

The opinion in support of the decision being entered today
is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL J. REED

Appeal 2007-1435
Application 10/408,979
Technology Center 3700

Decided: July 13, 2007

Before EDWARD C. KIMLIN, THOMAS A. WALTZ, and
JEFFREY T. SMITH, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-8 and 11-19.
Claims 9 and 10 have been objected to by the Examiner, and claim 20 stands
withdrawn from consideration pursuant to a restriction requirement. Claims
1 and 12 are illustrative:

1. A rack system for mounting on a generally planar surface and being adapted for storing bulky items which benefit from ventilation during storage, comprising:

an open peripheral frame member formed of rigid rod portions;

hinge means secured to the planar surface and enclosing one said portion of the frame member such that said frame member pivots about the hinge means from an open position to a closed position, engaged with the planar surface;

securing means to mate with a portion of the frame member so as to releasably secure the frame member against the planar surface when engaged therewith; and

a breathable flexible cover member secured to the open frame member so as to form an enclosing volume between the cover member and the planar surface, wherein

said generally planar surface is oriented such that the rack system extends and depends from said generally planar surface, and

said breathable flexible cover abuts against and supports said bulky items to retain said bulky items within said enclosing volume when in said closed position.

12. A breathable storage rack, comprising:

a frame member pivotally secured to a side of a generally vertical surface or the underside of a generally horizontal surface to pivot from an open position to a closed position;

a breathable cover attached to said frame member to form, with said frame member and said surface, an enclosed space within which an object may be stored when said frame member is in the closed position, said object being cradled in and supported by said breathable cover; and

releasable catch means for securing said frame member in the closed position.

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The Examiner relies upon the following references in the rejection of the appealed claims:

Sonner	US 3,632,029	Jan. 4, 1972
Ferrara	US 3,802,620	Apr. 9, 1974
Dale	US 3,861,092	Jan. 21, 1975
Pearlman	US 4,701,743	Oct. 20, 1987
Cooper	US 6,349,732 B1	Feb. 26, 2002
Leamon, Jr.	US 6,553,687 B1	Apr. 29, 2003

Appellant's claimed invention is directed to a rack system for mounting on a planar surface and storing bulky items, such as a helmet. According to Appellant, the claimed invention is adapted to be mounted on surfaces of various orientations, "particularly including vertical surfaces and on the undersides of shelves, ceilings and the like" (principal Br. 4, third para.). The rack system comprises a breathable flexible cover member that is secured to a frame comprising rigid rods and encloses a volume between the cover and the planar surface.

Appealed claim 12 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Ferrara. Claims 1 and 3-6 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Cooper. In addition, the appealed claims stand rejected under 35 U.S.C. § 103(a) as follows:

- (a) claims 7, 12, 18, and 19 over Cooper in view of Sonner;
- (b) claims 2, 8, 14, 15, and 17 over Cooper in view of Dale;
- (c) claim 13 over Cooper in view of Leamon, Jr.
- (d) claims 11 and 16 over Cooper in view of Dale and Pearlman;
- (e) claims 8, 14, 15, and 17 over Cooper in view of Sonner and Dale,

- (f) claim 13 over Cooper in view of Sonner and Leamon, Jr.; and
- (g) claims 11 and 16 over Cooper in view of Sonner and Dale.

Appellant does not set forth separate substantive arguments against the separately rejected groups of claims denoted (b), (c), (d), (e), (f), and (g), above. Appellant relies solely upon the asserted misinterpretation of Cooper by the Examiner. Accordingly, concerning the § 103 rejections, we will limit our consideration to the Examiner's rejection of claims 7, 12, 18, and 19 over Cooper in view of Sonner, which claims stand or fall together as a group.

We have thoroughly reviewed each of Appellant's arguments for patentability. However, we are convinced that the Examiner's rejections are supported by the prior art evidence relied upon and in accord with current patent jurisprudence. Accordingly, we will sustain the Examiner's rejections for essentially those reasons expressed in the Answer, and we add the following primarily for emphasis.

We consider first the Examiner's § 102 rejection of claim 12 over Ferrara. We agree with the Examiner that Ferrara describes the claimed subject matter within the meaning of § 102 by disclosing a breathable storage rack 10 comprising a frame member pivotably secured to the side of a generally vertical surface, wherein the cover is made of a breathable netted material, like Appellant's cover (*see* col. 2, ll. 28-33). We also agree with the Examiner that there is an enclosed space between elements 16 and 24 in which an object, such as mail, may be stored when the frame is in a closed

position. Clearly, mail meets the claimed requirement of “an object” which may be stored.

Appellant maintains that “[t]he Mail Receptacle [of Ferrara], as is clear from the drawing and description, is not intended for similar purposes as Applicant’s invention” (principal Br. 10, second para.). However, Appellant’s intended purpose is of no moment with respect to the patentability of the claimed breathable storage rack. Claim 12 on appeal defines no structure that is distinct from the structure described by Ferrara. While Appellant submits that “there is no indication that the cloth [of Ferrara] is breathable” (*id.*), Appellant has not explained how the netted cover of Ferrara is any less breathable than the claimed cover which, according to the Specification, may also be netted. Also, although Appellant makes the argument that “the Mail Receptacle [of Ferrara] is used to receive objects only in the open position and the objects (mail) are removed before the receptacle is closed” (*id.*), we fail to see how such function of Ferrara lends the claimed structure distinct from the Ferrara structure.

We next consider the § 102 rejection of claims 1 and 3-6 over Cooper. We concur with the Examiner that Cooper describes a rack system, like Appellant’s, for mounting on a generally planar surface and being adapted for storing bulky items which benefit from ventilation during storage comprising all the claimed elements. We do not subscribe to Appellant’s argument that Cooper does not describe a “rack system” because “[i]t does not support or hang, as required by the concept of a ‘rack’” (principal Br. 10,

penultimate para.). As explained by the Examiner, the claims do not recite “hang” or “suspend” and, furthermore, the dictionary definition supplied by the Examiner does not support Appellant’s argument that the concept of a “rack” requires any support or hanging. A rack may simply be a framework on or in which an article is placed. Certainly, the device of Cooper meets the definition of a rack.

We are also not persuaded by Appellant’s argument that Cooper provides no teaching that the cover is breathable. As pointed out by the Examiner, Appellant’s Specification fails to define what, specifically, is embraced by the claim term “breathable.” Consequently, we hardly find error in the Examiner’s conclusion that flap 59A of Cooper renders the enclosure breathable inasmuch as the stated purpose of the flap is to provide ventilation. Moreover, we agree with the Examiner that the vinyl or nylon fabric of Cooper’s cover is breathable at least to the non-specified degree encompassed by Appellant’s claims. Very few, if any, such fabrics are totally impermeable to air.

Appellant also contends that the device of Cooper does not meet the claim limitation of “extends and depends from said planar surface” (principal Br. 11, second para.). However, we agree with the Examiner’s rationale that “[t]he rack system of Cooper clearly shows the rack system extends (horizontally) and depends from (by gravity) the generally planar surface (floor)” (Answer 13, second para.). Furthermore, we find that the enclosure of Cooper is fully capable of being secured to, and extending

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from, a vertical surface. The intended use of the enclosure by Cooper is irrelevant to the described structure. We also agree with the Examiner that the “breathable flexible cover member 50, 55b, 55d [of Cooper] does abut against (make contact) and support (maintain item’s resting position) the bike to retain the bike within the enclosing volume when in closed position” (Answer, sentence bridging 13 and 14). Clearly, the larger the object enclosed by Cooper’s device the more the object would abut the cover and be supported thereby.

We now turn to the Examiner’s § 103 rejection of claims 7, 12, 18, and 19 over Cooper in view of Sonner. We agree with the Examiner that the claim language “for use in storing helmets against the side of a generally vertical mounting surface . . .” is simply a statement of intended use that does not further define the structure of the helmet rack that is articulated by the language following the term “comprising.” In any event, we are convinced that it would have been obvious for one of ordinary skill in the art to secure the enclosure of Cooper against a generally vertical surface, and to make any modifications that are necessary to do so, and that such an enclosure would be fully capable of storing the number of helmets that correspond in size to the size of the enclosure. Whether one wants to enclose and store helmets, bikes, or any myriad number of articles, such as sporting equipment, we have no doubt that the prior art establishes the obviousness of a storage rack or enclosure having the features recited in independent claims 7 and 12.

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Manifestly, one of ordinary skill in the art would also have found it obvious to design the air and moisture impermeability of the cover material that affords the desired degree of protection from the elements. Even if we were to find that the cover of Cooper is not breathable, which, of course, we have not, we are satisfied that it would have been obvious for one of ordinary skill in the art to modify the cover of Cooper to the degree of permeability desired. We are also convinced that it would have been obvious to one of ordinary skill in the art to modify the size of Cooper's enclosure to accommodate larger, or much smaller, articles. It cannot be Appellant's argument that it would have been nonobviousness for one of ordinary skill in the art to modify the size, shape and configuration of Cooper's enclosure to accommodate articles of different size and shape. Indeed, Cooper specifically discloses that the field of invention "relates generally to collapsible enclosures for storing and protecting objects" (col. 1, ll. 6-7).

As a final point with respect to the § 103 rejections, we note that Appellant bases no argument upon objective evidence of nonobviousness, such as unexpected results.

Appellant requests the Board to "require concurrent handling of [non-elected claim 20] by the Examiner" (principal Br. 16, third para.). However, as noted by the Examiner, the propriety of an Examiner's restriction requirement is outside the scope of our review.

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As a final point, we must bring to counsel's attention the mandates of 37 C.F.R. § 1.3, which reads "[a]pplicants and their attorneys or agents are required to conduct their business with the United States Patent and Trademark Office with decorum and courtesy" Manifestly, counsel's statement at page 16 of the principal Brief that "it is laziness and unnecessary obfuscation to refuse to consider that claim [claim 20]" is **not** in compliance with the rule. Based on this unfortunate remark, the entirety of the Brief was susceptible to non-entry. It should be evident that disparaging remarks by counsel do nothing to advance the cause of an applicant. In our view, the Examiner has performed a commendable job in analyzing all the features that are present in a variety of claims and has properly applied the law in rejecting the claims over the cited prior art.

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 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

clj

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