

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 11

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

Ex parte ROBERT J. STARR

---

Appeal No. 98-2446  
Application 08/593,070<sup>1</sup>

---

ON BRIEF

---

Before FRANKFORT, McQUADE and PATE, 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 through 17, all the claims pending in the application.

---

<sup>1</sup>Application for patent filed January 29, 1996.

Appeal No. 98-2446  
Application 08/593,070

Appellant's invention is directed to a cover for use on a standard open head container or drum used in the waste industry to contain and store potentially hazardous waste materials, such as waste oil. As noted on pages 1 and 2, and pages 5 and 6, of the specification, such standard open head containers are typically 55 gallon or 30 gallon drums, which drums would normally have a flat cover of substantially the same diameter as the drum sealably secured to the open end of the drum. Typically, the cover is secured to the drum by means of a bolt ring similar to that seen in Figure 6 of the application drawings. The cover of the present invention, best seen in Figures 1 through 5 of the application drawings, is a replacement for the typical flat drum cover described above. Independent claim 1 is representative of the subject matter on appeal and a copy of that claim may be found in Appendix I of appellant's brief.<sup>2</sup>

---

<sup>2</sup> Given our understanding of appellant's invention as noted above, we understand the "cover" in line 6 of claim 1 as being the flat cover which would normally be used on a standard open head container of the type mentioned in claim 1 on appeal, and that such a flat cover is to be replaced with the cover described and claimed in the present application. It would be prudent for appellant and the examiner to clarify this minor informality during any further prosecution of the application subsequent to this appeal.

Appeal No. 98-2446  
Application 08/593,070

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Green 1934	1,948,263	Feb. 20,
Lineweber 24, 1962	3,045,857	Jul.
Collier et al. (Collier) 25, 1983	4,411,371	Oct.
Kusta 1991	4,982,864	Jan. 08,
Seitz 1995	5,439,935	Aug. 08,

Claims 1 through 3, 8 and 15 through 17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by each of Seitz and Collier.

Claims 1 through 3, 8 and 15 through 17 stand additionally rejected under 35 U.S.C. § 103 as being unpatentable over Seitz in view of Lineweber and Kusta.

Claims 4 through 7 and 9 through 13 stand rejected under 35 U.S.C. § 103 as being unpatentable over Seitz in view of

Appeal No. 98-2446  
Application 08/593,070

Lineweber and Kusta as applied above, and further in view of Green.

Claim 14 stands rejected under 35 U.S.C. § 103 as being unpatentable over Seitz, Lineweber, Kusta and Green as applied above, and further in view of Collier.

Rather than reiterate the examiner's full statement of the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellant regarding those rejections, we make reference to the examiner's answer (Paper No. 10, mailed March 13, 1998) for the examiner's reasoning in support of the rejections, and to appellant's brief (Paper No. 9, filed January 2, 1998) for appellant's arguments thereagainst.

#### OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a

Appeal No. 98-2446  
Application 08/593,070

consequence of our review, we have made the determinations which follow.

Turning first to the examiner's rejection of claims 1 through 3, 8 and 15 through 17 under 35 U.S.C. § 102(b) as being anticipated by Seitz or Collier, we must agree with appellant (brief, pages 4-6) that both Seitz and Collier fail to show, disclose or teach a cover for a "standard open head container" as in appellant's claim 1 on appeal, wherein the cover includes,

*inter alia*, a housing like that set forth in independent claim 1 with

"a sealing portion of said housing that is sealably engageable to the second end of the elongated side walls [of the standard open head container], such that the housing passage is removably connected to the container body cavity."

Both Seitz and Collier disclose a ring/coaming or housing (12 of Seitz, 34 of Collier) that is welded to the body of the rail car therein and is clearly not removably connected

Appeal No. 98-2446  
Application 08/593,070

thereto in the same sense that appellant's cover is removably connected to the container therein, e.g., via the bolt ring (60) seen in Figures 3, 4 and 6 of the application drawings. The examiner's position that the hatch covers of Seitz and Collier are removably connected to the rail car body therein "by cutting the weld attachment" (answer, page 5) is unreasonable and disregards the well settled maxim of our Patent law that, in proceedings before the Patent and Trademark Office, claims must be given their broadest reasonable interpretation *consistent with the specification*, and that the claim language cannot be read in a vacuum, but instead must be read in light of the specification as it

would be interpreted by one of ordinary skill in the pertinent art. See In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983),

It follows from the foregoing that the examiner's rejection of claims 1 through 3, 8 and 15 through 17 under 35 U.S.C.

Appeal No. 98-2446  
Application 08/593,070

§ 102(b) as being anticipated by each of Seitz and Collier will not be sustained.

We next look to the examiner's rejection of claims 1 through 3, 8 and 15 through 17 under 35 U.S.C. § 103 as being unpatent-able over Seitz in view of Lineweber and Kusta. In this instance, we see no way that one of ordinary skill in the art would have been led to make any combination of the totally disparate rail-road car hatch cover of Seitz and the seal ring arrangements of Lineweber and Kusta so as to arrive at a cover for a "standard open head container" as in appellant's claim 1 on appeal. In this regard, we are of the view that the examiner's position is based on impermissible hindsight gleaned from appellant's own disclosure and not from any fair teaching or suggestion found in the applied prior art references themselves.

More specifically, we consider that the examiner has used appellant's own disclosure and the claimed invention itself as a blueprint for piecing together unrelated elements from

Appeal No. 98-2446  
Application 08/593,070

disparate

references in the prior art so as to defeat patentability of the invention as defined in appellant's claims 1 through 3, 8 and 15 through 17 on appeal. Thus, the examiner's rejection of those claims under 35 U.S.C. § 103 based on Seitz, Lineweber and Kusta will not be sustained.

Turning now to the examiner's rejection of claims 4 through 7 and 9 through 13 under 35 U.S.C. § 103 based on Seitz, Lineweber, Kusta and Green, and the rejection of claim 14 under 35 U.S.C. § 103 based on Seitz, Lineweber, Kusta, Green and Collier, we find nothing in the added teachings of either Green or Collier which would overcome or provide for that which we have indicated above to be lacking in the basic combination of Seitz, Lineweber and Kusta. Accordingly, we will not sustain the examiner's rejection of claims 4 through 7 and 9 through 13 under 35 U.S.C. § 103, or that of claim 14 under 35 U.S.C. § 103.

Appeal No. 98-2446  
Application 08/593,070

In summary: none of the examiner's rejections before us on appeal has been sustained. Thus, the decision of the examiner is reversed.

REVERSED

CHARLES E. FRANKFORT	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
WILLIAM F. PATE, III	)	APPEALS AND
Administrative Patent Judge	)	INTERFERENCES
	)	
	)	
JOHN P. McQUADE	)	
Administrative Patent Judge	)	

vsh

Appeal No. 98-2446  
Application 08/593,070

Buchanan Ingersoll Professional Corp.  
One Oxford Center  
301 Grant Street  
20th Floor  
Pittsburgh, PA 15219-1410