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BROWN & MICHAELS, PC 400 M & T BANK BUILDING 118 NORTH TIOGA ST ITHACA, NY 14850			DSOUZA, JOSEPH FRANCIS A	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL RICE, BRUCE MCCORMICK, ABY J. MATHEW,
and KEVIN O'DONNELL

Appeal 2019-001038
Application 15/158,717
Technology Center 2600

BEFORE KRISTEN L. DROESCH, JENNIFER L. MCKEOWN, and
BETH Z. SHAW, *Administrative Patent Judges*.

SHAW, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant,¹ appeals from the Examiner's decision to reject claims 1–18 and 20, which represent all the pending claims. Final Act. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ We use the word “Appellant” to refer to “Applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as Biologistex CCM, LLC. Appeal Br. 1.

CLAIMED SUBJECT MATTER

The claims are directed to an insulated shipping or storage container for time or temperature sensitive biologic based materials. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. An insulated shipping or storage container comprising:
 - an insulated container body comprising a bottom and sidewalls extending from the bottom of the body, a first main cavity, and a second cavity, wherein the bottom and sidewalls form the first main cavity;
 - a removable top that fits onto the insulated container body, sealing the first main cavity;
 - a long-range communications device located within the second cavity of the insulated container body, to transmit information to a communications network; and
 - a first shielding material lining at least a portion of the bottom and sidewalls of the insulated container body, wherein the first shielding material is selected from the group consisting of:
 - lead, zinc, aluminum, bronze, copper, nickel, a conductive plastic, a metal that does not block X-rays, and a carbon based material.

REFERENCES

The prior art relied upon by the Examiner is:

Derifield	US 5,924,302	July 20, 1999
Kriss	US 2013/0245991 A1	Sept. 19, 2013
Stevick	US 2014/0284503 A1	Sep. 25, 2014
Yaish	US 2016/0170072 A1	Jun. 16, 2016

REJECTIONS

Claims 1–3, 5–10, and 12–16 are rejected under 35 U.S.C. § 103 as being unpatentable over Kriss, Derifield and Yaish. Final Act. 5.

Claims 4 and 11 are rejected under 35 U.S.C. § 103 as being unpatentable over Kriss, Derifield, Yaish, and Stevick. Final Act. 11.

Appeal 2019-001038
Application 15/158,717

Claims 16 and 20 are rejected under 35 U.S.C. § 103 as being unpatentable over Kriss and Yaish. Final Act. 12.

Claims 17 and 18 are rejected under 35 U.S.C. § 103 as being unpatentable over Kriss, Yaish, and Derifield. Final Act. 13.

OPINION

Appellant's invention is directed to shielding a biologic payload in a shipping or storage container from radiation by using a shielding material in the shipping or storage container. Spec., 8:1–4.

The Examiner relied on Kriss to teach “a first shielding material lining at least a portion of the bottom and sidewalls of the insulated container body,” and Yaish to teach “wherein the first shielding material is selected from the group consisting of: lead, zinc, aluminum, bronze, copper, nickel, a conductive plastic, a metal that does not block X-rays, and a carbon based material,” as recited in claim 1. Final Act. 5–7.

Appellant argues that

Yaish discloses a method and apparatus for *detecting* high atomic weight materials in a volume (see Title and Abstract). Paragraph 60, in particular, discusses *scattering density from an x-ray-based APMDM for certain target materials*, and not materials intended to *shield against* radiation. One of skill in the art would not have looked to Yaish's method of detecting material in a volume to inform or teach one's self regarding an insulated container that shields the internal contents from radiation.

Appeal Br. 4.

The Examiner, in the Answer, points to Yaish's paragraph 3 as stating: “*However, lead and other dense materials can be used to smuggle radioactive and nuclear materials through radiation portal monitors by shielding the radioactive radiation emitted from the nuclear matter.*”

Appeal 2019-001038
Application 15/158,717

Ans. 14. The Examiner concludes “Yaish discloses that lead can be used as a shielding material and therefore the combination of Kriss and Yaish would result in a container that would shield the radioactive commodity and prevent it from contaminating surrounding items/areas.” *Id.* The Examiner also points out that Kriss mentions in paragraph 27 that containers may carry radioactive commodities, and therefore, Kriss at least contemplates carrying radioactive materials. *Id.*

We agree with Appellant that the fact that Kriss’s shipping container 102 can contain radioactive commodities does not demonstrate that it would be obvious to replace the insulation of Kriss with a specific type of shielding material lining at least a portion of the bottom and sidewalls of the insulated container body. On this record, the Examiner has not sufficiently explained *why* one of skill in the art would look to Yaish’s method and apparatus, which is used to *detect* material in a container, to teach *shielding* an insulated container’s *internal contents* from radiation. The Examiner concludes that “it would have been obvious to one having ordinary skill in the art, at the time the invention was filed, to use the materials, as taught by Yaish in the system of Kriss because this would enable detection of materials,” (Final Act. 7). Presumably, the Examiner means to say that the materials would *prevent*, not enable, detection of other materials.

Nonetheless, even if a person of ordinary skill in the art would have recognized that the combination of Kriss and Yaish would have conveyed the concept of a specific type of shielding material for a container, the Examiner does not provide sufficient explanation or evidence to demonstrate why one of ordinarily skilled in the art would have substituted lead, mentioned briefly in Yaish as useful for *smuggling* radioactive materials, for the lining of Kriss’s biologic shielding shipping container’s insulation. *KSR*

Appeal 2019-001038
Application 15/158,717

v. Int'l Co. v. Teleflex Inc., 550 U.S. 398, 418–19 (“[I]t can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. This is so because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known.”). Thus, the Examiner has not shown that one of ordinary skill would have combined Kriss’s container with Yaish’s lead to arrive at the claimed invention that includes “a first shielding material lining at least a portion of the bottom and sidewalls of the insulated container body,” and Yaish to teach “wherein the first shielding material is selected from the group consisting of: lead, zinc, aluminum, bronze, copper, nickel, a conductive plastic, a metal that does not block X-rays, and a carbon based material,” as recited in claim 1.

Accordingly, constrained as we are by the record before us, we do not sustain the Examiner’s rejection of claim 1. For the same reasons, we do not sustain the rejection of claims 2–18 and 20.

DECISION

The Examiner’s rejections are reversed.

CONCLUSION SUMMARY

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
1–3, 5–10, 12–16	§ 103	Kriss, Derifield, Yaish		1–3, 5–10, 12–16

Appeal 2019-001038
Application 15/158,717

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
4, 11	§ 103	Kriss, Derifield, Yaish, Stevick		4, 11
16, 20	§ 103	Kriss, Yaish		16, 20
17, 18	§ 103	Kriss, Yaish, Derifield		17, 18
Overall Outcome				1-18, 20

REVERSED