

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BOARD OF PATENT APPEALS
AND INTERFERENCES

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte EMIL J. DALBO

Appeal No. 96-1689
Application No. 08/225,749¹

HEARD: December 3, 1996

Before CALVERT, LYDDANE, and NASE, Administrative Patent Judges.

NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 7, which are all of the claims pending in this application.

¹ Application for patent filed April 11, 1994.

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Appellant's invention is directed to a tray. The tray includes a plurality of compartments (11) having pour spouts (15). Each compartment is provided with a cover (16) for closing each compartment. Claim 1 is representative of the subject matter on appeal and a copy of claim 1 is attached to this decision.

The prior art references of record relied upon by the examiner as evidence of obviousness under 35 U.S.C. § 103 are:

Gruebel	508,700	Nov. 14, 1893
Roos	2,491,771	Dec. 20, 1949
Liska	2,774,466	Dec. 18, 1956
Henderson	3,343,709	Sep. 26, 1967
Halbich	4,253,572	Mar. 3, 1981
Will	4,593,819	Jun. 10, 1986

Claims 1, 6 and 7 stand rejected under 35 U.S.C. § 103 as being unpatentable over Liska in view of Halbich.

Claims 1, 6 and 7 stand rejected under 35 U.S.C. § 103 as being unpatentable over Halbich in view of Liska and Henderson.

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Claims 2 and 4 stand rejected under 35 U.S.C. § 103 as being unpatentable over the prior art as applied to claim 1 above, and further in view of Will.

Claim 3 stands rejected under 35 U.S.C. § 103 as being unpatentable over the prior art as applied to claim 2 above, and further in view of Gruebel.

Claims 4 and 5 stand rejected under 35 U.S.C. § 103 as being unpatentable over the prior art as applied to claims 2 and 4 above, and further in view of Roos.

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellant regarding the § 103 rejection, we make reference to the examiner's answer (Paper No. 11, mailed December 14, 1995) for the examiner's complete reasoning in support of the rejection, and to appellant's brief (Paper No. 10, filed November 3, 1995) for appellant's arguments thereagainst.

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OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we make the determinations which follow.

Turning first to the examiner's rejection of claim 1 based on 35 U.S.C. § 103 as being unpatentable over Liska in view of Halbich. After considering the collective teachings of Liska and Halbich, we must disagree with the examiner that the claimed invention would have been obvious to one of ordinary skill in the art at the time of appellant's invention. While providing an individual cover for each of Liska's compartments as taught by Halbich may have been obvious to one of ordinary skill in the art at the time of appellant's invention to allow the user to easily fill or completely empty one compartment at a time without disturbing the contents of the other compartments, such

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modification of Liska would not have resulted in the claimed invention for the reasons set out below:

Liska teaches the use of a circular tray (10) having a bottom section (12) and a top cover (11). The bottom section is divided into four compartments (23) by the vertical partitions (24), the flat bottom (15) and the circular wall (17). Each compartment is provided with an opening (26) permitting articles to be dispensed from each compartment. The top cover is provided with one opening (27) to permit only one compartment at a time to dispense articles.

Halbich teaches the use of a rectangular tray having a bottom section (10) and a top cover (12). The bottom section is divided into a plurality of compartments by bottom wall (19), vertical side walls (18, 20) and vertical partition members (14, 15, 24). The top cover is made of a series of individual tabs (64, 66, 70). Each tab is provided with a continuous depending rib (72) sized and configured to fit into the compartment (see

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column 1, line 64 to column 2, line 4). Each tab can be broken off from the top cover to permit a pill or capsule to be dispensed one at a-time (see column 2, lines 5-12).

The possible differences between Liska and claim 1 are:

(1) one end of the compartment has angled walls angularly disposed with respect to the straight walls for defining a funnel; (2) a pour spout between the angled walls; and (3) a plurality of cover means for selectively closing each individual compartment.

As to differences (1) and (2), the examiner held that the Liska's circular wall (17) with four openings (26) was readable on the recited angled walls and pour spouts. The appellant argues that even though the curved wall of Liska is, technically, angularly related to the diametrical dividers, the curved wall (walls) does not form a funnel, or anything remotely resembling a funnel.

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It is axiomatic that, in proceedings before the PTO, claims in an application are to be given their broadest reasonable interpretation consistent with the specification, and that claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art. In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983) (citations omitted). See also DeGeorge v. Bernier, 768 F.2d 1318, at 1322 n.2, 226 USPQ 758, at 761 n.2 (Fed. Cir. 1985) (citing In re Yamamoto, 740 F.2d 1569, 222 USPQ 934 (Fed. Cir. 1984)) and In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989). Moreover, limitations are not to be read into the claims from the specification. *Id.*

We find that, giving claim 1 its broadest reasonable interpretation consistent with the specification, Liska does provide the recited angular walls and pour spouts. In this regard, it is appropriate to interpret Liska's curved wall (17) as consisting of eight equal angled walls. Each angled wall extends from the intersection of the vertical partition (24) with

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the curved wall to an opening (26). Thus, each of Liska's compartments (23) includes two angled walls meeting at the opening (26). The two angled walls of each compartment are located at one end of the compartment and are angularly disposed with respect to the straight walls thereby defining a funnel². The opening (26) is therefore defined between the two angled walls and thus constitutes the claimed pour spout.

As to difference (3), the examiner held that it would have been obvious to one of ordinary skill in the art to provide an individual cover means for each compartment as taught by Halbich in the tray of Liska to allow the user to easily fill or completely empty one compartment at a time without disturbing the

² Terms in claims are to be given their ordinary and accustomed meaning, unless it appears that the inventor used them differently. Envirotech Corp. v. Al George, Inc., 730 F.2d 753, 759, 221 USPQ 473, 477 (Fed. Cir. 1984) and Hoechst Celanese Corp. v. BP Chems. Ltd., 78 F.3d 1575, 1578, 38 USPQ2d 1126, 1129 (Fed. Cir. 1996). The term funnel is neither ambiguous nor highly technical. More importantly, there is nothing in the claims or the specification that would suggest a meaning other than its ordinary meaning. When so read, Liska's two angled walls define a funnel.

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contents of the other compartments. The appellant argues that Halbich's cover is not readily adaptable to Liska and that nothing is taught in either patent as to how the two might be combined to yield a container with separate covers, and still have the recited pour spout.

When it is necessary to select elements of various teachings in order to form the claimed invention, we ascertain whether there is any suggestion or motivation in the prior art to make the selection made by the applicant. Interconnect Planning Corp. v. Feil, 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1985). Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive supporting the combination. In re Bond, 910 F.2d 831, 834, 15 USPQ2d 1566, 1568 (Fed. Cir. 1990) (quoting Carella v. Starlight Archery and Pro Line Co., 804 F.2d 135, 140, 231 USPQ 644, 647 (Fed. Cir. 1986)). The extent to which such suggestion must be explicit in, or may be fairly inferred from, the references, is decided on the facts of each

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case, in light of the prior art and its relationship to the applicant's invention. As in all determinations under 35 U.S.C. § 103, the decision maker must bring judgment to bear. It is impermissible, however, simply to engage in a hindsight reconstruction of the claimed invention, using the applicant's structure as a template and selecting elements from references to fill the gaps. Interconnect Planning, 774 F.2d at 1143, 227 USPQ at 551. The references themselves must provide some teaching whereby the applicant's combination would have been obvious. Something in the prior art as a whole must suggest the desirability, and thus the obviousness, of making the combination. Lindemann Maschinenfabrik GmbH v. American Hoist and Derrick Co., 730 F.2d 1452, 1462, 221 USPQ 481, 488 (Fed. Cir. 1984).

In this instance Halbich fails to provide the needed teaching of providing Liska with a plurality of cover means for selectively closing each of Liska's individual compartments while maintaining each compartment's pour spout. We believe that if

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one skilled in the art did modify Liska in accordance with the teachings of Halbich that the resulting tray would not possess Liska's openings (26). While providing an individual cover means for each of Liska's compartments as taught by Halbich may have been obvious to one of ordinary skill in the art at the time of appellant's invention to allow the user to easily fill or completely empty one compartment at a time without disturbing the contents of the other compartments, such modification of Liska would remove the necessity for Liska's openings (26). Since both individual cover means and pour spouts are required by claim 1, the collective teachings of Liska and Halbich fail to render the claimed invention obvious to one of ordinary skill in the art at the time of appellant's invention. Accordingly, the examiner's rejection of claim 1 under 35 U.S.C. § 103 as being unpatentable over Liska in view of Halbich is reversed.

We next consider the examiner's rejection of claim 1 under 35 U.S.C. § 103 as being unpatentable over Halbich in view of Liska and Henderson. After considering the collective teachings

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of Halbich, Liska and Henderson, we must disagree with the examiner that the claimed invention would have been obvious to one of ordinary skill in the art at the time of appellant's invention.

The teachings of Halbich and Liska are discussed above. Henderson teaches the use of a dispenser for pills, tablets or the like. The dispenser includes a flat box (10) provided with a discharge opening (11). The discharge opening is controlled by slidable gates (18, 19). Abutments (25, 26) are provided in the box adjacent the ends of the discharge opening. The abutments include angled walls forming a funnel leading to the discharge opening (see Figure 2).

The possible differences between Halbich and claim 1 are:
(1) one end of the compartment has angled walls angularly disposed with respect to the straight walls for defining a funnel; and (2) a pour spout between the angled walls.

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As to difference (1), the examiner held that it would have been obvious to one of ordinary skill in the art at the time of appellant's invention to provide Halbich's compartments with the recited angled walls as taught by Henderson to allow the contents of the compartment to easily flow out of the compartment. The appellant argues that the Henderson device has no place in the Halbich arrangement, and Halbich would be destroyed if the Henderson device were used as the dispensing means.

We find that, giving claim 1 its broadest reasonable interpretation consistent with the specification, Halbich does provide the recited angular walls. In this regard, it is appropriate to interpret Halbich's compartments as comprising a bottom (19) and four generally vertical straight walls (e.g., wall (20), partition (15), first partition (24) and second partition (24)). Thus two of Halbich's generally vertical straight walls (e.g., partition (15) and first partition (24)) correspond to the claimed recitation of a plurality of straight generally vertical walls. The other two of Halbich's generally

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vertical straight walls (e.g., wall (20) and second partition (24)) correspond to the claimed recitation of one end of the compartment comprising angled walls angularly disposed with respect to the plurality of straight walls for defining a funnel.

As to difference (2), the examiner held that it would have been obvious to one of ordinary skill in the art at the time of appellant's invention to provide Halbich's compartments with the recited pour spout on an end wall as taught by Liska to allow easy pouring access to each compartment. The appellant argues that nothing is taught in either Liska or Halbich as to how the two might be combined to yield a container with separate covers, and still have the recited pour spout.

In this instance Liska and Henderson fail to provide the needed teaching of providing Halbich's individual compartments with the claimed pour spout. Only by the use of impermissible hindsight would a person modify Halbich to include pour spouts based upon the teachings of Liska and Henderson. Since pour

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spouts are required by claim 1, the collective teachings of Halbich, Liska and Henderson fail to render the claimed invention obvious to one of ordinary skill in the art at the time of appellant's invention. Accordingly, the examiner's rejection of claim 1 under 35 U.S.C. § 103 as being unpatentable over Halbich in view of Liska and Henderson is reversed.

Claims 2-7, which depend from claim 1, have been rejected on the same basis as claim 1 or with additional prior art. The additional prior art of Will, Gruebel and Roos does not provide any teaching that would have rendered claim 1 unpatentable under 35 U.S.C. § 103. Accordingly, the examiner's rejection of claims 2-7 under 35 U.S.C. § 103 is also reversed.

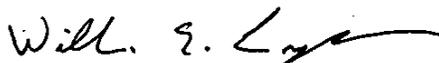
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To summarize our decision, the examiner's rejection of
claims 1-7 under 35 U.S.C. § 103 is reversed.

REVERSED



IAN A. CALVERT)
Administrative Patent Judge)



WILLIAM E. LYDDANE)
Administrative Patent Judge)

BOARD OF PATENT
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JEFFREY V. NASE)
Administrative Patent Judge)

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APPENDIX

1. A tray for containing a plurality of beads, said tray defining a plurality of compartments therein, each compartment of said plurality of compartments including a plurality of straight generally vertical walls and a bottom, one end of said compartment comprising angled walls angularly disposed with respect to said plurality of straight walls for defining a funnel, a pour spout between said angled walls, and a plurality of cover means for selectively closing each individual compartment of said plurality of compartments.