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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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT A. CLARK and JOHN PARNALL

Appeal No. 96-0610
Application 08/257,449¹

HEARD: July 15, 1997

Before McCANDLISH, Senior Administrative Patent Judge, and
MEISTER and McQUADE, Administrative Patent Judges.

McCANDLISH, Senior Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the examiner's rejection of claims 1, 2, 4 through 7 and 17 under 35 U.S.C. § 103. All of the other claims remaining in the application have been allowed.

¹ Application for patent filed June 7, 1994. According to appellants, this application is a continuation of Application 08/107,119, filed August 17, 1993, now abandoned.

Appellants' claimed invention relates to a collapsible container having a bottom wall, a pair of sidewalls,² and a pair of end walls defining a generally rectangular periphery. The sidewalls and the end walls are hinged to the bottom wall or to what amounts to an upstanding rim portion of the bottom wall. The vertical levels of the hinges permit a first one of the sidewalls to initially be pivoted to a collapsed position overlying the bottom wall, the second sidewall to be pivoted to a collapsed position overlying the first sidewall, and the two end walls to be pivoted to non-overlapping collapsed positions overlying the second sidewall.

In independent claim 1, the second sidewall is recited to overlie the first sidewall "in relatively flat configuration."³ Claim 1 further recites that the end walls lie parallel to and in engagement with the second sidewall upon being pivoted to their overlying positions. Claim 17, the only other independent claim on appeal, recites that the

² Throughout appellants' specification and pending claims, "sidewall" is spelled as two words. According to Webster's Third New International Dictionary (G. & C. Merriam Company, 1971), "sidewall" is spelled as one word.

³ Consistent with appellants' specification, we have interpreted this phrase to mean that the second sidewall lies flat or parallel relative to the first sidewall upon being pivoted to its overlying position.

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sidewalls and the end walls lie in parallel planes upon being pivoted to their collapsed positions.⁴ Claim 17 further recites that the thickness of the collapsed container is equal the sum of the thicknesses of the bottom wall, the sidewalls and the end walls.

A copy of appealed claims 1 and 17, as these claims appear in the appendix to appellants' brief, is appended to this decision.

The following references are relied upon by the examiner in support of his rejection of the appealed claims:

Spangler	1,471,508	Oct. 23, 1923
Friedrich	4,062,467	Dec. 13, 1977

Claims 1, 2, 4 through 7 and 17 stand rejected under 35 U.S.C. § 103 as being unpatentable over Spangler in view of Friedrich. According to the examiner, the teachings of Friedrich would have made it obvious to eliminate the cover in Spangler's collapsible container "to allow a more compact collapsed height" (answer, page 4). Reference is made to the examiner's answer for further details of this rejection.

⁴ The end walls actually lie in or, more particularly, along a common plane in their collapsed positions.

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We have carefully considered the issues raised in this appeal together with the examiner's remarks and appellants' arguments. As a result, we conclude that the rejection of the appealed claims is sustainable.

The collapsible container disclosed in the Spangler patent is similar to appellants' container in that it comprises a bottom wall 1, a pair of sidewalls 3 and 4 and a pair of end walls 5 defining a generally rectangular periphery as set forth in appealed claims 1 and 17. Like appellants' claimed invention, Spangler's sidewalls and end wall are hinged to the bottom wall or what amounts to an upstanding rim portion of the bottom wall. Spangler's collapsible container also corresponds to appellants' claimed invention in that the vertical levels of the patentee's hinges permit a first one of the sidewalls to initially be pivoted to a collapsed position overlying the bottom wall in parallel relation to the bottom wall, the second sidewall to be pivoted to a collapsed position overlying the first sidewall in parallel relation to the first sidewall, and the two end walls to be pivoted to non-overlapping collapsed positions overlying the second sidewall in parallel relation to the second sidewall.

Unlike appellants' invention, however, Spangler's illustrated embodiment of the collapsible container includes a cover 6 which lies between the sidewall 3 and the end walls 5 in the collapsed condition of the container as shown in Figure 3 of the patent drawings. According to the description in lines 73-84 on page 2 of the Spangler specification, the cover is detachable while retaining the capability of reattaching it.

With the patentee's cover attached to the container, appealed claim 1 differs from Spangler only by reciting that in the positions where the end walls lie parallel to the second sidewall, the end walls are "in engagement on" the second sidewall while claim 17 differs from Spangler only by reciting that the collapsed container has a thickness equal to the sum of the thicknesses of the bottom wall, the two sidewalls and one of the end walls. Appellants do not appear to argue that any other limitations in claims 1 and 17 differ from Spangler.

Admittedly, Spangler does not expressly disclose that the elimination of the cover without providing for the reattachment of the cover to the container. However, it would

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have been evident to one of ordinary skill in the art that as an alternative to retaining the capability of reattaching the patentee's cover to the container, the cover may be eliminated without providing for the reattachment thereof. In this regard, it is well established patent law that the elimination of an element such as Spangler's cover together with its function would have been an obvious expedient. See *In re Kuhle*, 526 F.2d 553, 555, 188 USPQ 7, 9 (CCPA 1975).

Given the self-evident alternative of permanently eliminating Spangler's cover without providing for its reattachment, it would have been obvious to one of ordinary skill in the art from the patentee's teaching of conserving space (see page 1, lines 16-24 of the Spangler specification) to vertically lower the common level of the hinges for the end walls to allow the end walls to lie flat on the upper sidewall in the collapsed condition of the container rather than leaving a void space previously occupied by the cover. Indeed, skill in the art is presumed, not the converse. *In re Sovish*, 769 F.2d 738, 742, 226 USPQ 771, 774 (Fed. Cir. 1985).

For the foregoing reasons, the subject matter of appealed claims 1 and 17 would have been obvious from Spangler alone.

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In any case, Friedrich suggests the omission of a cover or a top for a collapsible rectangular container having sidewalls and end walls all hinged to a bottom wall. According to Friedrich:

[s]uch an arrangement allows the lower pivoted walls to be dropped down first with the other walls pivoted down on top of them so as to form a flat and extremely com-pact assembly when collapsed. [Column 2, lines 13-17.]

Friedrich's teaching of forming a flat and extremely compact assembly of the container in its collapsed condition in itself would have suggested the subject matter of claims 1 and 17. Moreover, this teaching would have suggested an arrangement in which the hinges are at levels to permit the sidewalls and the end walls to be pivoted to their collapsed positions without leaving any void space especially between the end walls and the underlying sidewall.

In light of the motivation for modifying Spangler's container as discussed *supra*, we are not persuaded by appellants' argument that the proposed modifications to Spangler would "destroy the Spangler device for its intended purposes" (brief, page 8). Certainly, the elimination of Spangler's cover and any void space between the pair of end

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walls and the underlying sidewall to form a flat and extremely compact assembly in the collapsed condition of the container as expressly suggested by Friedrich would not destroy Spangler's container for its intended purpose, namely to store or transport articles.

In view of the foregoing, we conclude that the subject matter of claims 1 and 17 would have been obvious from the combined teachings of Spangler and Friedrich if not from either reference alone. We will therefore sustain the examiner's § 103 rejection of claims 1 and 17.

We will also sustain the examiner's § 103 rejection of dependent claims 2 and 4 through 7. Merely reiterating what each of these dependent claims recites or that these dependent claims are considered to patentable because claim 1 is considered to be patentable does not amount to an argument that these dependent claims are patentable separately of the claims from which they depend. In short, appellants have failed to argue the patentability of the dependent claims with any reasonable specificity. They therefore stand or fall with claim 1. See *In re Nielson*, 816 F.2d 1567, 1572, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987) and *In re Burckel*, 592 F.2d 1175,

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1179, 201 USPQ 67, 70 (CCPA 1979). In any event, the dependent claims are considered to be unpatentable over the applied references for the reasons stated by the examiner.

The examiner's decision rejecting appealed claims 1, 2, 4 through 7 and 17 is therefore affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

	HARRISON E. McCANDLISH)	
	Senior Administrative Patent Judge)	
)	
)	
	JAMES M. MEISTER)	BOARD OF
PATENT	Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
	JOHN P. McQUADE)	
	Administrative Patent Judge)	

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APPENDIX

1. A collapsible container, comprising:

a) a bottom wall, a pair of side walls and a pair of end walls, said side walls and end walls defining a generally rectangular periphery;

b) a first of said side walls being pivotably connected to said bottom wall by a first hinge mounted adjacent said bottom wall;

c) a second of said side walls being pivotably connected on said container by a second hinge parallel with said first hinge and vertically spaced from said first hinge with respect to said bottom wall by a distance whereby when said first of said side walls is pivoted in overlying relation to said bottom wall, said second of said side walls may be pivoted into overlying relation to said first of said side walls in relatively flat configuration;

d) said end walls being pivotably mounted on said container via respective third and fourth parallel hinges, said third and fourth hinges being vertically spaced from said second hinge with respect to said bottom wall by a distance permitting said end walls to be pivoted inwardly to a position

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where said end walls lie flat and in engagement on said second of said side walls with said end walls lying parallel to said second of said side walls;

e) each of said hinges permitting its respective connected wall to pivot from a collapsed inwardly directed generally horizontal configuration to a generally vertical erected configuration and beyond said vertical configuration with respect to said collapsed configuration; and

f) locking means for releasably locking said walls in said erected configuration.

17. A collapsible container, comprising:

a) a bottom wall, a pair of side walls and a pair of end walls, said side walls and end walls defining a generally rectangular periphery;

b) a first of said side walls being pivotably connected to said bottom wall by a first hinge mounted adjacent said bottom wall;

c) a second of said side walls being pivotably connected on said container by a second hinge parallel with said first hinge and vertically spaced from said first hinge with respect to said bottom wall;

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d) said end walls being pivotably mounted on said container via respective third and fourth parallel hinges, said third and fourth hinges being vertically spaced from said second hinge with respect to said bottom wall;

e) each of said hinges permitting its respective connected wall to pivot from a collapsed inwardly directed generally horizontal configuration to a generally vertical erected configuration and beyond said vertical configuration with respect to said collapsed configuration, said walls, in said collapsed configuration, lying in parallel planes;

f) locking means for releasably locking said walls in said erected configuration; and

g) said container, as collapsed, having a thickness equal to the sum of thicknesses of said bottom wall, said side walls and one of said end walls.