



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
 United States Patent and Trademark Office  
 Address: COMMISSIONER FOR PATENTS  
 P.O. Box 1450  
 Alexandria, Virginia 22313-1450  
 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/507,528	07/05/2012	David Fought		7150

7590 08/29/2018  
 Ryan M. Fountain, Esq.  
 420 Lincoln Way West  
 Mishawaka, IN 46544

EXAMINER
DAYOAN, DARRELL G

DAYOAN, DARRELL G

ART UNIT	PAPER NUMBER
3612	

MAIL DATE	DELIVERY MODE
08/29/2018	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

*Ex parte* DAVID FOUGHT and MARTIN CLANTON

---

Appeal 2017-000315  
Application 13/507,528  
Technology Center 3600

---

Before STEVEN D.A. McCARTHY, NATHAN A. ENGELS and  
PAUL J. KORNICZKY, *Administrative Patent Judges*.

McCARTHY, Administrative Patent Judge.

DECISION ON APPEAL

STATEMENT OF THE CASE

1  
2  
3  
4  
5  
6  
7  
8

The Appellants<sup>1</sup> appeal under 35 U.S.C. § 134(a) from the Examiner's decision finally rejecting claim 1 under pre-AIA 35 U.S.C. § 102(b) as being anticipated by Dietrich (US 4,049,311, issued Sept. 20, 1977); and claim 2 under § 102(b) as being anticipated by McDougal (US 2,752,864, issued July 3, 1956). An oral hearing was held on August 23, 2018. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

---

<sup>1</sup> The Appellants identify Thor Industries, Inc., and its wholly owned subsidiary, Heartland Recreational Vehicles, LLC, as the real parties in interest. (*See* Appeal Brief, dated Jan. 13, 2016, at 2).

1 THE CLAIMED SUBJECT MATTER

2 Claims 1 and 2 are independent and self-explanatory:

3 1. A travel trailer having a first and second  
4 compartment therein separated by a wall assembly which is  
5 movable so as to alter the relative dimensions of the first and  
6 second compartments without altering the exterior appearance of  
7 the travel trailer.

8 2. A travel trailer having a front wall, rear wall, and  
9 two side walls with a first and a second compartment therein,  
10 those compartments being separated by a wall assembly,

11 the wall assembly having a forward wall and at least one  
12 side member,

13 the side member being located adjacent to and movable in  
14 parallel with respect to one of the side walls of the trailer, and

15 the wall assembly being moved along the longitudinal  
16 length of the trailer by drive means positioned between the side  
17 member and the side wall.

18  
19 ISSUES

20 The issues are straightforward:

21 *First*, whether the recitation of a “travel trailer” in the preamble of  
22 claim 1 is a mere statement of intended use, that is, whether the recitation is  
23 capable of distinguishing the subject matter of claim 1 from the refrigerated  
24 trailer described in Dietrich? (*See* Appeal Brief, dated Jan. 13, 2016 (“App.  
25 Br.”), at 8–13; *see also* Reply Brief, dated Sept. 20, 2016 (“Reply Br.”), at 3  
26 & 4).

27 *Second*, is claim 2 limited to a trailer with two *usable* compartments?  
28 (*See* App. Br. 14).

Appeal 2017-000315  
Application 13/507,528

1 FINDINGS OF FACT

2 The record supports the following findings of fact (“FF”) by a  
3 preponderance of the evidence.

4  
5 *Dietrich*

6 1. Dietrich anticipates claim 1.

7 2. We adopt and incorporate by reference the findings of the  
8 Examiner at page 2 of the Final Office Action, mailed January 13, 2015  
9 (“Final Act.”). Dietrich describes a conventional truck trailer 11, such as a  
10 refrigerated trailer. (See Dietrich, col. 3, ll. 42–44). Figure 1 of Dietrich  
11 depicts the trailer 11 being pulled by a cab-over-engine truck. The trailer 11  
12 has a wall structure defining a substantially closed cargo storage  
13 compartment. A bulkhead door assembly 26 positioned in the interior of the  
14 cargo storage compartment separates the cargo storage compartment into  
15 first and second subcompartments 21, 22. (See Dietrich, col. 3, ll. 45–53 &  
16 Fig. 1). The bulkhead door assembly 26 includes a panel 31 is supported by  
17 a roller carriage 51 including rollers 53 in rolling engagement with a track  
18 structure 33 fixed with respect to the frame of the trailer 11. (See Dietrich,  
19 col. 4, l. 56 – col. 5, l. 2 & Figs. 2 & 3). The bulkhead door assembly 26 is  
20 movable so as to alter the relative dimensions of the first and second  
21 compartments without altering the exterior appearance of the travel trailer.  
22 (See Dietrich, col. 7, l. 56 – col. 8, l. 11).

23  
24 *McDougal*

25 3. McDougal anticipates claim 2.

1           4.     McDougal describes a bulkhead  $B$  that may be used to partition  
2 the interior space of a shipping compartment  $C$  of a freight or box railway  
3 car, a motor vehicle, a detachable van-body or a ship. (See McDougal, col.  
4 1, ll. 15–23; col. 2, ll. 51–58 & Fig. 1). The shipping compartment  $C$ , as  
5 depicted in Figure 1 and 2, has a front wall as well as two side walls 23.  
6 (See McDougal, col. 2, ll. 66–71 & Fig. 1). The bulkhead  $B$  includes spaced  
7 outer walls 20, 21 extending perpendicularly to the side walls 23; and  
8 transverse reinforcing bracing and spacer plates  $d$  extending between the  
9 outer walls 20, 21. (See McDougal, col. 2, ll. 51–58 & Fig. 7). The two  
10 outer walls 20, 21 define rimming members  $a$  along each side of the  
11 bulkhead  $B$ . (See *id.*)

12           5.     McDougal’s bulkhead  $B$  includes vertically spaced mechanisms  
13  $M$  for adjusting the position of the bulkhead relative to the side walls 23.  
14 (See McDougal, col. 2, ll. 66–71 & Fig. 1). Each mechanism  $M$  includes a  
15 pair of aligned arbors 24 rotatably mounted on the outer wall 21 and  
16 extending outwardly through one of the spacer plates  $d$ . Each arbor 24  
17 mounts a pinion gear 27 that engages rack-teeth  $r$  of a trackway 41 affixed to  
18 a side wall 23. (See McDougal, col. 3, ll. 8–20; col. 4, ll. 4–10; & Fig. 7).  
19 The two arbors 24 within a mechanism  $M$  are joined by a shaft 34 coaxial  
20 with the two arbors. (See McDougal, col. 3, ll. 27–31 & Fig. 6). The shaft  
21 34 mounts a bevel gear 37. A stud shaft 38 mounts a bevel gear 36 engaged  
22 with the bevel gear 37. (See McDougal, col. 3, ll. 33–39 & Fig. 7). If one  
23 engages a crank with a socket-receiving extension 38 $a$  of the stud shaft 38  
24 and turns the shaft, the pinion gears 27 roll over the trackway 41 to move the  
25 bulkhead  $B$  relative to the side walls 23. (See McDougal, col. 3, ll. 39–43 &  
26 col. 5, ll. 10–18).

1           6.     The Examiner correctly finds that McDougal’s bulkhead *B*  
2 corresponds to the wall assembly recited in claim 2; that McDougal’s outer  
3 wall *20* corresponds to the forward wall recited in claim 2; and that  
4 McDougal’s rimming members *a* correspond to the side members recited in  
5 claim 2. (*See* Final Act. 2 & 3). Alternatively, McDougal’s spacer plates *d*  
6 might correspond to the recited side members. Both the rimming members *a*  
7 and the spacer plates *d* are located adjacent to, and move in parallel with  
8 respect to, one of the side walls *23*. McDougal’s mechanisms *M*, including  
9 the pinion gears *27*, constitute “drive means” positioned between the side  
10 member *a*, *d* and the side wall *23* such that McDougal’s wall assembly or  
11 bulkhead *B* may be moved along the longitudinal length of the side walls *23*  
12 by drive means positioned between the side member and the side wall. (*See*  
13 McDougal, col. 3, ll. 39–43; & col. 5, ll. 10–18; *compare* McDougal, col. 2,  
14 ll. 66–71; col. 3, ll. 8–20, 27–31 & 33–43; col. 4, ll. 4–10; col. 5, ll. 10–18;  
15 & Figs. 1, 6 & 7, *with* Spec. 3, ll. 14–18 & Figs. 1 & 2).

16

17

## ANALYSIS

18 *First Issue*

19

20

21

22

23

24

25

26

Dietrich describes a conventional truck trailer *11*, such as a refrigerated trailer, having a movable wall or bulkhead assembly that divides the interior into separate compartments. (*See* FF 2). McDougal describes a shipping compartment *C* of a detachable van-body, that is, a trailer, having a movable wall or bulkhead assembly that divides the shipping compartment into separate subcompartments. (*See* FF 4). The Appellants argue that Dietrich fails to anticipate claim 1, and McDougal fails to anticipate claim 2, because neither describes a travel trailer. (*See* App. Br. 8–13; *see also* Reply

1 Br. 3 & 4). The Examiner correctly concludes that the term “travel trailer,”  
2 as used in the preambles of claims 1 and 2, is a mere statement of intended  
3 use or purpose of the trailer that does not limit claim 1 or claim 2 so as to  
4 distinguish what is disclosed in the prior art. (*See* Final Act. 3).

5 Even assuming that a travel trailer is a distinct type of trailer, the  
6 recitation of a “travel trailer” in the preamble merely recites an intended use  
7 or purpose of a trailer, such as the trailers described by Dietrich and  
8 McDougal. It is noteworthy that the term “travel trailer” appears only once  
9 in the body of claim 1, and not at all in the body of claim 2. The sole  
10 recitation of the term “travel trailer” in the body of claim 1 relates to  
11 “alter[ing] the relative dimensions of the first and second compartments  
12 without altering the exterior appearance of the travel trailer.” This recitation  
13 relates to a feature, namely, an external appearance, which travel trailers  
14 share with other trailers such as refrigerated trailers and detachable van-  
15 bodies. Thus, the recitation of the term “travel trailer” in claims 1 and 2  
16 relates to the use or purpose of the trailer in which the wall assembly is  
17 installed and not to any structural distinction between a travel trailer and any  
18 other type of trailer. Because Dietrich describes each feature recited in  
19 claim 1 except, arguably, a travel trailer; because McDougal describes each  
20 feature recited in claim 2 except, arguably, a travel trailer; and because the  
21 term “travel trailer” is a statement of intended use or purpose, Dietrich  
22 anticipates claim 1 and McDougal anticipates claim 2.

23 That said, the term “travel trailer” itself merely identifies an intended  
24 use or purpose of a trailer rather than a trailer having any particular  
25 structural distinction. On pages 9–11 of the Appeal Brief, the Appellants  
26 rely on two statements regarding “travel trailers” as evidence of the meaning

Appeal 2017-000315  
Application 13/507,528

1 of the term in the art. The first of these statements is taken from Miller (US  
2 2010/0096873 A1, publ. Apr. 22, 2010):

3 “Recreational vehicles” or “RVs,” as referred to herein, can be  
4 motorized or towed, but in general have a living area which  
5 provides shelter from the weather as well as personal  
6 conveniences for the user, such as bathroom(s), bedroom(s),  
7 kitchen, dining room, and/or family room. Each of these rooms  
8 typically forms a separate compartment within the vehicle. . . . A  
9 towed recreational vehicle is generally referred to as a “travel  
10 trailer.”

11 (Miller, para. 2). In other words, Miller distinguishes travel trailers from  
12 recreational vehicles primarily in terms of an intended purpose or use,  
13 namely, towability. At most, Miller distinguishes recreational vehicles and  
14 travel trailers, if at all, from trailers such as those described by Dietrich and  
15 McDougal in terms of the intended use or purpose the space within the  
16 trailer, that is, in terms of providing “living space” rather than cargo space.

17 Likewise, *Woodall’s RV Buyer’s Guide* (1998) states that:

18 Probably the single most-popular class of towable RV is the  
19 Travel Trailer. Spanning 13 to 35 feet long, travel trailers are  
20 designed to be towed by cars, vans, and pickup trucks with only  
21 the addition of a frame or bumper mounted hitch. Single axles  
22 are common, but dual and even triple axles may be found on  
23 larger units to carry the load.

24 *Id.*, quoted in *In re Thor Tech, Inc.*, 113 USPQ2d 1546, 1547 (TTAB Jan.  
25 26, 2015). Once again, travel trailer is distinguished in terms of an intended  
26 use or purpose, namely, towability. *Woodall’s RV Buyer’s Guide* also says  
27 that “[m]ost travel trailers are equipped with electric and water capacities on  
28 board as well as toilet facilities. Self-contained (independent of hookups)  
29 operation is possible with most travel trailers, and all may be connected to  
30 facilities at RV parks and campgrounds for extended stays.” *Id.*, quoted in

1 *Thor Tech* at 1547. A statement regarding what “most travel trailers are  
2 equipped” with falls short of defining a structural distinction between the  
3 trailers described by Dietrich and McDougal, on the one hand, and the  
4 trailers recited in claims 1 and 2, on the other.

5 Therefore, we agree with the Examiner that the term “travel trailer” as  
6 used in the preambles of claims 1 and 2 is a statement of intended use or  
7 purpose that does not patentably distinguish the trailers described in Dietrich  
8 and McDougal. Based on this conclusion, we sustain the rejection of claim  
9 1 under § 102(b) as being unpatentable over Dietrich.

10

11 *Second Issue*

12 The Appellants argue that McDougal fails to anticipate claim 2  
13 because it fails to describe first and second “useful” compartments. (*See*  
14 *App. Br.* 14). Claim 2 does not recite “useful” compartments. The  
15 Specification, at one point, mentions that, “for example, compartment 22 is  
16 the living quarters of the travel trailer, and compartment 24 is the garage  
17 portion where vehicles may be stored.” (*Spec.* 3). The use of the words “for  
18 example” indicates that this statement was not intended to limit the use, or  
19 usefulness, of the first and second compartments recited in claim 2. The  
20 Appellants’ argument is not commensurate with the scope of claim 2. As  
21 such, we sustain the rejection of claim 2 under § 102(b) as being anticipated  
22 by McDougal.

23

24

DECISION

25

We AFFIRM the Examiner’s decision rejecting claims 1 and 2.

26

More specifically, we sustain the rejection of claim 1 under

Appeal 2017-000315  
Application 13/507,528

1 § 102(b) as being anticipated by Dietrich; and we sustain the rejection of  
2 claim 2 under § 102(b) as being anticipated by McDougal.

3 No time period for taking any subsequent action in connection with  
4 this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R.  
5 § 1.136(a).

AFFIRMED