The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GERALD R. KOEFELDA
and DONALD L. BELL

Appeal No. 2005-1237
Application No. 10/227,631

ON BRIEF

Before MCQUADE, NASE, and BAHR, Administrative Patent Judges.
MCQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Gerald R. Koefelda et al. originally took this appeal from the final rejection (mailed November 3, 2003) of claims 4 through 7, 11 through 16, 18 through 24 and 26 through 38.[1] As the examiner has since withdrawn the rejections of claims 15 and 16, the appeal as to these claims is hereby dismissed, leaving for review the standing rejections of claims 4 through 7, 11 through 14, 18 through 24 and 26 through 38. Claims 15 and 16, as well as claim 25, now stand objected to as depending from rejected

[1] Claims 17, 29, 31 and 32 have been amended subsequent to final rejection.

base claims. Claims 1 through 3, 8 through 10 and 17, the only other claims pending in the application, stand allowed.

THE INVENTION

The invention relates to “a stackable low depth case having a handle structure feature” (specification, page 1). Claim 4, which is representative of the subject matter on appeal, reads as follows:

4. A low depth case for holding containers and adapted for maneuvering by a user, the low depth case comprising:
a bottom portion;
a first and second pair of opposing side walls attached to the bottom portion and projecting upwardly therefrom;
a plurality of central columns along a longitudinal centerline of the case, the central columns extending upwardly from the bottom portion between the first pair of opposing side walls and between the second pair of opposed side walls; and
a handle structure including an outer wall member disposed in each of the first pair of opposing sidewalls aud attached to an inner wall member for defining a finger receiving area therebetween, the handles disposed along the longitudinal centerline of the case, the outer wall member having a lower portion having a lower edge and an upper portion, the lower portion, bottom portion, and adjacent one of the first pair of opposing sidewalls defining a hand-opening area extending into the low depth case which is adapted for handling by a user in one of a palm-up or palm-down orientation,
wherein in the palm-up orientation the user's fingers extend into the hand-opening area and so that the user's palm faces up such that when the user exerts force against the lower edge, the low depth case may be raised,
and wherein in the palm-down orientation, the user's fingers wrap around the upper portion of the outer wall and extend into the finger receiving area, such that the user may maneuver the low depth case.

THE PRIOR ART

The references relied on by the examiner to support the rejections on appeal are:

Apps et al. (Apps)	4,978,002	Dec. 18, 1990
Koefelda	5,465,843	Nov. 14, 1995

THE REJECTIONS

Claims 11 through 14, 18 through 24 and 26 through 30 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Koefelda.

Claims 4 through 7, 24 and 26 through 38 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Koefelda in view of Apps.

Attention is directed to the main and reply briefs (filed June 10, 2004 and October 8, 2004) and the answer (mailed August 6, 2004) for the respective positions of the appellants and the examiner regarding the merits of these rejections.

DISCUSSION

I. The 35 U.S.C. § 102(b) rejection of claims 11 through 14, 18 through 24 and 26 through 30 as being anticipated by Koefelda

Koefelda pertains to low depth crates for holding and displaying beverage bottles. In general, these crates, which are

integrally molded of plastic, consist of a floor having an open lattice design and a peripheral wall structure including a lower wall portion adjacent the floor and a plurality of upstanding pylons. For purposes of the rejection, the examiner focuses on the embodiment illustrated in Figures 16 and 19 which Koefelda describes as follows:

> The second preferred embodiment of the invention is shown in FIG. 16 as crate 220. Crate 220 is preferably constructed for holding a three by four array of one liter bottles B. . . .
>
> . . .
>
> Handle 282 of FIG. 19 comprises a triple walled area with the outermost section being integral with exterior lower wall portion 262, anti the innermost section being integral with interior lower wall portion 260.
>
> Exterior portion 262 is spaced further away from interior portion 260 at endwalls 227 so that lower wall portion 226 is bulkier at the endwalls. In these embodiments exterior lower portion 262 at endwalls 227 are not contiguous with the exterior sides of pylons 230 . . . . A middle wall 283 is integrally formed between exterior portion 262 and interior portion 260, and is contiguous with the exterior sides of pylons 230. Middle wall 283 is connected to exterior portion 262 by a bridging member 285 which is preferably spaced some distance above floor bottom surface 248, but below the top surface 286 of lower wall portion 226. Thus, a handle cavity 287 is formed between middle wall 283 and interior portion 260.
>
> In use, handle 282 allows both "palm-up" and "palm-down" gripping [column 10, lines 3 through 41].

Anticipation is established only when a single prior art reference discloses, expressly or under principles of inherency,

each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). It is not necessary that the reference teach what the subject application teaches, but only that the claim read on something disclosed in the reference, i.e., that all of the limitations in the claim be found in or fully met by the reference. Kalman v. Kimberly Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

The appellants contend that the Koefelda reference is not anticipatory with respect to the subject matter so rejected due to its failure to meet certain limitations in claims 11, 14 and 24. More specifically, the appellants submit that Koefelda lacks response to the recitations in independent claim 11 of (1) a finger receiving area defined between an outer handle member and the outer surface of a wall of an inner handle member which has an inner surface defining at least one container-receiving pocket and (2) a hand-opening area defined in part by a bottom portion, the recitation in dependent claim 14 that the wall of the inner handle member extends upwardly at a center point of the handle structure, and the recitations in independent claim 24 of (1) a

divider wall substantially perpendicular to a bottom floor portion and extending into a container holding compartment from an inner handle member and (2) a hand-receiving area defined in part by the bottom floor portion. These arguments, however, are unconvincing because they are not commensurate with the fair teachings of Koefelda or the broad scope of the claim language at issue.

With regard to claim 11, the portion of Koefelda's handle 282 which is contiguous with exterior lower wall portion 262 constitutes an outer handle member and the portion of Koefelda's handle 282 composed of interior lower wall portion 260, top surface 286 of lower wall portion 226 and middle wall 283 constitutes a wall of an inner handle member. This wall includes an inner surface defining at least one container-receiving pocket and an outer surface which defines with the outer handle member a finger receiving area. Koefelda's handle 282 also comprises a hand-opening area in the form of handle cavity 287 which is defined in part by the bottom portion or floor of the crate as best seen in Figure 16.

With respect to claim 14, Koefelda's Figures 16 and 19 show that the wall of the inner handle member extends upwardly at a

center point of the handle structure by virtue of the upwardly extending orientation of the lower wall portion 260 and/or middle wall 283 components of the wall.

As for claim 24, the inner portions of pylons 230 that are contiguous with interior lower wall section 260 and disposed above Koefelda's handle 282 embody divider walls which are substantially perpendicular to the bottom floor portion and extend into the container holding compartment (the area of the crate interior of lower wall portion 262) from the inner handle member. Furthermore, Koefelda's handle cavity 287 constitutes a hand-opening area defined in part by the bottom floor portion.

Hence, the appellants' position that the subject matter recited in independent claims 11 and 24, and dependent claims 12 through 14, 18 through 23 and 26 trough 30, distinguishes over that disclosed by Koefelda is not persuasive. We shall therefore sustain the standing 35 U.S.C. § 102(b) rejection of claims 11 through 14, 18 through 24 and 26 through 30 as being anticipated by Koefelda.

II. The 35 U.S.C. § 103(a) rejection of claims 4 through 7, 24 and 26 through 38 as being unpatentable over Koefelda in view of Apps

The examiner concedes that Koefelda does not respond to the limitation in independent claim 4 requiring a plurality of central columns along a longitudinal centerline of the case and the corresponding limitation in independent claim 31 requiring a plurality of central columns extending upwardly from the bottom floor portion. The examiner also allows that Koefelda may not respond to the limitations in independent claim 24 requiring a divider wall substantially perpendicular to the bottom floor portion and extending into the container holding compartment and the limitations in dependent claims 6 and 37 requiring the inner handle member to include two curved surfaces defining two container-retaining pockets. To account for these differences, the examiner looks to Apps.

Apps is similar to Koefelda in that it too discloses a low depth crate or case for holding and displaying beverage bottles. Case 10, which like the Koefelda crates is integrally molded of plastic, comprises four side walls, 12, 14, 16 and 18, a bottom portion 20, a pair of handle portions 38 in the center of side walls 14 and 18, and a plurality of vertical walls 29 and columns or pylons 30 which define two rows of bottle retaining pockets

32. Figure 1 shows that the columns embody curved surfaces 34 bounding the bottle retaining pockets and that some of the columns are disposed centrally along the longitudinal axis of the case.

In proposing to combine Koefelda and Apps, the examiner submits that it would have been obvious in view of Apps to modify the crate disclosed by Koefelda “so it comprises a plurality of central columns disposed along a longitudinal centerline of the crate for holding two rows of containers instead of four rows to reduce the size of the crate” (answer, page 5), “for better securing the bottles within the crate” (answer, page 10) and “so the inner handle member includes two curved surfaces for defining two container-receiving pockets for further securing the bottles” (answer, page 10).

The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

In the present case, the combined teachings of Koefelda and Apps would have provided the artisan with ample suggestion or motivation to modify the Koefelda crate in view of Apps in the manner proposed by the examiner. The disclosures of these references demonstrate that beverage cases having either two or three rows are art recognized design alternatives. In this regard, both references teach that the crates or cases respectively disclosed therein may be made to accommodate different arrays of bottles (see Koefelda at column 10, lines 3 through 11; and Apps at column 4, lines 15 through 20). The combined teachings of Koefelda and Apps also would have suggested providing the Koefelda crate with central columns, divider walls and curved column surfaces of the sort disclosed by Apps for the self-evident benefits of bottle stability afforded thereby. The appellants' argument that the proposed reference combination is unsound because the Koefelda crate is designed for single serve bottles while the Apps case is made for larger two or three liter bottles is not convincing. Both references indicate that the crates/cases disclosed therein can be adapted for bottles of different size (see Koefelda, for example, at column 2, lines 51 through 60; and Apps, for example, at column 4, lines 15 through

20). Furthermore, the appellants have not advanced any cogent explanation, and none is apparent, for the proposition that the proposed modification of Koefelda in view of Apps would result any significant change, deleterious or otherwise, in Koefelda's handle structure.

In light of the foregoing, we shall sustain the standing 35 U.S.C. § 103(a) rejection of independent claims 4, 24 and 31, and dependent claims 6 and 37, as being unpatentable over Koefelda in view of Apps.

We also shall sustain the standing 35 U.S.C. § 103(a) rejection of dependent claims 5, 7, 26 through 30, 32 through 36 and 38 as being unpatentable over Koefelda in view of Apps since the appellants have not challenged such with any reasonable specificity, thereby allowing these claims to stand or fall with parent independent claims 4, 24 and 31 (see In re Nielson, 816 F.2d 1567, 1572, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987)).

SUMMARY

The decision of the examiner to reject claims 4 through 7, 11 through 14, 18 through 24 and 26 through 38 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

JOHN P. MCQUADE Administrative Patent Judge	)	
JEFFREY V. NASE Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
JENNIFER D. BAHR Administrative Patent Judge	)	

JPM/kis

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