

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JAMES C. SCHROEDER

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Appeal No. 2001-0673  
Application No. 09/138,445

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ON BRIEF

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Before FRANKFORT, STAAB, and McQUADE, Administrative Patent Judges.

STAAB, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claims 1 and 2, all the claims pending in the application.

Appellant's invention pertains to a gun for spraying a mixture of paint and reflective beads onto a surface. An understanding of the invention can be derived from a reading of exemplary claim 1, reproduced below:

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1. A gun for spraying paint and reflective beads onto a surface, said gun comprising:

an airless tip assembly which atomizes paint passed therethrough at a locus of atomization shortly in front of said tip assembly; and

means for injecting reflective beads approximately into said locus of atomization, said injecting means being attached to a source of reflective beads.

As evidence of obviousness, the examiner relies on the following references:

Bollag	4,856,931	Aug. 15, 1989
Waggoner	3,844,485	Oct. 29, 1974

Claims 1 and 2 stand rejected under 35 U.S.C. § 103 as being unpatentable over Bollag in view of Waggoner.

The examiner's explanation of the rejection is found on page 3 of the answer and reads as follows:

The Bollag reference discloses a spray striping apparatus comprising a conventional sprayer nozzle arrangement with a "tip" 2 for paint and an "injection means" 4 for beads, but does not disclose the paint tip as being an "airless tip". The Waggoner reference discloses another sprayer having an airless tip 22. It would have been obvious to one of ordinary skill in the art to substitute a sprayer with an associated "airless tip" (if not already) as, for example, taught by the Waggoner reference for the conventional sprayer

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and tip of the Bollag device wherein so doing would amount to mere substitution of one functional equivalent sprayer/tip arrangement for another . . . .

Implicit in the above is the examiner's position that modified Bollag spray apparatus would correspond in all respects to the spray gun of the appealed claims.

*Discussion*

We have carefully reviewed the appellant's invention as described in the specification, the appealed claims, the prior art applied by the examiner and the respective positions advanced by the appellant in the brief and by the examiner in the answer. As a consequence of our review, we conclude that the examiner's rejection of the appealed claims under 35 U.S.C. § 103 cannot be sustained. Our reasons follow.

First, it is our view that neither of the applied references teach a spray gun for spraying liquid comprising an airless tip assembly which atomizes liquid passed therethrough. Bollag does not disclose that the "conventional spray nozzle" thereof for spraying paint comprises an airless tip assembly, and the examiner does not contend otherwise. As to Waggoner, the most that can be said for this reference is that Waggoner is silent as to whether or not the spray nozzles 22, 23 are of the

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airless variety. Hence, the examiner's evidence of obviousness does not provide a factual basis for concluding that it would have been obvious for one of ordinary skill in the art to provide an airless sprayer tip assembly in the Bollag reference.

Second, the examiner's opinion to the effect that "spraying" and "atomizing" are synonymous terms is not well taken. In this regard, we think appellant's position that "atomizing" is a subset of "spraying" is the better view. Thus, we are in accord with appellant that "spraying" is not necessarily "atomizing." There is therefore no factual basis to support the examiner's conclusion to the effect that the applied prior art teaches a tip assembly that "atomizes" a liquid.

Finally, the prior art applied by the examiner is devoid of any teaching or suggestion of appellant's inventive concept of injecting particles into the atomized stream at the particular location called for in the claims, namely, "approximately into [the] locus of atomization" of the paint. The circumstance that it is known in the art that a locus of atomization exists in airless atomization spraying devices does not suffice in this regard. In addition, and in contrast to the position apparently held by the examiner, there is no basis for concluding that

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injecting particles into an atomized stream at the particular location called for in claim 1 would inherently result from using an airless spraying technique in Bollag.

The decision of the examiner is reversed.

*REVERSED*

CHARLES E. FRANKFORT	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
LAWRENCE J. STAAB	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
JOHN P. McQUADE	)	
Administrative Patent Judge	)	

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DOUGLAS B FARROW  
CORP INTELLECTUAL PROPERTY COUNSEL  
GRACO INC.  
PO BOX 1441  
MINNEAPOLIS MN 55440-1441

# *Letty*

JUDGE STAAB

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APJ STAAB

APJ FRANKFORT

APJ McQUADE

DECISION: **REVERSED**

**PREPARED:** Sep 9, 2002

**OB/HD**

**PALM**

**ACTS 2**

**DISK (FOIA)**

**REPORT**

**BOOK**

**GAU**