

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(2) is not binding precedent of the Board.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. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte IAN A. BOOTH,
DAVID H. ATTON, ROBERT W. INCE,
and STEPHANIE M. HICKFORD

Appeal No. 98-1295
Application 08/325,361¹

ON BRIEF

Before ABRAMS, STAAB, and MCQUADE, Administrative Patent
Judges.

ABRAMS, Administrative Patent Judge.

DECISION ON APPEAL

¹Application for patent filed December 12, 1994.
According to appellants, this application is a U.S. national
stage application, PCT/GB93/00893, filed April 29, 1993, under
35 U.S.C. § 371.

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This is an appeal from the decision of the examiner finally rejecting claims 1-3 and 5-17. Claim 4, the only other claim of record, has been indicated as containing allowable subject matter.

The appellants' invention is directed to a blast attenuating container. The subject matter before us on appeal is illustrated by reference to claim 1, which reads as follows:

1. A blast attenuating container comprising:

a number of panels, at least one of which has blast attenuating properties,

the panels being joined together to form an enclosure by joint means for providing a relatively rigid joint between joined panels under normal handling loads and for providing a relatively flexible hinged joint capable of transmitting tensile loads between joined panels under blast conditions.

THE REFERENCES

The references relied upon by the examiner to support the final rejection are:

Powell, Jr. (Powell)	2,489,670	Nov. 29, 1949
Veenema	3,989,157	Nov. 2, 1976
Norton	4,162,341	Jul. 24, 1979
Kupersmit 1989	4,860,912	Aug. 29,
Lee (PCT)	WO 91/07337	May 30, 1991

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THE REJECTIONS

The following rejections stand under 35 U.S.C. § 102(b):

(1) Claims 1, 2, 5, 15 and 17 on the basis of Veenema or Powell.

(2) Claims 3 and 6-8 on the basis of Veenema.

The following rejections stand under 35 U.S.C. § 103:

(1) Claim 9 on the basis of Veenema and Lee.

(2) Claim 10 on the basis of Powell.

(3) Claims 11, 13 and 14 on the basis of Veenema or Powell, each in view of Lee.

(4) Claim 12 on the basis of Veenema or Powell, each in view of Lee and Norton.

(5) Claim 16 in view of Veenema or Powell, each in view of Kupersmit.

The rejections are explained in the Examiner's Answer.

The arguments advanced by the appellants are set forth in the Brief and the Reply Brief.

OPINION

In reaching our decision on the issues raised in this appeal, we have carefully assessed the claims, the prior art applied against the claims, and the respective views of the

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examiner and the appellants as set forth in the Answer and the Briefs.

The Rejections Under 35 U.S.C. § 102(b)

It is axiomatic that anticipation under 35 U.S.C. § 102(b) is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of the claimed invention. See, for example, *In re Paulsen*, 30 F.3d 1475, 1480-1481, 31 USPQ2d 1671, 1675 (Fed. Cir. 1994) and *In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990). It is the examiner's view that independent claim 1 is anticipated by both Veenema and Powell. We do not agree, and therefore we will not sustain the rejection of claim 1 or, it follows, of claims 2, 3, 5-8, 15 and 17, which depend therefrom. Our reasons for arriving at this conclusion follow.

Claim 1 recites a number of panels, at least one of which has blast attenuating properties, and states that the panels be joined together to form an enclosure by joint means that provide a relatively rigid joint between joined panels under normal handling loads and "a relatively flexible hinged joint

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capable of transmitting tensile loads between joined panels under blast conditions." This requirement of the claim is not, in our opinion, disclosed or taught by either Veenema or Powell.

Veenema is directed to a container assembly for a transportation vehicle, and its objective is to assemble the plurality of panels that comprise the container in mutually perpendicular planes without the use of fastening devices such as bolts or rivets (column 1, lines 4-9). The reference contains no mention of the problem of attenuating the force of a blast that occurred in the container. The assembled container is shown in Figure 1. The manner in which the panels are attached together is best shown in Figure 2, wherein side panel 14 is attached to top panel 18 by inserting the edges of each in moldings 60 which are installed in a right-angled rail 40. Inwardly-facing teeth 64, which can be augmented by an adhesive, permanently grip the edges of the plywood panels when they are inserted into the moldings (column 2, line 35 *et seq.*). While we do not quarrel with the examiner's position that this joint means provides a relatively rigid joint between joined panels under normal

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handling loads, we agree with the appellants that there is no evidence that this joint also provides a "relatively flexible hinged joint capable of transmitting tensile loads between joined panels under blast conditions," as is required by the claim. There is no explicit recitation in the reference that the joint would behave in such a fashion. The examiner's conclusion that the Veenema joint "will flex under some blast conditions" is not supported by evidence and is not, from our perspective, a mode of operation that would be apparent to one of ordinary skill in the art from a review of the disclosure of the invention. Thus, it can only be regarded as speculation, which cannot form the basis for a rejection.

The same applies to Powell, which is directed to a truck body that can be shipped in the knocked-down state and then quickly assembled. There is no concern voiced for attenuating the force of a blast that has occurred in the container. The joint, shown in Figures 3, 6 and 9, would appear to meet the first portion of the applicable requirement of claim 1, that is, that it is relatively rigid under normal handling loads. However, there is no evidentiary basis from which to conclude that it also provides a relatively flexible hinged joint

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capable of transmitting tensile loads between joined panels under blast conditions.

The Rejections Under 35 U.S.C. § 103

All five of these rejections pertain to claims that ultimately depend from claim 1, and all utilize as the primary reference either Veenema or Powell. Considering the disclosures and teachings of these two references from the standpoint of obviousness under Section 103,² it is our view that the problem with each reference discussed above still exists. Even taking into account the teachings of Lee, Norton and Kupersmit, we fail to perceive any teaching, suggestion or incentive which would have led one of ordinary skill in the art to provide the joint means of Veenema or Powell with such modifications as would permit them to be relatively flexible and capable of transmitting tensile loads between joined panels under blast conditions. The only suggestion for doing so is vested in the hindsight accorded one who first viewed the appellants' disclosure, and in that manner determining the

²The test for obviousness is what the combined teachings of the prior art would have suggested to one of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

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existence of the problem and the solution thereto. This, of course, is improper as the basis for a rejection. See *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992).

We therefore will not sustain any of the Section 103 rejections.

SUMMARY

None of the rejections are sustained.

The decision of the examiner is reversed.

REVERSED

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	Neal E. Abrams)	
	Administrative Patent Judge)	
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	Lawrence J. Staab)	BOARD OF
PATENT)	
	Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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	John P. McQuade)	
	Administrative Patent Judge)	

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Nixon & Vanderhye P.C.
8th Floor, 1100 North Glebe Road
Arlington, VA 22201-4714