps’249 and Splash do not teach “side band members” having upper edges directed downwardly at the ends thereof to form a corner band portion. We also agree with the appellants that the examiner has not established that Apps ‘249 teaches each sidewall having a lower edge forming a nesting area as required by claims 28 and 29 and Apps ‘819 teaches double walls as required by claim 28 and each side wall having a lower edge nesting area for receiving a corresponding “band member” as required by claim 29. It follows that the examiner, on this record, fails to establish a *prima facie* case of anticipation within the meaning of Section 102(b). Accordingly, we reverse each of the aforementioned Section 102(b) rejections.

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

REVERSED

CHUNG K. PAK Administrative Patent Judge	)	
ROMULO H. DELMENDO Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
JEFFREY T. SMITH Administrative Patent Judge	)	

CKP:dal

KONSTANTINE J. DIAMOND
4010 E. 26TH STREET
LOS ANGELES CA 90023