

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 ED ROUBAL and MATTHEW CRIDER

Appeal No. 2006-2041
Application No. 10/412,336
Technology Center 3700

HEARD: September 12, 2006

Before OWENS, LEVY and FETTING, *Administrative Patent Judges*.
OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from a rejection of claims 1-25, which are all of the pending claims.

THE INVENTION

The appellants claim a plastic container. Claim 1 is illustrative:

A plastic container, comprising:

a base;

a foundation extending upward from the base;

front and rear panels extending upward from the foundation;

right and left side panels extending upward from the

foundation;

a front pillar wall extending upward from the foundation, the front pillar wall being non-co-planer with the front panel;

a rear pillar wall extending upward from the foundation, the rear pillar wall being non-co-planer with the rear panel;

a transitional wall attached to the front and rear panels and the front and rear pillar walls, the transitional wall being located between the front panel and the front pillar wall and being located between the rear panel and the rear pillar wall;

an integral handle having a first end attached to the right side panel and a second end attached to the transitional wall;

a top panel attached to the transitional wall, front and rear panels, and second end of the handle;

a shoulder extending upward from the front and rear pillar walls and the left side panel; and

a finish extending upward from the shoulder and having an opening.

THE REFERENCES

Schiemann	4,881,652	Nov. 21, 1989
Platte, Sr.	4,969,922	Nov. 13, 1990
Howard et al. (Howard)	5,449,088	Sep. 12, 1995
Meisner et al. (Meisner)	5,954,216	Sep. 21, 1999

THE REJECTIONS

The claims stand rejected as follows: claims 1-10, 14, 15, 18-20 and 22-24 under 35 U.S.C. § 102(b) as anticipated by Schiemann; claims 1-3, 5-10, 18-20 and 22-24 under

35 U.S.C. § 102(b) as anticipated by Platte, Sr.; claims 2 and 18-20 under 35 U.S.C. § 103 as obvious over Schiemann in view of Platte, Sr.; claims 11, 13, 21 and 25 under 35 U.S.C. § 103 as obvious over Schiemann or Platte, Sr., in view of Meisner; claim 12 under 35 U.S.C. § 103 as obvious over Schiemann or Platte, Sr., in view of Howard; and claims 16 and 17 under 35 U.S.C. § 103 as obvious over Schiemann or Platte, Sr.

OPINION

We reverse the aforementioned rejections.

*Rejections over Schiemann, alone or
in combination with other references*

Schiemann discloses a single-piece, dual-chamber container wherein each chamber has smooth curvatures from one side to the next, between the sides and the top and bottom, and between the top and an integral handle (figure 1).

During patent prosecution, claims are to be given their broadest reasonable interpretation consistent with the specification, as the claim language would have been read by one of ordinary skill in the art in view of the specification. See *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); *In re Sneed*, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983). Although the transitions from one to another of the appellants' panels and walls can be gentle curves (specification,

¶ 23), the appellants' disclosure indicates that the panels and walls are distinct and are not merely portions of a smooth continuous wall (figures 1-3). Thus, the terms "panel" and "wall", when given their broadest reasonable interpretation consistent with the specification, are limited to distinct panels and walls.

The examiner has marked up portions of the surface of Schiemann's container and labeled them as the elements in the appellants' claims. The examiner's transition wall is not a distinct wall but, rather, is a portion of the sides and top of each of Schiemann's containers.

Thus, the examiner has not established a prima facie case of anticipation of the appellants' claimed invention over Schiemann.

Also, the examiner has not explained how the appellants' transition wall would have been obvious to one of ordinary skill in the art over Schiemann in combination with the other references with which Schiemann is applied. The examiner, therefore, has not established a prima facie case of obviousness of the appellants' claimed invention over Schiemann and the references applied therewith.

*Rejections over Platte, Sr., alone or
in combination with other references*

Platte, Sr. discloses a blow-molded bottle having oblong

depressions in its opposed major sides, and a depressed rib extending from the major axes ends of the oblong depressions circumferentially around the bottle (col. 1, lines 38-46; figure 1).

The examiner has marked up Platte, Sr.'s drawings to show elements corresponding to those in the appellants' claims. The examiner's transition wall includes thin vertical lines between what the examiner considers to be the front panel and the front pillar wall, and the rear panel and the rear pillar wall. Those vertical lines, however, are not a distinct wall between what the examiner regards as the panel and pillar walls. Instead, they appear to be a portion of the examiner's front and rear panel walls.

The examiner, therefore, has not established a prima facie case of anticipation of the appellants' claimed invention over Platte, Sr. Nor has the examiner explained how Platte, Sr., alone or in combination with the references applied therewith, would have fairly suggested the appellants' transition wall to one of ordinary skill in the art. Consequently, the examiner has not established a prima facie case of obviousness of the appellants' claimed invention over Platte, Sr. and the references with which it is applied.

DECISION

The rejections of claims 1-10, 14, 15, 18-20 and 22-24 under 35 U.S.C. § 102(b) over Schiemann, claims 1-3, 5-10, 18-20 and 22-24 under 35 U.S.C. § 102(b) over Platte, Sr., claims 2 and 18-20 under 35 U.S.C. § 103 over Schiemann in view of Platte, Sr., claims 11, 13, 21 and 25 under 35 U.S.C. § 103 over Schiemann or Platte, Sr., in view of Meisner, claim 12 under 35 U.S.C. § 103 over Schiemann or Platte, Sr., in view of Howard, and claims 16 and 17 under 35 U.S.C. § 103 as over Schiemann or Platte, Sr., are reversed.

REVERSED

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TERRY J. OWENS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
STUART S. LEVY)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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ANTON W. FETTING)	
Administrative Patent Judge)	

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