

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

3
4 UNITED STATES PATENT AND TRADEMARK OFFICE

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6
7 BEFORE THE BOARD OF PATENT APPEALS
8 AND INTERFERENCES

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11 *Ex parte* RICHARD BOHACIK and STANLEY DICKERSON

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14 Appeal 2006-1951
15 Application 10/392,140¹
16 Technology Center 3700

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19 Decided: March 23, 2007

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22 *Before* STUART S. LEVY, ROBERT E. NAPPI, and ANTON W.
23 FETTING, *Administrative Patent Judges*.

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25 LEVY, *Administrative Patent Judge*.

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28 DECISION ON REQUEST FOR REHEARING

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30 *STATEMENT OF CASE*

31 Appellants request Rehearing of our Decision on Appeal dated
32 September 27, 2006. In our Decision, we affirmed the rejection of claims
33 10-13.

¹Application filed March 19, 2003. The real party in interest is the inventors.

1 Claim 10 is the only independent claim under appeal, and reads as
2 follows:

3 10. A sink comprising
4
5 a drawn one piece metal body defining a floor and an
6 upstanding wall extending peripherally of said floor; and
7
8 a peripheral metal frame welded to and extending upwardly
9 from said wall of said body.
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11 The prior art relied upon by the Examiner in rejecting the claims on
12 appeal is:

13 Just	US 2,456,065	Dec. 14, 1948
14 Wenning	US 6,488,172 B1	Dec. 3, 2002

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16 Appellants contend (Rehearing 1) that the Decision commits error in
17 the interpretation of the Wenning reference, and in the application of
18 Wenning to claim 10. Appellants further contend that the Decision commits
19 error in holding that the structure of claim 12 is met by the offset facing
20 tubular edges of the tubular element 14 of Wenning and the bottom 15, 16
21 and 17 which are welded in offset fashion. Specifically, Appellants contend
22 (Rehearing 2) that the Decision is in error in opining that "we find nothing in
23 the language of claim 12 that would preclude the facing edges of Wenning
24 from being offset welded." With regard to claim 10, Appellants assert
25 (Rehearing 3) that shell bottom 16 is not a floor because it forms the rear
26 wall of useful space 11. It is argued that there is no basis in law or fact to
27 support for finding that the orientation of the structure, in and of itself, does
28 not distinguish the claimed structure from Wenning.
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ISSUE

The issue is whether we erred in holding that the teachings of Wenning were sufficient to anticipate claim 10, and whether we erred in holding that the teachings and suggestions of Wenning and Just would have suggested the language of claim 12. With regard to claim 10, the issue turns on whether the shell bottom 16 of Wenning meets the claimed floor. With regard to claim 12, the issue turns on whether Wenning meets the language of the claim, or if not, whether the combined teachings and suggestions of Wenning and Just would have suggested the language of the claim.

PRINCIPLES OF LAW

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The inquiry as to whether a reference anticipates a claim must focus on what subject matter is encompassed by the claim and what subject matter is described by the reference. As set forth by the court in *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), it is only necessary for the claims to "read on" something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or 'fully met' by it."

FINDINGS OF FACT

We make reference to our findings, in the Decision, as to the teachings and suggestions of Wenning and Just.

1 detract from the device of Wenning being used in a different orientation, we
2 maintain our position that claim 10 is anticipated by Wenning.

3 Turning to claim 12, we note at the outset that as stated in our
4 Decision (p. 13) that "claim 12 does not recite butt welding." The claim
5 recites that the fame and wall are welded, but is silent as to how they are
6 welded, and as such is met by offset welding. Nor are we persuaded by
7 Appellants' assertion (Rehearing 2) that the edges cannot be offset because
8 they are facing. We find Appellants to be providing a narrower definition of
9 facing than is required by the claim. For example, people in an auditorium
10 may face the stage. However, this does not mean that an axis running
11 through the person facing the stage also passes through a person on the
12 stage. Rather, the person may be facing the stage as a whole. In any event,
13 even if we are wrong in our interpretation of the language in the claim, as
14 Appellants have asserted, claim 12 is still met by the prior art for the reasons
15 which follow.

16 The Examiner rejected claim 12 under 35 U.S.C. § 103(a) as being
17 unpatentable over Wenning in view of Just (Answer 3). As we noted in our
18 Decision (p. 15) , "appellants do not argue the teachings of Just. From the
19 disclosure of Just of using a butt weld to secure the facing edges of a sink
20 that is fabricated out of metal using seamless weld (col. 1, lines 7 and 8 and
21 36 and 37), we agree with the examiner that an artisan would have been
22 motivated to weld facing elements in the structure of Wenning."

23 Accordingly, from the failure of Appellants to argue the teachings of Just,
24 and our findings with respect to the Just reference, we are not convinced of
25 any error on the part of the Examiner in rejecting claim 12 under 35 U.S.C.

1 § 103(a) as being unpatentable over Wenning in view of Just.

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CONCLUSION OF LAW

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We have granted Appellants' Request for Rehearing to the extent that we have reconsidered our Decision of September 27, 2006. However, we decline to make any changes to our ultimate decision affirming the rejection of claims 10-13.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2006).

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REQUEST FOR REHEARING DENIED

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