

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ANDREW D. BAILEY III, ALAN M. SCHOEPP,  
DAVID J. HEMKER and MARK H. WILCOXSON

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Appeal No. 2005-1395  
Application No. 10/347,334

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ON BRIEF

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Before KIMLIN, PAK and WARREN, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-9.

Claim 1 is illustrative:

1. A method of transporting cargo using containers, the containers each having bottom flooring, and substantially open front and rear ends such that a user can walk through the container via the open front and rear ends, each container being constructed and arranged to be transported within an interior of a trailer of a vehicle, method including the steps of:

moving a first container to a cargo collection location,

loading cargo into the first container,

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moving the loaded first container to the trailer and loading the first container into the interior of the trailer,

moving a second container to the cargo collection location,

loading cargo into the second container,

moving the loaded second container to the trailer and loading the second container into the interior of the trailer so that an end of the second container is generally adjacent to an end of the first container,

transporting the trailer with the containers therein to a destination,

removing the cargo from the second container while the second container remains in the trailer, and

walking through the second container in the trailer to unload the cargo from the first container while the first container remains in the trailer.

The examiner relies upon the following references as evidence of obviousness:

Black	3,850,295	Nov. 26, 1974
Bennett	3,993,343	Nov. 23, 1976

Appellant's claimed invention is directed to a method of transporting cargo, such as tires, using containers that have substantially open front and rear ends that allow for a person to enter and exit, respectively. The method entails loading the cargo into a first container, moving the loaded container into a trailer, loading cargo into a second container and moving the second loaded container into a trailer. After the trailer is transported to its destination, cargo is removed from the second

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container by a person who then walks through the second container to unload cargo from the first container.

Appealed claims 1-9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Black in view of Bennett.

In accordance with the grouping of claims set forth at page 5 of appellant's principal brief, claims 1 and 3-5 stand or fall together, as do claims 6 and 8-9.

We have thoroughly reviewed each of appellant's arguments for patentability. However, we are in complete agreement with the examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Accordingly, we will sustain the examiner's rejection for essentially those reasons expressed in the Answer, and we add the following primarily for emphasis.

There is no dispute that Black, like appellant, discloses a method of transporting tires by loading the tires into containers and then unloading the tires from the means of transportation. Appellant does not argue that "Black does not teach removing tires from the vehicle, but it is Applicant's position that Black does not teach or suggest that the tires are removed from his containers while the containers remain in the vehicle" (sentence

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bridging pages 1 and 2 of Reply Brief). Appellant emphasizes that "[n]owhere does Black teach or suggest unloading the tires from the containers while the containers are in the trailer" (page 6 of principal brief, second paragraph). However, we concur with the examiner that Black's disclosure that the containers "with tires in place may be moved to selected storage areas" would have suggested to one of ordinary skill in the art that the tires may also be removed while the container remains in the vehicle (column 10, lines 7-8, emphasis added). Moreover, we are utterly convinced that one of ordinary skill in the art would have found it obvious to either remove the loaded containers from the vehicle or, as presently claimed, remove the tires from the containers while they are still in the vehicle. Also, we agree with the examiner that Bennett evidences the obviousness of a worker moving from one container to the other during the unloading process. In our view, one of ordinary skill in the art would have readily ascertained the option of leaving the containers in the vehicle while removing the tires so that the vehicle may return to the location of loading for additional transportation of more tires.

Appellant maintains that "[t]here is no manually unloading of all the cylinders from all the pallets while the pallets

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remain on the truck in Bennett since this is described as the undesirable prior art method at column 1, lines 34-37 of Bennett" (page 7 of principal brief, first paragraph). However, although Bennett may describe such a method as undesirable, the fact remains that such a technique was within the prior art. Likewise, while appellant contends that Black describes difficulties associated with leaving the containers in the vehicle, such method remains in the prior art. Appellant has proffered no objective evidence that such difficulties are unobviously avoided by the present method.

Appellant also submits that "[i]t is not a moot point that Black compresses his tires in his containers, since one could not walk through Black's compressed container having tires therein" (page 3 of Reply Brief, first paragraph). However, one could not walk through appellant's containers having tires therein, whether they be in a compressed state or not.

As a final point, we note that appellant bases no argument upon objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the strong prima facie case of obviousness established by the examiner.

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In conclusion, based on the foregoing and the reasons well-stated by the examiner, the examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (effective Sep. 13, 2004; 69 Fed. Reg. 49960 (Aug. 12, 2004); 1286 Off. Gaz. Pat. Office 21 (Sep. 7, 2004)).

AFFIRMED

EDWARD C. KIMLIN	)	
Administrative Patent Judge	)	
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CHUNG K. PAK	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
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CHARLES F. WARREN	)	
Administrative Patent Judge	)	

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Manelli, Denison & Selater  
2000 M St., N.W., Ste. 700  
Washington, DC 20036-3307