

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* SJUR H. LINBERG and JOANNE E. LINBERG

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Appeal No. 2006-1258  
Application No. 10/243,241  
Technology Center 3700

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ON BRIEF

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Before OWENS, CRAWFORD and NAPPI, *Administrative Patent Judges*.  
OWENS, *Administrative Patent Judge*.

*DECISION ON APPEAL*

This appeal is from a rejection of claims 1-11, which are all of the pending claims.

*THE INVENTION*

The appellants claim a device for cooling a temperature sensitive item such as a container of food. Claim 1 is illustrative:

A cooling device for the presentation of a temperature sensitive item, said cooling device comprising:

a tray, said tray having top surface, said top surface receiving therein a chilled portion for absorbing heat, wherein said chilled portion provides a surface for holding said item.<sup>[1]</sup>

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<sup>1</sup> In the event of further prosecution the examiner and the appellants should address on the record whether claim 1 reads on an ice cube tray with ice cubes placed in it.

*THE REFERENCES*

Whitecar	2,504,911	Apr. 18, 1950
Rabenbauer	4,064,835	Dec. 27, 1977

*THE REJECTIONS*

The claims stand rejected as follows: claims 1-4 under 35 U.S.C. § 102(b) as anticipated by Rabenbauer; claims 6 and 8 under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103 as obvious over Rabenbauer; and claims 5, 7 and 9-11 under 35 U.S.C. § 103 as obvious over Rabenbauer in view of Whitecar.

*OPINION*

We affirm the aforementioned rejections.

*Rejection of claims 1-4, 6 and 8  
over Rabenbauer*

Rabenbauer discloses an air-conditioned pet bed comprising a lower portion (1) having a floor and three sides lined with insulation (2) inside which is placed reusable, frozen, ice packs (3), and a perforated top portion (4) having downwardly extending flanges that fit around the sides of the lower portion (col. 1, line 29 - col. 2, line 7).

The appellants argue that Rabenbauer's ice packs do not provide a surface for holding the item being cooled because the item is placed on the top portion which, Rabenbauer states (abstract), prevents direct contact of the item with the ice

packs (brief, page 4).

Rabenbauer's disclosure that the ice packs are removably contained within the device (col. 1, lines 10-11) indicates that the top portion is removable so that the ice packs can be placed inside the insulated bottom portion. After the ice packs are inserted, and before the top portion is put in place, the ice packs provide a surface capable of holding a temperature sensitive item. Consequently, Rabenbauer anticipates the cooling device claimed in the appellants' claim 1.

Regarding claim 6 the appellants argue that Rabenbauer's top surface prevents the ice packs from cooling by conduction (brief, page 4). Before the top portion is put in place, the ice packs are capable of cooling, by conduction, a temperature sensitive item placed directly on them.

We therefore are not convinced of reversible error in the examiner's rejection of independent claims 1 and 6, and dependent claims 2-4 and 8 which are not separately argued.

*Rejection of claims 5, 7 and 9-11  
over Rabenbauer in view of Whitecar*

Whitecar discloses a refrigerant tray (11) having a bottom (12) which sits on a ledge provided by transversely arranged spacers or support blocks (17) to space the tray from the adjacent surface of an inner casing (5) for the purpose of

providing circulation of air between the surfaces (col. 3, lines 46-49).

The appellants argue that Rabenbauer and Whitecar are nonanalogous art (brief, pages 5-6). The test of whether a reference is from an analogous art is first, whether it is within the field of the inventor's endeavor, and second, if it is not, whether it is reasonably pertinent to the particular problem with which the inventor was involved. See *In re Wood*, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979). A reference is reasonably pertinent if, even though it may be in a different field of endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering the inventor's problem. See *In re Clay*, 966 F.2d 656, 659, 23 USPQ2d 1058, 1061 (Fed. Cir. 1992). Both Rabenbauer and Whitecar are in the appellants' field of endeavor, which is devices for controlling the temperature of an item (specification, ¶ 0001), and are reasonably pertinent to solving the problem solved by the appellants, which is keeping a fungible item cool with ice packs. Consequently, Rabenbauer and Whitecar are analogous art.

The appellants argue that there would have been no motivation to use Whitecar's spacers in Rabenbauer's device to make it easier to remove the ice packs (brief, pages 6-7). The

motivation would have been that provided by Whitecar, i.e., to enable air circulation between the ice packs and their adjacent surfaces.

We therefore are not convinced of reversible error in the examiner's rejection of claims 5, 7 and 9-11.<sup>2</sup>

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<sup>2</sup> In the event of further prosecution the examiner and the appellants should address on the record whether, in view of Whitecar's disclosure that the main container can have "the geometrical form of a pan, dish, or the like" (col. 5, lines 18-20), i.e., a tray, Whitecar would have fairly suggested the appellants' claimed invention to one of ordinary skill in the art.

*DECISION*

The rejections of claims 1-4 under 35 U.S.C. § 102(b) over Rabenbauer, claims 6 and 8 under 35 U.S.C. § 102(b) or 35 U.S.C. § 103 over Rabenbauer, and claims 5, 7 and 9-11 under 35 U.S.C. § 103 over Rabenbauer in view of Whitecar, are 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).

*AFFIRMED*

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TERRY J. OWENS )  
Administrative Patent Judge )  
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MURRIEL E. CRAWFORD ) BOARD OF PATENT  
Administrative Patent Judge ) APPEALS  
) AND  
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ROBERT E. NAPPI )  
Administrative Patent Judge )

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