

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte Alan M. Groff

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Appeal No. 2005-1826  
Application No. 10/210,046

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ON BRIEF

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Before FRANKFORT, PATE, and McQUADE, Administrative Patent Judges.  
McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Alan M. Groff appeals from the final rejection of claims 1-5, 7, 9 and 13-20, all of the claims pending in the application.

THE INVENTION

The invention relates to "stackable containers having a product access opening in one panel" (specification, page 1).

Representative claim 1 reads as follows:

Claim 1. A stackable container formed from a single sheet of material comprising:  
side panel members, a front panel member connected to said side panel members and a rear panel member connected to said side

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panel members, each of said panel members constructed with a container forming section, a reinforcing section adapted to folded over and secured to said container forming section, said reinforcing section being defined and separated from said container forming section by score lines and a bottom section defined and separated from said container forming section by score lines, said bottom section being folded on scoring which separates it from said container forming section to form at least a portion of a bottom of the container, said bottom section overlapping a bottom section of an adjacent panel, each side panel member, front panel member and rear panel member comprising two overlapping walls formed by said container forming section and said reinforcing section which are secured together, at least one of said panel members defining a cutout allowing entry into an interior of said container and a plurality of corner support members defined by said panel members, each said corner support member extending between adjacent panels to provide stacking support for containers placed thereon and being seated in recesses cut into said reinforcing section.

THE PRIOR ART

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

Hamilton	Re. 25,050	Oct. 10, 1961
Kanter et al. (Kanter)	6,158,653	Dec. 12, 2000

THE REJECTIONS

Claims 1-5, 7, 9 and 13-20 stand rejected under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly claim the subject matter the appellant regards as the invention.

Claims 1-3, 5 and 7 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Kanter.

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Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Kanter in view of Hamilton.

Attention is directed to the main and reply briefs (filed July 26, 2004 and January 18, 2005) and answer (mailed November 17, 2004) for the respective positions of the appellant and examiner regarding the merits of these rejections.

#### DISCUSSION

##### I. Preliminary matter

The appellant (see pages 7 and 8 in the main brief) raises as an issue on appeal the refusal of the examiner to enter the amendment filed subsequent to final rejection on February 2, 2004. It is well settled, however, that the refusal of an examiner to enter an amendment after final rejection is a matter of discretion which is reviewable by petition to the Director rather than by appeal to this Board. In re Mindick, 371 F.2d 892, 894, 152 USPQ 566, 568 (CCPA 1967). Hence, we shall not address the merits of this matter.

##### II. The 35 U.S.C. § 112, second paragraph, rejection of claims 1-5, 7, 9, 13 and 14-20

The examiner considers claims 1-5, 7, 9, 13 and 14-20 to be indefinite because:

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In claim 1, "each said corner support member...being seated in recesses" is confusing. It seems only one corner is seated in one corresponding recess.

In claim 9, "it's" should be changed to --its--.

In claim 9, line 8, and claim 14, line 7, "once fold line" should be changed to --one fold line--.

In claim 16, the rectangular tabs do not have the diagonal fold lines. The drawings show only the quarter circle having the diagonal fold lines [answer, page 4].

These criticisms are reasonable on their face and not specifically disputed on appeal. Instead, the appellant challenges the rejection on the basis of an allegedly improper refusal by the examiner to enter the amendment submitted subsequent to final rejection. In the appellant's view, the amendment, if entered, would overcome the examiner's concerns. As explained above, however, this Board has no jurisdiction to review the examiner's action in this regard. Hence, the appellant's argument is misplaced.

Accordingly, we shall sustain the standing 35 U.S.C. § 112, second paragraph, rejection of claims 1-5, 7, 9, 13 and 14-20.<sup>1</sup>

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<sup>1</sup>The appealed claims contain numerous inconsistencies in terminology. For example, claim 1 utilizes the terms "score lines" and "scoring" to refer to the same structure, and lacks a proper antecedent basis for the terms "said bottom section," "panels" and "said reinforcing section." In the event of further prosecution, steps should be taken to review the claims and eliminate these problems.

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III. The 35 U.S.C. § 102(b) rejection of claims 1-3, 5 and 7 as being anticipated by Kanter

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).

Kanter discloses a stackable container for packaging, shipping and displaying goods. Of particular interest in this appeal is the presence in the Kanter container of corner supports which increase the stacking strength of the container.

The examiner's determination (see page 4 in the answer) that Kanter's container meets the various limitations in representative claim 1 relating to the single sheet of material, the side panel members, the front panel member, the rear panel member, the container bottom, the container forming sections, the

reinforcing sections, the bottom sections, the score lines and the cutout is reasonable on its face and not disputed by the appellant. The appellant does contend, however, that the rejection of claim 1 is unsound because the Kanter container lacks response to the limitations in the claim pertaining to the plurality of corner support members (see pages 4 and 5 in the main brief). The various arguments advanced by the appellant in support of this position are unpersuasive because they are not (1) commensurate with the relatively broad scope of the corner support member limitations or (2) directed to the particular corner support structure disclosed by Kanter which is relied on by the examiner to meet these limitations (see pages 4 and 5 in the main brief).

More particularly, the Kanter container includes four corner supports 40:

As best illustrated in FIGS. 1, 2, 3, and 4, corner supports 40 are provided adjacent each corner 26, 28, 30, and 32 to improve stacking strength. The corner supports 40 reinforce each of the corners 26, 28, 30, and 32 and provide a second support surface in addition to the tops of the corners for supporting a container stacked on top. While all corners of the container 10 are shown with a corner support 40, it is readily understood that other embodiments having less than all corners reinforced are possible.

Multiple configurations for the corner supports 40 are contemplated, two particular preferred configurations being illustrated: a substantially

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non-rectangular corner support 42a, 42b, and a substantially rectangular corner support 44a, 44b [column 3, lines 39-52].

In applying Kanter against claim 1, the examiner focuses on the corner support embodiment illustrated in Figure 8 which is a variation of non-rectangular corner supports 42a and 42b:

Illustrated in FIGS. 8 and 9 is another embodiment of the corner supports 40 of the non-rectangular type. A corner support 42c is similar to that of the support 42a of FIG. 3, with similar elements being referenced with the same reference number. The height of the first and second panel sections 50 and 58 of the corner support 42c are substantially less than the height of the adjacent wall panels 18 and 20, the corner support 42c having a lower end 59 as shown. The first edge 52 of the first panel section 50 is attached pivotally to the inner face 17 of the first wall panel 18 via the glue panel 54 in a like manner as shown and described with reference to FIG. 3. Here, however, the glue panel 54 has a lower section 104 that extends below the lower end 59 of the corner support 42c to the corner 26 (see FIG. 9). The first edge 60 of the second panel 58 is pivotally attached to the inner face 17 of the second wall panel 20 via the second glue panel 62. The reinforcing panel 91, folded over at the top end 14 and glued to the panel 20 has a lower section 106 that extends below the lower end 59 of the corner support 42c to the corner 26 (see FIG. 9).

With reference to FIG. 9, it is seen that the corner support 42c is formed and cut from the first glue panel 54 (here a reinforcing panel) and reinforcing panel 91 by making horizontal cuts 108, 108b (the cut 108b forming the lower end 59 of the corner support 42c) and a vertical cut 110 (forming the end 66) to leave a cut-out 112 [column 7, lines 32-58].

Figures 8 and 9 in the Kanter reference clearly show that the non-rectangular corner supports 42c are defined by the container's panel members and that each extends between adjacent panels (i.e. panel members) to provide stacking support for containers placed thereon and seats in a recess cut into a reinforcing section of a panel member. This is all that is required by the corner support member limitations recited in claim 1. The appellant's argument that Kanter's rectangular corner supports fail to meet these limitations, while arguably correct, is of no moment since the subject limitations find full response in Kanter's non-rectangular supports 42c and because the claim does not exclude, and is not otherwise inconsistent with, the rectangular corner supports.

Hence, the appellant's position that the subject matter recited in independent claim 1, and dependent claims 2, 3, 5 and 7, distinguishes over that disclosed by Kanter is not well taken. Consequently, we shall sustain the standing 35 U.S.C. § 102(b) rejection of claims 1-3, 5 and 7 as being anticipated by Kanter.

IV. The 35 U.S.C. § 103(a) rejection of claim 4 as being unpatentable over Kanter in view of Hamilton

Claim 4 depends from claim 1 and recites that at least one of the corner support members has a top segment shaped as a

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quarter circle with an anchor tab extending outwardly therefrom and secured to an adjacent panel member. Conceding that the Kanter container has no such corner support member, the examiner turns to Hamilton to account for this deficiency.

Hamilton discloses a stackable tray which includes corner support members in the form of quarter circles having respective anchor tabs. The examiner submits that it would have been obvious "to provide a support member being shaped as a quarter circle and having an anchor tab in Kanter as taught by Hamilton to provide an alternative corner support structure for a container" (answer, page 5). The problem here, however, is that Hamilton's corner support members are part of an intricate folded blank construction which differs markedly from that disclosed by Kanter. The examiner has failed to cogently explain, and it is not apparent, how or why one of ordinary skill in the art would have found it obvious to incorporate the particular quarter circle and anchor tab configuration taught by Hamilton into the container disclosed by Kanter so as to arrive at a corner support of the sort set forth in parent claim 1 and further defined in dependent claim 4. The only suggestion for such a combination stems from hindsight knowledge impermissibly derived from the appellant's disclosure.

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Thus, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of claim 4 as being unpatentable over Kanter in view of Hamilton.

SUMMARY

As at least one rejection of each of the appealed claims is sustained, the decision of the examiner to reject claims 1-5, 7, 9 and 13-20 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

CHARLES E. FRANKFORT	)	
Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
WILLIAM F. PATE, III	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
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JOHN P. McQUADE	)	
Administrative Patent Judge	)	

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