

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES A. RITZ AND BRIAN L. FIDELER

Appeal No. 96-0601
Application 08/104,965¹

ON BRIEF

Before LYDDANE, MEISTER and ABRAMS, *Administrative Patent Judges*.
MEISTER, *Administrative Patent Judge*.

¹Application for patent filed August 10, 1993.

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Claims 4-7 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Camps.

Claims 9, 10, 12 and 13 stand rejected under 35 U.S.C. § 103 as being unpatentable over Camps.

Each of the above-noted rejections is based upon the examiner's view that

since the force that can be applied by different people varies greatly, the examiner is of the opinion that making the box and lid [of Camps] out of the disclosed materials would inherently allow the box and lid to be deformed to some extent by a person. With sufficient pressure exerted on the box and lid, the examiner contends that the lid would become removed from the box. It should also be noted that the claim does not prohibit the application of some other force at some other location to assist in the operation of the latch means. One could manually grasp and flex the box and lid while additional pressure is exerted directly on the latches and tabs. In either situation, the claim limitations are deemed to be met by CAMPS. [Answer, page 4.]

We will not support the examiner's position. Independent claims 4 and 9 each expressly requires a latch means

for mechanically latching said first and second sections to one another and for mechanically unlatching said first and second sections from one another **in response to manual deformation** of said first section **between** said pivot point and said latch means.
[Emphasis ours.]

The examiner concedes that Camps does not specifically teach such an arrangement but, nevertheless, takes the position that the

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materials disclosed by Camps would "inherently" allow the box to be deformed to some extent and that with "sufficient pressure" the lid would become removed. This position is based on speculation and unfounded assumptions. Even if we were to agree with the examiner that Camps' first section could be deformed to "some extent" with sufficient pressure, there is absolutely nothing to indicate that this deformation of "some extent" would have any effect at all on Camps' latches 31, much less function to unlatch them. It is well settled that inherency may not be established by probabilities or possibilities. *In re Oelrich*, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981) and *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993).

As to the examiner's contention on page 4 of the Answer that one "could manually grasp and flex the box and lid [of Camps] while additional pressure is exerted directly on the latches and tabs," the plain language of each of the independent claims on appeal expressly requires a latch means which functions in such a manner that, upon manual deformation of the first section between the pivot point and the latch means, the latch means unlatches.

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In short, the claims expressly require that unlatching occur *in response to manual deformation* of the first section *between the pivot and the latch means*. There is absolutely nothing in Camps which either teaches or suggests such an arrangement.

The examiner's rejections of claims 4-7 under 35 U.S.C. § 102(e) and claims 9, 10, 12 and 13 under 35 U.S.C. § 103 are reversed.

REVERSED

WILLIAM E. LYDDANE)	
Administrative Patent Judge)	
)	
)	
JAMES M. MEISTER)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	

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