

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

Ex parte GARY L. FENTON and GERALD A. SILL

---

Appeal No. 97-1948  
Application 08/569,554<sup>1</sup>

---

ON BRIEF

---

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

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 3 through 5, 8, 9, 14, 15, 20, 21, 24 and 26 through 32, which are all of the claims remaining in this application. Claims 2, 6, 7, 10 through 13, 16 through 19, 22, 23 and 25 have been canceled.

---

<sup>1</sup>Application for patent filed December 8, 1995. According to appellants, this application is a continuation of application 08/142,580, filed October 25, 1993, abandoned.

Appeal No. 97-1948  
Application 08/569,554

Appellants' invention relates to an intermodal shipping container of the type widely used in the freight hauling industry where different modes of transport (e.g., sea, rail and roadway) are used to ship the containers from one point to another. As explained on pages 2 through 5 of the specification, the intermodal shipping container that is the subject of the present invention has a non-standard arrangement of lock-receiving fittings or connectors and stacking points which affords the container the capacity to be stacked in a variety of double-stack arrangements with other containers of different lengths. Claims 1, 9, 20, 26 and 31 are representative of the subject matter on appeal and a copy of those claims may be found in the Appendix to appellants' brief.

The prior art references of record relied upon by the examiner as evidence of obviousness of the claimed subject matter are:

Yurgevich	4,844,672	Jul. 04, 1989
Grogan	5,072,845	Dec. 17, 1991

Claims 1, 3 through 5, 8, 9, 14, 15, 20, 21, 24 and 26 through 32 stand rejected under 35 U.S.C. § 103 as being unpatentable over Yurgevich in view of Grogan.

Appeal No. 97-1948  
Application 08/569,554

Reference is made to the examiner's answer (Paper No. 20) for the examiner's reasoning in support of the above-noted rejection. Appellants' arguments against the examiner's rejection are found in appellants' brief (Paper No. 19, filed September 18, 1996).

#### OPINION

Our evaluation of the obviousness issues raised in this appeal has included a careful assessment of appellants' specification and claims, the applied prior art references, and the respective positions advanced by appellants and the examiner. As a consequence of our review, we have reached the conclusion that the examiner's rejection of the appealed claims before us on appeal will not be sustained. Our reasons follow.

Looking at the examiner's combination of Yurgevich and Grogan, we share appellants' view (brief, pages 6-16) that even if these references are combined in the manner urged by the examiner, the resulting intermodal shipping container would not be the same as that now claimed by appellants in the claims before us on appeal. The intermodal container resulting from providing the container of Yurgevich with fittings at the corners of each frame (18, 26) so as to define four stacking points as in

Appeal No. 97-1948  
Application 08/569,554

the container of Grogan, does not provide a container as claimed by appellants, since the additional, lock-receiving fittings (50) pointed to by the examiner in Yurgevich (as modified) are not "spaced from said stacking points so as to be independent thereof," as required in appellants' independent claims 1, 9, 20, 26 and 31 on appeal. Based on appellants' disclosure (pages 5, 10 and 11) and the arguments made in the brief (pages 8-11), we understand the language of the claims on appeal to require the additional lock-receiving fittings (claims 1, 20, 26 and 31) and the "pair of said connectors in said bottom wall" which are set forth in claim 9 as being "spaced from said stacking points and are independent thereof," to be "not associated with stacking points" of the container (specification, page 5) and/or "not located at a stacking frame and... therefore not associated with vertical stacking posts or an upper crossmember" (specification pages 10-11). Accordingly, we interpret the language "spaced from said stacking points so as to be independent thereof" in claims 1, 20, 26 and 31, and similar language in claim 9 on appeal, to be -- spaced from all of said stacking points of said container so as to be independent of all of said stacking points thereof --. It is clear that neither Yurgevich nor Grogan teach

Appeal No. 97-1948  
Application 08/569,554

or suggest such an arrangement of additional lock-receiving fittings or connectors.

Moreover, we observe that the container of Yurgevich (as modified) does not have "exactly three stacking points" as required in independent claims 1, 20 and 31 on appeal. Contrary to the position taken by the examiner (answer, page 6), it is our opinion that the language "exactly three stacking points" is limiting and does, as appellants have argued, require that the container of appellants' claims 1, 20 and 31 have "only three stacking points," no more and no less (see, e.g., brief, pages 13 and 14). Since, by the examiners own understanding, the container of Yurgevich (as modified) has four stacking points, for this additional reason, it clearly differs from the container defined in appellants' independent claims 1, 20 and 31 on appeal.

For the reasons set forth on pages 15 and 16 of appellants' brief, we find that the container resulting from the examiner's combination of Yurgevich and Grogan also differs from the intermodal container defined in appellants' claims 5, 20 and 30 on appeal. Like appellants (brief, page 15), we recognize that the container of Yurgevich (as modified)

Appeal No. 97-1948  
Application 08/569,554

illustrates a tunnel section, but does not teach or suggest providing additional lock-receiving fittings independent of stacking locations between a front stacking frame and an intermediate stacking frame forming a rear end portion of the tunnel section

Based on the foregoing , the decision of the examiner rejecting claims 1, 3 through 5, 8, 9, 14, 15, 20, 21, 24 and 26 through 32 under 35 U.S.C. § 103 is reversed.

REVERSED

HARRISON E. McCANDLISH	)	
Senior Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
JAMES M. MEISTER	)	APPEALS AND
Administrative Patent Judge	)	INTERFERENCES
	)	
	)	
	)	
CHARLES E. FRANKFORT	)	
Administrative Patent Judge	)	

Appeal No. 97-1948  
Application 08/569,554

Timothy M. Kelley  
Michael, Best & Friedrich  
100 East Wisconsin Avenue  
Milwaukee, WI 53202-4108