

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RONALD C. IDOL and JOSEPH L. IWANISZEK

Appeal No. 96-0681
Application 08/041,715¹

ON BRIEF

Before CALVERT, McQUADE and NASE, Administrative Patent Judges.
CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 5, 8, 9, 12 to 14, 16 to 18, 20 to 22, 25 to 27, 29, 34, 35 and 38. The other claims remaining in the application, claims 4, 7, 11, 30 to 33, 36 and 37, have been allowed.

The subject matter in issue concerns a container for particulate materials, particularly for use as a desiccant

¹ Application for patent filed April 1, 1993.

Appeal No. 96-0681
Application 08/041,715

container. Claims 1, 21 and 38 are exemplary of the claims on appeal, and are reproduced in the appendix hereto.

The references relied upon by the examiner in the final rejection are:

Schifferly	2,994,404	Aug. 1, 1961
Kleinhans	3,245,737	Apr. 12, 1966
Russell et al. (Russell)	4,093,105	June 6, 1978
Earl	4,770,318	Sept. 13, 1988

The claims on appeal stand finally rejected under 35 U.S.C. § 103 on the following grounds:

- (1) Claims 1, 5, 8, 9, 21 and 22, unpatentable over Kleinhans in view of Russell;
- (2) Claims 12, 13, 20, 25 and 26, unpatentable over Kleinhans in view of Russell and Schifferly;
- (3) Claims 14, 16 to 18, 27, 34, 35 and 38, unpatentable over Kleinhans in view of Russell, Schifferly and Earl;
- (4) Claim 29, unpatentable over Kleinhans in view of Russell and Earl.

Rejection (1)

The basis for this rejection, as stated on pages 3 and 4 of the examiner's answer, is in essence that:

It would have been obvious for an artisan at the time of the invention, to modify the structure of the Kleinhans apparatus to have the body made of a molded plastic and to include apertures in the end wall of the container, in view of Russell et al, since such would reduce the cost of mass produced containers by making

Appeal No. 96-0681
Application 08/041,715

them from plastic, and would increase the efficiency of the desiccant by allowing more gas to pass through the container per unit time.

Also, on page 7 of the answer:

Clearly the Russell et al reference is being utilized to teach the well[-]known advantages of constructing the inventive apparatus from molded plastic (advantage : economics), constructing the inventive apparatus with apertures in both ends (advantage : greatly gas passage through the container per unit time), and constructing the inventive apparatus with the apertures terminating in a substantially planar inner surface of the end caps (advantage : lessened abrading of the desiccant).

After fully considering the record in light of the arguments made in the appellants' brief and the examiner's answer, we conclude that the rejection was not well taken.

We agree with the examiner that it would have been obvious, in view of Russell, to make the body 11 and cap 12 of the Kleinhans container 10 out of molded plastic, this being simply the obvious use of a well-known material. As for the cap 12 of Kleinhans, it appears to be made of metal, with the apertures ("ports") 22 being punched through it. If cap 12 of Kleinhans were made of molded plastic rather than metal, the apertures 22 would be included as part of the molding process and, not being punched like the Kleinhans apertures, would not have inner ends protruding beyond the inner surface of the cap, but rather would

Appeal No. 96-0681
Application 08/041,715

terminate at the inner surface of the cap, as exemplified by holes 26 of Russell.

However, the fact that apertures 22 of Kleinhans are presumably punched also accounts for the fact that their diameters diverge outwardly. Contrary to the examiner's statement on page 7 of the answer, divergence of the diameters of the apertures is not "taught" by Kleinhans; the most that can be said is that it is shown in the drawing. If the Kleinhans cap were made out of plastic instead of metal, we do not consider that one of ordinary skill would find it obvious to mold the apertures in the cap with an outwardly diverging diameter, any more than they would reproduce in plastic the protruding inner ends of the Kleinhans apertures. Rather, one of ordinary skill would recognize that Kleinhans' apertures 22 have an outwardly diverging diameter and extend beyond the inner surface of the cap as a result of the method by which they were made (punching). Since Kleinhans attributes no advantage to (in fact, does not even mention) the outwardly diverging diameter of the apertures 22, one of ordinary skill making the cap out of molded plastic would not be motivated to try to replicate the shape of the punched apertures by using apertures of outwardly diverging diameter, but in all likelihood would simply use constant diameter apertures (as shown, for

Appeal No. 96-0681
Application 08/041,715

example, by Schifferly at 12 or 52), or outwardly converging apertures as disclosed by Russell at 36.

Accordingly, rejection (1) will not be sustained.

Rejections (2) and (4)

The claims to which these rejections apply are all dependent, directly or ultimately, on independent claims 1 or 21, included in rejection (1). Since the additional references applied in rejections (2) and (4) do not supply the deficiencies noted with regard to rejection (1), rejections (2) and (4) will not be sustained.

Rejection (3)

This rejection will not be sustained as to claims 14, 16 to 18 and 27, which are directly or ultimately dependent on independent claims 1 and 21, for the same reason as stated above with regard to rejections (2) and (4).

Independent claims 34, 35 and 38 do not require that the cap be made of plastic, or that the apertures terminate at the planar inner surface of the cap, and therefore are readable on the metal cap shown by Kleinhans insofar as the shape of the apertures is concerned. However, if the container cap were metal, the particular structure recited for joining the cap to the body would not have been obvious over the applied prior art, for neither Kleinhans, Russell, Schifferly nor Earl discloses any

Appeal No. 96-0681
Application 08/041,715

such structure for joining a metal cap to a plastic body. On the other hand, if claims 34, 35 and 38 were read on the cap 22 of the Kleinhans container modified in view of Russell to be made of plastic, then it would not have been obvious, for the reasons discussed above, to utilize in such a plastic cap apertures with diameters which diverge from the inside to the outside, as recited in these claims.

The rejection of claims 34, 35 and 38 will therefore not be sustained.

Conclusion

The examiner's decision to reject claims 1, 5, 8, 9, 12 to 14, 16 to 18, 20 to 22, 25 to 27, 29, 34, 35 and 38 is reversed.

REVERSED

IAN A. CALVERT)	
Administrative Patent Judge)	
)	
)	
)	
JOHN P. McQUADE)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
JEFFREY V. NASE)	
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Appeal No. 96-0681
Application 08/041,715

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APPENDIX

1. A canister containing a desiccant comprising a molded plastic body, an end wall on said body having an inner surface and an outer surface, a molded plastic cap having a cap wall, an inner surface and an outer surface on said cap wall, means for securing said cap on said body in opposition to said end wall, desiccant particles in said body, at least one of said end wall and said cap wall having an inner surface which is substantially planar, and apertures in at least one of said cap wall and end wall, said apertures terminating at said substantially planar inner surface and diverging in diameter in the direction from said inner surface toward said outer surface of said wall in which they are located, and said apertures at said inner surface being of smaller size than the size of said desiccant particles.

21. A canister comprising a molded plastic body, an end wall on said body having an inner surface and an outer surface, a molded plastic cap having a cap wall, an inner surface and an outer surface on said cap wall, means for securing said cap on said body in opposition to said end wall, at least one of said end wall and said cap wall having an inner surface which is substantially planar, and apertures in at least one of said cap

wall and end wall, said apertures terminating at said substantially planar inner surface and diverging in diameter in the direction from said inner surface toward said outer surface of said wall in which they are located.

38. A canister comprising a molded plastic body, an end wall on said body having an inner surface and an outer surface, a cap having a cap wall, an inner surface and an outer surface on said cap wall, means for securing said cap on said body in opposition to said end wall, and apertures in at least one of said cap wall and end wall, said apertures diverging in diameter in the direction from said inner surface toward said outer surface of said wall in which they are located, said body at the opposite end thereof from said end wall terminating at an end surface surrounding an opening, and said body including an inner surface, and said cap covering said opening, said cap comprising a first portion which is inserted into said body through said opening, a flange on said cap of larger diameter than said first portion of said cap, a flange surface on said flange for abutting said end surface, a bead and groove connection between said inner surface of said body and said first portion of said cap for securing said cap on said body, said body being substantially cylindrical, and said first portion of said cap being cylindrical, said bead and

Appeal No. 96-0681
Application 08/041,715

groove connection comprising an annular bead on said first portion of said cap, and an annular groove in said inner surface of said body, said inner surface of said body including an inner surface portion which extends axially between said groove and said end surface of said body, and said first portion of said cap including a cap surface which extends axially between said bead and said flange, and said inner surface portion of said body being of slightly longer axial length than the axial length of said cap surface to thereby cause said flange to be seated in firm abutting engagement with said end surface of said body when said bead is located in said groove.