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Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO. Includes details for application 11/602,521 filed 11/21/2006 by Charles Bridgham Worrick III, attorney 00216-444003/Case 8054B, confirmation 9718. Also includes examiner information (EXAMINER: CHOI, STEPHEN), art unit (3724), and notification date (01/24/2013).

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* CHARLES BRIDGHAM WORRICK, III

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Appeal 2010-011487  
Application 11/602,521  
Technology Center 3700

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Before BIBHU R. MOHANTY, MEREDITH C. PETRAVICK, and JAMES  
A. TARTAL, *Administrative Patent Judges*.

TARTAL, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF THE CASE<sup>1</sup>

Charles Bridgham Worrick, III (Appellant) seeks our review under 35 U.S.C § 134 of the Examiner's final decision rejecting claims 1-5, 9, 12, 16, 18, 19, and 22. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

Appellant's claimed invention relates to storage devices for storing items such as shaving razors and cartridges. Spec. 1, ll. 11-12.

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A storage device for a shaving razor, the storage device comprising
  - a base member comprising a bottom wall and an upwardly extending side wall which together define at least one storage compartment having an entrance that is upwardly facing, said base member having a major longitudinal length;
  - an upper structure hingedly connected to said base member in overlying relation to the base member for movement between a closed condition and an open condition, each said storage compartment defines an opening directed towards an underside of the hinged upper structure in a closed condition thereof, whereby in a closed condition the upper structure substantially overlies the opening of the storage compartment; and
  - a shaving razor engagement structure disposed on an upwardly facing outside surface of the upper structure, said shaving razor engagement structure being adapted to nestingly receive at least a portion of a shaving razor outside of the storage device when the storage device is in a closed condition.

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<sup>1</sup> Our decision will make reference to Appellant's Appeal Brief ("App. Br.," filed Mar. 16, 2010) and the Examiner's Answer ("Ans.," mailed May 20, 2010).

The Examiner relies upon the following evidence:

Stanfield                      US 5,095,924                      Mar. 17, 1992

Claims 1-5, 12, 18, 19, and 22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Stanfield.

Claims 9 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Stanfield.

#### FINDINGS OF FACT

We find that the findings of fact which appear in the Analysis below are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

#### ANALYSIS

##### *Anticipation based on Stanfield*

Appellant argues claims 1-5, 12, 18, 19, and 22 as a group (App. Br. 3-4). We select claim 1 as the representative claim for this group, and the remaining claims 2-5, 12, 18, 19, and 22 stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(vii).

We find unpersuasive Appellant's unsupported assertion that the openings 39 of Stanfield are not capable of nestingly receiving at least a portion of a shaving razor outside of the storage device when the storage device is in a closed condition, as claimed. *See* Ans. 4. Appellant provides no explanation regarding what structural difference exists between Stanfield's openings 39 and the claimed invention that cause openings 39

to be incapable of performing the recited function. *See In re Schreiber*, 128 F.3d 1473, 1477-78 (Fed. Cir. 1997) (functional language does not confer patentability if prior art structure has capability of functioning in the same manner). As to Appellant's assertion that brackets disclosed by Stanfield "extend from the inside panel and not the outside panel," it has no bearing on the issue because the Examiner relies upon the openings 39, not the brackets, as disclosing the claimed structure. *See* Ans. 4-5.

Accordingly, we find Appellant has not overcome the Examiner's determination that there is no structural difference between the claimed invention and the device of Stanfield because the openings 39 are capable of nestingly receiving at least a portion of a shaving razor when the case is in a closed condition.

*Obviousness based on Stanfield*

Appellant disputes the rejection of claims 9 and 16 as obvious in view of Stanfield, but offers no argument other than what Appellant asserted with respect to claims 1-5, 12, 18, 19, and 22. App. Br. 4-5. We therefore find that Appellant has not overcome the Examiner's rejection of claims 9 and 16 for the same reasons discussed above with respect to claims 1-5, 12, 18, 19, and 22.

CONCLUSIONS OF LAW

We conclude that Appellant has not overcome the Examiner's rejection of claims 1-5, 12, 18, 19, and 22 under 35 U.S.C. § 102(b) as anticipated by Stanfield.

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We further conclude that Appellant has not overcome the Examiner's rejection of claims 9 and 16 under 35 U.S.C. § 103(a) as unpatentable over Stanfield.

#### DECISION

We AFFIRM the decision of the Examiner to reject claims 1-5, 9, 12, 16, 18, 19, and 22.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2011).

AFFIRMED

Klh