

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DON W. BROWN

Appeal No. 97-1226
Application No. 08/288,479¹

ON BRIEF

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

NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the refusal of the examiner to allow claim 1. Claims 11 through 20 have been allowed. Claim 9 has been objected to as depending from a non allowed claim.

¹ Application for patent filed August 10, 1994.

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Claims 2 through 8 and 10 have been withdrawn from consideration under 37 CFR § 1.142(b) as being drawn to a nonelected invention.

We AFFIRM.

BACKGROUND

The appellant's invention relates to a insulated spray bottle. An understanding of the invention can be derived from a reading of appealed claim 1, which appears in the appendix to the appellant's brief.

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

Diamond et al. 12, 1990 (Diamond)	4,932,563	June
Davis 1990	4,972,973	Nov. 27,

Claim 1 stands rejected under 35 U.S.C. § 103 as being unpatentable over Davis in view of Diamond.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the § 103 rejection, we make reference to the examiner's answer (Paper No. 14, mailed August 2, 1996) and the examiner's response to the edited reply brief (Paper No. 20, mailed February 6, 1998)

for the examiner's complete reasoning in support of the rejection, and to the appellant's brief (Paper No. 13, filed July 15, 1996) and the edited reply brief (part of Paper No. 17, filed January 15, 1997) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we will sustain the examiner's rejection of claim 1. Our reasoning for this determination follows.

Claim 1 recites a spray bottle comprising, inter alia, (1) a hand operated spray mechanism including a straw and an orifice, (2) a container having a threaded opening, and (3) an insulator substantially conformably enclosing the container.

Davis relates to insulated containers which may be used

to keep the contents warmer or colder than the surrounding environment. As shown in Figure 1, the insulated container 1 includes an inner vessel 2 (e.g., a high-density polyethylene container) provided with a neck aperture 3. The inner vessel 2 is surrounded by an expanded polystyrene jacket 4 which comprises an upper half 4a and a lower half 4b. Davis teaches that an appropriate cavity 5 is formed in the lower half 4b such that the inner vessel 2 may be snugly accommodated therein with the vertical axis of the inner vessel 2 inclined away from the vertical towards the middle of one of the top edges of the inner vessel 2 by about 20°. The insulated container 1 also includes a dispensing tube 11 and a manually-operated pump 12 which may be used to dispense the contents of the inner vessel 2. The pump 12 is adapted to engage the neck aperture 3 of the inner vessel and the dispensing tube then extends down into the inner vessel 2 to a location adjacent the bottom thereof. Davis further teaches (column 3, lines 1-8) that when the container 1 and its contents are being stored and one does not wish to dispense the contents, the pump 12 and dispensing tube

11 are disengaged from the neck aperture 3 of the inner vessel 2 and a conventional sealing closure, for example a screw cap, is then used to close the neck aperture 3 of the inner vessel 2. In an alternative embodiment (not shown), Davis discloses (column 2, lines 38-43) that a substantially rigid inner vessel 2 is placed within a mould cavity in the appropriate orientation and the expanded polystyrene jacket is formed integrally around the inner vessel 2 and therefore does not consist of the respective upper and lower halves 4a, 4b. Lastly, Davis teaches (column 4, lines 3-17) that the containers of his invention may be used to store and dispense any material which needs to be kept at a temperature other than the ambient temperature for a given period of time. Such materials include pharmaceuticals (including vaccines), other chemicals, food, micro-encapsulated pesticides, and soup.

Diamond discloses a combined jug and sprayer. As shown in Figure 2, the combined jug and sprayer includes a first container 11, a second container 20, and a sprayer 21. Diamond teaches (column 2, lines 38-45) that (1) the sprayer 21 is a manually actuated aspirating sprayer for delivering a

mist of liquid from the second container 20, (2) the second container 20 has a threaded neck portion defining a filling opening, and (3) the sprayer 21 is secured to and closes the filling opening of the threaded neck portion of the second container 20. The first container 11 is a double walled container having insulation material 14 disposed between the walls. Diamond teaches (column 2, lines 45-51) that the liquid within the second container 20 will be maintained at the same temperature as liquid contained within the volume 12 of the first container 11. Accordingly, the volume of liquid 12 within the first container 11 and the first container 11 together constitute an insulator substantially conformably enclosing the second container 20 thereby reducing heat transfer through the surface of the second container 20.

In applying the test for obviousness², the examiner determined (answer, p. 4) that

² The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

[i]t would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the device of Davis to have a spray mechanism for delivery of the product to be dispensed as taught by Diamond et al., since this is a substitution of one delivery means for another that would function equally as well.

We agree.³

The arguments presented by the appellant with respect to this ground of rejection are unpersuasive for the following reasons.

First, the appellant argues in the edited reply brief that the claimed orifice is absent from both Davis and Diamond. We do not agree. In evaluating references it is proper to take into account not only the specific teachings of the references but also the inferences which one skilled in the art would reasonably be expected to draw therefrom. In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968). In this case, it is our opinion that both Davis and Diamond

³ The appellant does not dispute the obviousness of combining the references as set forth by the examiner. The appellant does argue (as set forth infra) that the combined prior art lacks certain structure recited in claim 1.

implicitly disclose discharge orifices which enable the contents of their containers (i.e., Davis' inner vessel 2 and Diamond's second container 20) to be discharged. In addition, it is our determination that Figure 1 of Diamond shows such an orifice. Furthermore, the appellant has admitted that the standard spray bottle (shown in the appellant's Figure 1 and described on pages 1-2 of the appellant's specification) includes an orifice 60 in the spray mechanism 54.

Second, the appellant argues in the brief that Davis' insulator (i.e., jacket 4) does not substantially conformably enclose the container (i.e., inner vessel 2 of Davis). We do not agree. It is our determination that the jacket 4 of Davis does substantially conformably enclose the inner vessel 2. We reach this determination based upon (1) Davis' teaching (column 2, lines 48-50) that it is preferred that the jacket 4 fit the inner vessel 2 snugly in the manner shown in Figure 1, and
(2) Davis' teaching (column 2, lines 38-43) that the jacket 4 can be formed integrally around the inner vessel 2.

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For the reasons provided above, we sustain the examiner's rejection of claim 1 under 35 U.S.C. § 103.

CONCLUSION

To summarize, the decision of the examiner to reject claim 1 under 35 U.S.C. § 103 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

IAN A. CALVERT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
NEAL E. ABRAMS)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JEFFREY V. NASE)	
Administrative Patent Judge)	

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MARK D. STIGNANI
STIGNANI LAW OFFICE
4900 28TH AVENUE
MINNEAPOLIS, MN 55417-1323

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APPLICATION NO. 08/288,479

APJ NASE

APJ CALVERT

APJ ABRAMS

DECISION: **AFFIRMED**

Prepared By: Delores A. Lowe

DRAFT TYPED: 03 Apr 98

FINAL TYPED: