

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

Paper No. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* MARK HILLIS,  
CLIFFORD R. PERRY,  
and  
CHERYL M. REILAND

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Appeal No. 1999-0402  
Application No. 08/567,385

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ON BRIEF

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Before McCandlish, *Senior Administrative Patent Judge*, and  
COHEN and STAAB, *Administrative Patent Judges*.

STAAB, *Administrative Patent Judge*.

*DECISION ON APPEAL*

This is a decision on an appeal from the examiner's final rejection of claims 8, 14, 18-20, 22-25 and 28. Claims 26 and 27, the only other claims remaining in the application, have been allowed.

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Appellants' invention pertains to a container having a reinforced bottom to prevent downward deflection of the bottom over time. Claim 8, a copy of which is found in an appendix to appellants' main brief, is illustrative of the appealed subject matter.

The references cited by the examiner in support of the final rejection are:

Sere 1971	3,628,684	Dec. 21,
Gyenge et al. (Gyenge) 1987	4,674,647	Jun. 23,
Kruelskie 29, 1990	4,928,839	May

Claims 8, 18, 22, 23, 25 and 28 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Sere.

Claims 14 and 24 stand rejected under 35 U.S.C. § 103 as being unpatentable over Sere in view of Gyenge.

Claims 19 and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Sere in view of Kruelskie.

Reference is made to appellants' main and reply briefs (Paper Nos. 16 and 18) and to the examiner's answer (Paper No. 17) for the respective positions of appellants and the examiner regarding the merits of these rejections.

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*The § 102 rejection of claims 8, 18, 22, 23, 25 and 28*

Anticipation under 35 U.S.C. § 102(b) is established only when a single prior art reference discloses, either expressly or under principles of inherency, each and every element of a claimed invention. *See RCA Corp. v. Applied Digital Data Systems, Inc.*, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984), *cert. dismissed sub nom., Hazeltine Corp. v. RCA Corp.*, 468 U.S. 1228 (1984). The law of anticipation, however, does not require that the reference teach what the appellants are claiming, but only that the claims on appeal "read on" something disclosed in the reference (*see Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 722, 218 USPQ 781, 789 (Fed. Cir. 1983), *cert. denied*, 465 U.S. 1026 (1984), (*and overruled in part on another issue*) 775 F.2d 1107, 227 USPQ 577 (Fed. Cir. 1985)). Moreover, anticipation by a prior art reference does not require either the inventive concept of the claimed subject matter or the recognition of inherent properties that may be possessed by the prior art reference. *See Verdegaal Bros. Inc. v. Union Oil of Calif.*, 814 F.2d 628, 633, 2 USPQ2d 1051, 1054 (Fed. Cir. 1987).

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In reading claim 8 on Sere, the examiner has taken the position that the cross sectional shape of Sere's cross members 26, 28 is in the form of an inverted T, such that the cross or head portions of the inverted T-shapes collectively read on the claimed bottom wall of the container and such that the leg portions of the inverted T-shapes read on the claimed integral, vertically extending ribbing. Appellants, however, contend that the cross sectional shape of Sere's members 26, 28 is rectangular in shape rather than an inverted T, and that accordingly, that there is nothing in Sere to support the examiner's reading of the claim language on Sere (reply brief, page 2).

From our perspective, Sere's drawing figures are inconsistent in their showing of members 26, 28 in that some of Sere's drawing figures (namely, Figures 3 and 7) support the examiner's position, while others of Sere's drawing figures (namely, Figures 1 and 8) support appellants' position. Moreover, we note, as did appellants, that Sere's specification is silent as to the cross sectional shape of members 26, 28. Accordingly, we conclude that Sere is ambiguous as to the shape of cross members 26, 28, and that it

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would be speculative to find that these members are in the  
form of an inverted T.

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Notwithstanding this circumstance, the standing rejection of claim 8 as being anticipated by Sere is sustainable in that the claim language calling for "ribbing, extending vertically from, and integral with, said bottom wall" is clearly readable on Sere's vertically extending partition walls 23, and in that the claim language calling for the bottom wall to have a plurality of regions "free of said ribbing" is clearly readable on cross members 26, 28 and star-shaped members 22 that collectively define a bottom wall of the container that is free of ribbing in certain regions, namely, those regions that lie between partition walls 23. Appellants' argument on page 3 of the main brief that the partition walls 23 of Sere are not integral with the members that make up the bottom wall of Sere's container is not well taken in view of Sere's express statement at column 6, lines 13-16, that the lower parts of the vertical partition walls are integral with the crossbars. The only other pertinent argument advanced by appellants against Sere is that there are no regions of the bottom wall free of said ribbing (main brief, paragraph spanning pages 3-4). This argument is not well taken in that, as noted above, the regions between

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members 23, 26, and 28 of Sere that the partition walls 23 do not overlie comprise regions of the bottom wall that are free of vertically extending ribbing.

In light of our above reading of claim 8 on Sere, and the arguments presented by appellants against the anticipation rejection thereof based on Sere, we will sustain the standing § 102 rejection of claim 8. We also will sustain the standing § 102 rejection of claims 18, 22, 23, 25 and 28 based on Sere in that appellants have not argued the rejection of claims 18, 22, 23, 25 and 28 apart from claim 8, and have, in effect, grouped the claims rejected under § 102 together as a single group

(see main brief, page 3). *See, for example, In re Nielson*, 816 F.2d 1567, 1570, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987) and *In re Burckel*, 592 F.2d 1175, 1178-79, 201 USPQ 67, 70 (CCPA 1979).

*The § 103 rejection of claim 14*

Claim 14 depends from claim 8 and adds that the vertically extending ribs extend upwardly from the bottom<sup>1</sup> of

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<sup>1</sup>We consider the term "said base" in line 2 of claim 14 as referring to the "bottom wall" of the container set forth in

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the container, and that the container includes a plate positioned over the ribs. The examiner cites Gyenge for its teaching of a smooth bottom 16 over ribs 16a. However, it would not have obvious to one of ordinary skill in the art to provide a plate positioned over the bottom of Sere's container in view of Gyenge because a smooth plate like that of Gyenge would interfere with Sere's desire to provide an open bottom that allows inverted bottles stored in the container to drain (column 1, lines 17-23; column 3, lines 69-73). Hence, we will not sustain the standing § 103 rejection of claim 14.

*The § 103 rejections of claims 19, 20 and 24*

As with claims 18, 22, 23, 25 and 28, appellants have not separately argued the § 103 rejections of claims 19, 20 and 24. See the "GROUPING OF THE CLAIMS" section on page 3 of the main brief. Accordingly, we also will sustain the standing § 103 rejections of claims 19, 20 and 24.

*Summary*

The rejection of claims 8, 18, 22, 23, 25 and 28 under

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base claim 8.

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35 U.S.C. § 102(b), and the rejections of claims 19, 20 and 24 under 35 U.S.C. § 103, are affirmed.

The rejection of claim 14 under 35 U.S.C. § 103 is reversed.

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The decision of the examiner is affirmed-in-part.

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

*AFFIRMED-IN-PART*

	)	
HARRISON E. McCANDLISH	)	
Senior Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
IRWIN CHARLES COHEN	)	)
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
	)	
LAWRENCE J. STAAB	)	
Administrative Patent Judge	)	

LJS:hh

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