Patent Search Opinion

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		Search Type: US Patent Search	
To:	XXX		
		Search Subject: CONTAINER CARRIER	
Phone:	661-XXX-XXXX		
Fax:		Email: XXX	
Opinion Fee:	**$00.00**	**Note:** If you have not previously paid, this serves as your invoice which is due and payable upon receipt.	

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Disclaimer: xx strives to ensure the accuracy and completeness of our research and opinion services. However, because of the subjective natures of such research and possible incomplete data supplied to us, we cannot warrant that our legal opinions are 100% complete or error-free. Accordingly, we disclaim all warranties of merchantability or fitness for a particular purpose. Any liability arising out of the preparation of our report is limited to a refund of the opinion fee paid. This opinion is sold on a "best effort" basis only.

Thank you for allowing us to review your patent search! Your search fell into one of the categories checked below. Please read the description and make sure that you understand the implications before pursuing a patent, or taking (or not taking) any further steps.

- ☐ A thorough search appears to have been conducted, but no relevant patents were found.
- ☐ A thorough search appears to have been conducted, and relatively few relevant patents were found. These are categorized in two groups in the following pages. The “A” group are most relevant, and the “B” group appear relevant in some way but are mostly provided to illustrate surrounding technologies. (The B group may also include some A group patents.)
- ☑ A thorough search appears to have been conducted, and a moderate number of patents were found. These are categorized in two groups in the following pages. The “A” group are most relevant, and the “B” group appear relevant in some way but are mostly provided to illustrate surrounding technologies. (The B group may also include some A group patents.)
- ☐ A thorough search appears to have been conducted, and a fairly large number of patents were found. These are categorized in two groups in the following pages. The “A” group are most relevant and recent, and the “B” group either appear relevant in some way or appeared relevant but were older references. The abstracts or patents in this group should be reviewed carefully by the client for relevance, as there may also be highly-relevant references in this group. (The B group may also include some A group patents.)
- ☐ A thorough search does not appear to have been conducted.

Notes and Opinion from the Practitioner:

When conducting a patent search, your researcher appears to have looked primarily for other "prior art" patents and patent applications that included all of the following, which they must have felt were the primary patentable features of your invention/device:

Number	Feature
1	Receptacle Carrier
2	Paperboard
3	Extended Top
4	Optional Sides
5	Finger Holes
6	Neck Projections
7	Abn
8	Active

Your search is broken down into two lists: the A-list and the B-list. The A-list includes the most relevant prior art found. The B-list contains prior-art references that may be of interest to you because they includes some of the features of your invention. However, these patents are not patents that you necessarily should worry about in terms of the patentability of your device… although you should certainly review them. The B-list patents are not reprinted in this report, but you can obtain any of them for free on-line by going to either www.google.com/patents or www.freepatentsonline.com and entering the patent numbers (or publications numbers that are longer and that start with a year) in the search box.

The PTO has three main requirements before granting a patent. These are 1) usefulness, 2) non-obviousness, and 3) novelty. I'll address each of these below as they relate to your invention and what was found in the search.

First, your invention is clearly useful. Further, I believe it falls under patentable subject matter.

Second, I believe your invention is not novel. There appears to be at least one patent in your search report (eg. 8353398) that has all of your main features. As a result, I think a PTO Examiner would likely reject your patent application based on this one similar patent alone. Such a rejection tends to be difficult to overcome. You can expect that filing an application on this invention will result in such a rejection, typically one to three years from now. Meanwhile, if you did decide to file an application, you would be legally "patent pending" until six months after such a rejection (provided you failed to respond or "argue" with the Examiner). It may be that "patent pending" is a status you want to achieve regardless of the final outcome of the patent examination at the PTO. In that case, please let us know. There may be less inexpensive options for accomplishing this than filing a full utility patent application.

Third, your invention also appears to be what the PTO calls "obvious." That is, there appears to be a multiple number of prior art references that, when combined, would result in essentially your invention (for example, US 8353398 and US 9359093). A PTO Examiner, I feel, is likely to say that it would be "obvious to one skilled in the art" of making such items to combine these patents to get your device. Many patent applications are rejected based on this "obviousness" test—about 90%--and I think based on the results of your search, your invention would likely fall into that category. Please refer to the chart below.

With a novelty-type rejection, if you wish to move forward with a patent application, it's important to add any optional elements to your application. It may be that one or more of those optional elements is the key to obtaining allowance on your application from the PTO Examiner. You might also put your "inventor's hat" on and think of ways of improving on the prior art references that we found in this report. We have a saying that the inventing doesn't really start until you get your patent search back, since it may well show you areas in the industry that have holes to fill.

Note that many patent applications that are rejected based on obviousness can be argued in what's called an "office action response." About half of such patents are eventually issued, usually with narrower (weaker) claims. So this type of rejection isn't fatal to your application, and doesn't necessarily mean that your invention is not patentable, but you have to expect to fight for it. That takes time, but a well-crafted response can very often save the application.

That notwithstanding, the challenge now is to come up with arguments as to why it would not be obvious to combine these patents to get your invention. If you decide to proceed with an application, in order to give it the best chance of eventually being allowed, it is important to put as much detail as possible into the application, showing multiple embodiments, alternate ways of accomplishing features of your invention, and anything else that might be used to "hang your hat on" when it comes to later arguing why your invention is non-obvious. Unfortunately, it's difficult to predict accurately what patents specifically an Examiner is likely to use in an obviousness rejection, but it is likely that they will come from your A-list, attached. To the extent that we can preempt obviousness arguments of the Examiner in the patent application, such a rejection will be "softer" and more easily overcome with an office action response. Keep in mind that currently it takes the PTO typically between one and three years to examine a new application, so you wouldn't have to respond to the PTO with an office action response until that time, and in the meantime you would be legally "patent pending."

Patent or Pub. No.	Receptacle Carrier	Paperboard	Extended Top	Optional Sides	Finger Holes	Neck Projections
20200189818	X	X	X	X	X	
20200010255	X	X	X		X	X
20190135512	X	X			X	X
9359093	X		X	X	X	X
8353398	X	X	X	X	X	X
8297438	X	X			X	X
20200189821	X	X	X		X	

Description of elements. Please carefully review the description of the elements for your invention. Often the patentability of an idea will come down to one single new element, or the way that two elements are combined. Therefore, it is important to determine the key elements of your invention and whether they are indicated on this report. Also, the patentability of an idea may depend on whether the new element is described broadly or narrowly. As a rule of thumb, it is usually more difficult to obtain a patent on a broad idea than a narrow idea. Therefore, also please review if each element description has the appropriate level of broadness or detail.

Design Patent vs. Utility Patent. Another potential option is to apply for a design patent. Design patents protect the novel ornamental design or appearance of an invention. They do not protect the functionality of the

invention; therefore, they are not considered as strong as utility patents in general. Design patents last 15 years, while utility patents last 20 years from the filing date. However, design patents tend to be easier and cheaper to obtain and do provide protection against others copying the ornamental appearance of the product. Also, design patents allow you to claim "patent pending" on your product during the application process. If a patent later issues, then you would be able to use that design patent number on your patented products. In some cases, both utility and design patents may be applied for in order to protect both the functionality and ornamental appearance of an invention. Please ask us if you have questions about this.

Additional risks: It should be noted that there is no guarantee that a patent search is ever totally complete, inasmuch as the United States patent system presently includes over ten million U.S. patents which are classified and cross-classified within one or more of 125,000+ classification areas. It is, therefore, exceedingly difficult to be more than reasonably certain that the most pertinent patent art has been located. Further, there are 18-months worth of patent applications that are not published (they're still a secret). Still further, if this was a US-only search, there's a chance that the Examiner will find one or more non-US patents that may cause you problems. Also, any publicly disclosed information can be used as prior art. This search apparently focused only on patents and patent applications; therefore, there could be additional public information available that may affect the patentability of your idea. Finally, it is our experience that no matter who did the initial search, the patent examiners often find additional relevant prior art that they use in their rejections. Typically, the prior art found by the examiner is used with other patents in a Sec. 103 "obviousness" rejection, but occasionally, they do find prior art that leads to a Sec. 102 "non-novel" rejection. As such, before you make large investments into your invention in terms of developing prototypes, tooling, production runs, and the like, you are advised that the issuance of a U.S. Patent is the final word in terms of patentability, and a search of this type is never 100% certain of finding every pertinent reference.

Important! In order to obtain a patent, your idea must not have been publicly disclosed for more than a year. If you have sold any of your invented products, established a website, or otherwise publicly disclosed your invention, please let us know when such a disclosure occurred.

Commercial Success. Also, being able to obtain a patent or not does not in itself indicate the potential for commercial success of your idea. There are many patents that are granted that are not commercially successful. Likewise, there are many products on the market that are successful commercially, but that are not patentable. Therefore, be careful about letting the patentability of your invention unduly influence your pursuit in making a commercial success of your invention. There are many factors in being successful in business and the ability to patent a device is just one of many factors to consider.

About Your Report:

Carefully review the full patent documents (if provided) and the summaries/abstracts provided on the A, B, and/or C lists, paying particular attention to those on the A list. These are the patents that your researcher felt were most relevant to your invention.

Note that not all patents may have been included in your search report in their entirety. If there is a patent that appears to be relevant from the list, or that you just want to print-out for your information, you can obtain a copy for free in either of two ways:

1) Go to http://patft.uspto.gov/netahtml/PTO/srchnum.htm and enter the patent number of the reference you're interested in.
2) Go to www.freepatentsonline.com/1234567.pdf (where 1234567 is the patent number that you wish to see). If the patent is a design patent, use the format www.freepatentsonline.com/D123456.pdf. If the patent number has fewer digits than shown above, pad the number with leading zeros, as in D001234.pdf.

What to do next:

To obtain a patent in the U.S., the invention must be useful, novel, and "non-obvious." It's the "non-obvious" requirement that presents the biggest problem for most inventors. By "obvious," the U.S. Patent & Trademark Office means "obvious to one skilled in the art." So if your invention can be "put together" by combining different elements from, for example, patents 1, 2 and 3, then it may run the risk of being rejected as unpatentable over these "prior art" patents. In our experience, about 90% of the inventions we review fall into this category. Note, however, that even for these 90% there is still a chance to obtain a patent, and there is a way of obtaining a "patent pending" status for relatively little expense even if there is little hope of getting a patent in the future due to the number and relevancy of the prior art.

If, however, your invention cannot be "pieced together" by the elements of your search report (for example, your invention has fewer elements than any of the prior art patents, or unique and new elements), then your invention may be patentable, and perhaps even strongly so.

Let us know if you have any questions about this opinion or your search, or if you'd like to start work on a patent application. For more information about patents in general, visit the U.S. Patent and Trademark Office website at www.uspto.gov.

We appreciate the opportunity to be of service to you, and please don't hesitate to call with questions.