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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 15/464,151  | 03/20/2017  | CAYD PAUL BADER      | 6738-3-CIP-CON      | 8716             |
| 22442   | 7590        | 09/29/2020           | EXAMINER            |                  |
| Sheridan Ross PC<br>1560 Broadway<br>Suite 1200<br>Denver, CO 80202 |             |                      | TEFERA, HIWOT E     |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3637                |                  |
|   |             |                      | NOTIFICATION DATE   | DELIVERY MODE    |
|   |             |                      | 09/29/2020          | ELECTRONIC       |

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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* CAYD P. BADER

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Appeal 2019-006637  
Application 15/464,151  
Technology Center 3600

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Before EDWARD A. BROWN, MICHAEL L. HOELTER, and  
BRETT C. MARTIN, *Administrative Patent Judges*.

BROWN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant<sup>1</sup> seeks review under 35 U.S.C. § 134(a) of the Examiner's decision rejecting claims 1–4 and 10–13.<sup>2</sup> We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

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<sup>1</sup> We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party as Cayd P. Bader. Appeal Br. 1.

<sup>2</sup> Claims 5–9 are allowed. Final Act. 1 (Office Action Summary).

## CLAIMED SUBJECT MATTER

Appellant's disclosure "relates to framed cabinetry and more specifically relates to novel and improved face frames for cabinets which enable substantially increased access through the front opening into the interior of the cabinet over traditional framed cabinets." Spec. 1, ll. 8–10.

Claims 1 and 11 are independent claims. Claim 1, reproduced below, illustrates the claimed subject matter.

1. A cabinet, comprising:
  - a panel assembly configured to affix to a wall, the panel assembly comprising:
    - a first side panel, a second side panel, and a bottom panel, each panel having an inner surface and an outer surface, the inner surface of each panel faces an interior space of the panel assembly and the outer surface of each panel forms an exterior surface of the panel assembly, the panel assembly having a front end with an opening having a lateral width and a vertical height, and wherein there is an absence of any frame member extending along substantially the full depth of the panel assembly; and
    - a face frame connected to the front end of the panel assembly, the face frame including:
      - a first vertical frame member interconnected to the first side panel and having an inner surface and an outer surface, the inner surface being substantially flush to the inner surface of the first side panel and the outer surface extending laterally outward of the outer surface of the first side panel, the first vertical frame member having a longer dimension extending parallel to the first side panel and a shorter dimension extending perpendicular to the first side panel;
      - a second vertical frame member interconnected to the second side panel and having an inner surface and an outer surface, the inner surface being substantially flush to the inner surface of the second side panel and the outer surface extending laterally outward of the outer surface

of the second side panel, the second vertical frame member having a longer dimension extending parallel to the second side panel and a shorter dimension extending perpendicular to the second side panel;

a top rail extending horizontally between the first vertical frame member and the second vertical frame member, the top rail having a depth that extends approximately perpendicular to the opening of the cabinet box and a width that extends approximately parallel to the opening of the cabinet box, wherein the width of the top rail is greater than the depth of the top rail, and the top rail having a first end directly connected to the first vertical frame member and a second end directly connected to the second vertical frame member;

and  
a bottom rail extending horizontally between the first vertical frame member and the second vertical frame member, the bottom rail having a depth that extends approximately perpendicular to the opening of the cabinet box and a width that extends approximately parallel to the opening of the cabinet box, wherein the width of the bottom rail is greater than the depth of the bottom rail, and the bottom rail having a first end directly connected to the first vertical frame member and a second end directly connected to the second vertical frame member;

wherein the orientation of the first vertical frame member and the second vertical frame member permit substantially full access into the interior space of the panel assembly across the lateral width of the opening, and

wherein the face frame provides structural support to the panel assembly.

Appeal Br. 22–23 (Claims App.).

## REJECTIONS ON APPEAL

Claim 10 is rejected under 35 U.S.C. § 112, second paragraph, as indefinite. Final Act. 2.

Claims 1, 4, and 10 are rejected under 35 U.S.C. § 103(a) as unpatentable over Mitchell (US 3,021,187, issued Feb. 13, 1962), Bradbury (GB 2450129 A, published Dec. 17, 2008), and Chan (US 6,722,750 B2, issued Apr. 20, 2004). Final Act. 3.

Claims 2 and 3 are rejected under 35 U.S.C. § 103(a) as unpatentable over Mitchell, Bradbury, Chan, and Markley (US 6,494,551 B1, issued Dec. 17, 2002). Final Act. 7.

Claims 1, 4, 10, 11, and 13 are rejected under 35 U.S.C. § 103(a) as unpatentable over Castro (US 2006/0273085 A1, published Dec. 7, 2006), Chapman (US 3,150,903, issued Sept. 29, 1964), and Chan. Final Act. 9.

Claim 12 is rejected under 35 U.S.C. § 103(a) as unpatentable over Castro, Chapman, Chan, and Camper (US 3,743,373, issued July 3, 1973). Final Act. 11.

## ANALYSIS

### *Claim 10 as Indefinite*

Appellant does not address the Examiner's rejection of claim 10 as indefinite in the Appeal Brief. Accordingly, we sustain the rejection.

### *Claims 1, 4, and 10 over Mitchell, Bradbury, and Chan*

As to claim 1, the Examiner finds that Mitchell discloses a cabinet comprising, *inter alia*, a panel assembly comprising a first side panel (side wall 12) and a second side panel (side wall 14); and a face frame (front

frame 24) connected to a front end of the panel assembly and including first and second vertical frame members, a top rail, and a bottom rail. Final Act. 3–4. The Examiner determines that Mitchell does not disclose the following claim requirements: (a) the inner surface of the first and second vertical frame members is substantially flush to the inner surface of the respective first and second side panels; (b) the first and second vertical frame members have a longer dimension extending parallel to, and a shorter dimension extending perpendicular to, the respective first and second side panels; and (c) the orientation of the first and second vertical frame members permits substantially full access into the interior space of the panel assembly across the lateral width of the opening of the front end of the panel assembly. *Id.* at 4–5.

The Examiner relies on Bradbury as teaching first and second vertical frame members (side panels 32) and side panels (side panels 22) satisfying limitations (a)–(c). Final Act. 5 (citing Bradbury Fig. 3), 6 (annotated Bradbury Figure 3). *Id.* at 6. The Examiner concludes that it would have been obvious to modify the dimensions of Mitchell’s first and second vertical frame members to make the depth greater than the width, as taught by Bradbury, “to make the width of the opening wider hence provide extra space for larger items to be stored within the cabinet box.” *Id.*

The Examiner further determines that the Mitchell/Bradbury combination does not teach (d) that the outer surface of each of the first and second vertical frame members extends laterally outward of the outer surface of the side panel to which the respective vertical frame member is attached. Final Act. 6. The Examiner relies on Chan as teaching first and second vertical frame members (side rails 5) and side panels (side panels 7)

satisfying limitation (d). *Id.* at 7 (citing Chan Fig. 7a); *see also* Appellant's Figure 3A (identified as "Prior Art"). The Examiner concludes that it would have been obvious to modify the first and second vertical frame members of the combination of Mitchell/Bradbury to have an outer surface that extends laterally outward of the outer surface of the respective side panel, as taught by Chan, "to enhance the appearance of the vertical frame members and to give an appearance that the vertical members are legs." *Id.*

Appellant disagrees that one of ordinary skill in the art would have been motivated to modify Mitchell's vertical frame members, but not also modify Mitchell's horizontal frame members. Appeal Br. 14. Appellant points out that Bradbury's front portion 30 has all four members (horizontal and vertical) positioned in the same way. *Id.* Appellant contends that using the Examiner's logic (i.e., to make the opening larger), one of ordinary skill would also modify the horizontal frame members to maximize the opening size. *Id.* Appellant contends, however, that additionally modifying the horizontal frame members of Mitchell in the same way as Mitchell's vertical frame members would result in the combination not satisfying all recited claim elements, and, specifically, the requirement that the first and second vertical frame members and the top and bottom horizontal rails are differently oriented, with the horizontal frame members oriented with the width (the dimension parallel to the cabinet opening) greater than the depth (the dimension perpendicular to the cabinet opening). *Id.*

The Examiner responds that Appellant's Specification discloses a full access framed cabinet box where all the frame members are oriented like the face frame of Bradbury to provide full access to inside the cabinet (i.e., the depth of each frame member is greater than its width) (*see* Fig. 14), and also

discloses that the horizontal frame members can alternatively be flipped in a semi-full access framed cabinet box (*see* Fig. 6). Ans. 4. The Examiner submits that “[Appellant] does not provide a statement of criticality in having a semi-full access framed cabinet as oppose[d] to a full access framed cabinet.” *Id.* The Examiner also submits that the modification is a mere change in the size of Mitchell’s vertical frame members. *Id.* at 4–5.

Appellant contends, “[Appellant] has established that his invention uniquely achieves the benefits of a face frame style cabinet simultaneously with benefits available in a frameless cabinet. . . .” *Id.* Appellant explains these benefits. *Id.* at 8–9 (citing Declaration of Cayd Bader dated Dec. 12, 2014, ¶¶ 10–13, 19 (“Bader Declaration”); Spec. p. 1, ll. 1–16; p. 5, ll. 18–27; p. 7, ll. 23–25; p. 15, l. 6–p. 16, l. 11).

Appellant’s contentions are persuasive. Even if “modifying the dimension of the vertical frame members of Mitchell, such that the depth is greater than the width, such as taught by [Bradbury] would make the width of the opening wider hence provide more space to easily insert larger items within the cabinet” (Final Act. 6), this still does not explain adequately why a skilled artisan would only modify the vertical frame members of Mitchell in view of Bradbury, but not also Mitchell’s horizontal frame members.

First, Bradbury teaches that side panels 32 have a longer dimension parallel to a respective side panel 22, bottom panel 36 has a longer dimension parallel to bottom panel 26, and top panel 34 has a longer dimension parallel to top panel 24. *See* Bradbury Fig. 1. The Examiner does not identify any disclosure in Bradbury that the bottom panel and top panel can alternatively have the claimed dimensions and orientations. Accordingly, the Examiner does not establish that Bradbury teaches, or

suggests, modifying Mitchell's cabinet to only change the dimensions of side panels 32 to make the depth greater than the width, but not also modify the dimensions of top panel 34 and bottom panel 36 in the same manner.

Second, the Examiner does not explain adequately why one of ordinary skill would not also modify top panel 34 and bottom panel 36 of Mitchell to further increase the opening size of front frame 24. As pointed out by Appellant, this would result in the combination not teaching all the recited claim elements. In light of this and Mitchell's teachings, the Examiner's selective modification is indicative of reliance on improper hindsight.

Third, even if the Examiner's statement that "[Appellant] does not provide a statement of criticality in having a semi-full access framed cabinet as oppose[d] to a full access framed cabinet" is correct, the Examiner still has not established that Bradbury teaches or suggests modifying Mitchell to comprise a semi-full access framed cabinet, as claimed.

For the foregoing reasons, we do not sustain the rejection of claim 1, and claims 4 and 18 depending from claim 1, as unpatentable over Mitchell, Bradbury, and Chan.

*Claims 2 and 3 over Mitchell, Bradbury, Chan, and Markley*

The Examiner's additional reliance on Markley in rejecting claims 2 and 3 does not cure the deficiency in the rejection of parent claim 1 over Mitchell, Bradbury, and Chan. Final Act. 7–8. Accordingly, we do not sustain the rejection of claims 2 and 3 for same reasons as for claim 1.

*Claims 1, 4, 10, 11, and 13 over Castro, Chapman, and Chan*

The Examiner states that the combination teaches the limitations of claim 1 “as discussed above.” Final Act. 11. As the Examiner addresses claim 11 prior to addressing claim 1 (*see id.* at 9–11), we understand that the Examiner’s position as to the combination of references as applied to claim 11 applies likewise to claim 1.

The Examiner finds that Castro discloses a cabinet comprising a panel assembly including a first side panel (sidewall 12) and a second side panel (sidewall 13), as claimed. Final Act. 9 (citing Castro Fig. 3). The Examiner determines that Castro does not disclose a face frame having two vertical members and top and bottom rails, as claimed. *Id.*

The Examiner relies on Chapman as teaching a face frame including first and second vertical frame members (corner posts 20) that have a longer dimension extending parallel to, and a shorter dimension (width) extending perpendicular to, a first side panel (panel 100/horizontal rail 21), and top and bottom rails (horizontal rails 21) extending horizontally between the first and second vertical frame members and having a width that is greater than the depth of the respective rail. Final Act. 9 (citing Chapman Figs. 5, 12). The Examiner concludes that it would have been obvious “to include first and second vertical frame members and top and bottom rails to the frame member of Castro,” as taught by Chapman. *Id.* at 9–10 (emphasis added). The Examiner reasons that this modification would “securely and firmly hold the components of the cabinet together and provide a stable frame work to install doors and other hardware.” *Id.* at 10.

The Examiner determines that the combination of Castro and Chapman does not teach the following claim requirements: (a) the first and

second vertical frame members each have an inner surface substantially flush to the inner surface of the side panel to which the respective vertical frame member is attached, and (b) the outer surface of the first and second vertical frame members extends laterally outward of the outer surface of the side panel to which the respective vertical frame member is attached. Final Act. 10.

The Examiner relies on Chan as teaching first and second vertical frame members (side rails 5) and side panels (side panels 7) satisfying limitations (a) and (b). Final Act. 10 (citing Chan Fig. 7a). The Examiner concludes that it would have been obvious to modify the first and second vertical frame members of Castro/Chapman in view of Chan to include limitations (a) and (b) “to provide more interior volume at the entrance of the cabinet, provide a flush surface to mount shelves, hinges, drawer rails etc[.], and enhance the appearance of the vertical frame members and to give an appearance that the vertical members are legs.” *Id.* at 10–11.

Appellant disagrees with the Examiner’s finding that Castro fails to disclose a face frame with two vertical members, a top rail, and a bottom rail. Appeal Br. 17. Appellant contends that face frame 14 of Castro necessarily includes these members or it would not be a face frame, and also, Castro describes how the vertical and horizontal members are affixed to the cabinet box. *Id.* n.5 (citing Castro ¶ 5).

We agree with Appellant. Figures 7 and 9 of Castro show a face frame 14. Paragraph 5 of Castro describes attachment of face frame 14 to cabinet 10. Further, Figure 16 of Castro depicts face frame 74 including opposed vertical and horizontal members. Paragraph 52 of Castro describes that face frame 74 is attached along four edges.

Appellant also contends that, in contrast to Castro, Chapman is not directed to a face framed cabinet, but “discloses a full skeletal framed cabinet where frame members extend along every edge.” Appeal Br. 18. Claim 1, in contrast, requires that “there is an absence of any frame member extending along substantially the full depth of the panel assembly.” *Id.* at 22. Appellant explains that this limitation is recited “to differentiate the panel assembly from cabinets that have skeletal frames with frame members extending along each edge of the panel assembly.” *Id.* at 5. We agree with Appellant that Chapman does not meet this claim limitation. Appellant contends that, as Chapman is not a face framed cabinet, one of ordinary skill in the art would not rely on Chapman to modify Castro’s face frame. Reply Br. 10–11. In support, Appellant cites the Bader Declaration for its disclosure of multiple examples of face framed cabinets. *Id.* at 11–13.

We agree with Appellant that the Examiner does not provide an adequate reason to modify Castro in view of Chapman. The Examiner reasons that the modification would “securely and firmly hold the components of the cabinet together and provide a stable frame work to install doors and other hardware.” Final Act. 10. However, Castro’s cabinet assembly already includes a face frame having vertical and horizontal frame members. The Examiner does not explain why the face frame would not already be able to securely and firmly hold the cabinet components together and provide a stable frame work to install doors and other hardware.

As to the Examiner’s reliance on Chan “to enhance the appearance of the vertical frame members and to give an appearance that the vertical members are legs,” we agree with Appellant that this reasoning is inadequate to support the proposed modification. Appeal Br. 20. For example, it is not

apparent why one of ordinary skill in the art would desire to modify Castro's face frame such that the vertical frame member have the appearance of legs, as the vertical frame members do not appear to provide any leg function in the Castro's cabinet assembly.

For the foregoing reasons, we do not sustain the rejection of claim 1, and claims 4 and 10 depending therefrom, as unpatentable over Castro, Chapman, and Chan.

As the Examiner's findings and reasoning for claim 11 are substantially the same as for claim 1, we also sustain the rejection of claim 11 and dependent claim 13 as unpatentable over Castro, Chapman, and Chan for substantially the same reasons as claim 1.

*Claim 12 over Castro, Chapman, Chan, and Camper*

The Examiner's additional reliance on Camper in rejecting claim 12 does not cure the deficiency in the rejection of parent claim 11 over Castro, Chapman, and Chan. Final Act. 11–12. Accordingly, we do not sustain the rejection of claim 12 as unpatentable over Castro, Chapman, Chan, and Camper for the same reasons as claim 11.

CONCLUSION

In summary:

| <b>Claim(s)<br/>Rejected</b> | <b>35 U.S.C. §</b>    | <b>Reference(s)/Basis</b>         | <b>Affirmed</b> | <b>Reversed</b>  |
|------------------------------|-----------------------|-----------------------------------|-----------------|------------------|
|                              |                       |                                   |                 |                  |
| 10                           | 112, second paragraph |                                   | 10              |                  |
| 1, 4, 10                     | 103(a)                | Mitchell, Bradbury, Chan          |                 | 1, 4, 10         |
| 2, 3                         | 103(a)                | Mitchell, Bradbury, Chan, Markley |                 | 2, 3             |
| 1, 4, 10, 11, 13             | 103(a)                | Castro, Chapman, Chan             |                 | 1, 4, 10, 11, 13 |
| 12                           | 103(a)                | Castro, Chapman, Chan, Camper     |                 | 12               |
| <b>Overall Outcome</b>       |                       |                                   | 10              | 1-4, 11-13       |

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

AFFIRMED-IN-PART