

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(2) is not binding precedent of the Board.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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

Ex parte MARVIN D. BURNS,  
MARK E. CHARPIE  
and  
THOMAS E. GRIME

---

Appeal No. 97-2906  
Application 08/367,837<sup>1</sup>

---

ON BRIEF

---

Before CALVERT, FRANKFORT and STAAB, Administrative Patent  
Judges.

FRANKFORT, Administrative Patent Judge.

---

<sup>1</sup> Application for patent filed January 3, 1995.

Appeal No. 97-2906  
Application 08/367,837

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 6, all of the claims remaining in the application. Claims 7 through 12 have been canceled.

Appellants' invention relates to a spray head for use with a spray gun having passages in a spray gun body for delivering fluid (i.e., paint) and pressurized air to said spray head. Of importance to appellants is the use of a fluid flow valve mounted in the spray head, which fluid flow valve controls the rate of flow of the fluid (i.e., paint) and thereby eliminates the need to change the fluid tip size or to throttle the trigger valve for adjusting the fluid discharge rate of the spray gun. Independent claim 1 is representative of the subject matter on appeal and a copy of that claim may be found in the Appendix to appellants' brief.

The prior art references of record listed by the examiner as being relied upon in the rejections of the claims under appeal are:

Atwater

1,913,149

June 6, 1933

Appeal No. 97-2906  
Application 08/367,837

Asbeck et al. (Asbeck)	2,780,496	Feb. 5, 1957
Grime et al. (Grime)	5,236,129	Aug. 17, 1993

Claim 1 stands rejected under 35 U.S.C. § 103 as being unpatentable over Asbeck and Grime.

Claims 2 through 6 stand rejected under 35 U.S.C. § 103 as being unpatentable over Asbeck and Grime as applied to claim 1 above, and further in view of Atwater.

Rather than reiterate the examiner's full explanation of the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellants regarding the rejections, we make reference to the examiner's answer (Paper No. 11, mailed March 21, 1997) for the examiner's reasoning in support of the rejections, and to appellants' brief (Paper No. 10, filed February 5, 1997) and reply brief (Paper No. 12, filed April 21, 1997) for appellants' arguments thereagainst.

#### OPINION

In reaching our decision in this appeal, we have given careful consideration to appellants' specification and claims, to the applied prior art, and to the respective positions

articulated by appellants and the examiner. As a consequence of our review, we have made the determinations which follow.

Turning first to the examiner's rejection of independent claim 1 under 35 U.S.C. § 103, we note that this claim is directed to a spray head for use with a spray gun having passages in a spray gun body for delivering fluid and pressurized air to said spray head. The spray head is identified by the reference character (14) in appellants' Figure 1. The spray head is further defined in claim 1 on appeal as being "adapted to be detachably mounted on the spray gun body," for example, by the retaining ring (16) seen in Figure 1, and as including a fluid discharge orifice (52), a fluid inlet passage (54, 55, 50) "adapted to receive fluid from a passage in the spray gun body and to deliver such fluid to said fluid discharge orifice," a valve surface (at 51) adapted for cooperating with a trigger operated valve needle (53) to form a trigger operated valve for initiating and terminating the discharge of fluid from said fluid discharge orifice, and a valve (25) mounted in said spray head upstream of said valve surface (at 51) which serves to limit flow of fluid to said fluid discharge orifice when the trigger operated valve is open.

Appeal No. 97-2906  
Application 08/367,837

According to the examiner (answer, pages 3-4), Asbeck "shows all of the basic spray head including a spray gun, passages 69 and 70, discharge orifice 136, trigger 40, valve needle 50, and valve 80 in spray head upstream of the surface (column 5, lines 57-65)." The only feature of claim 1 on appeal the examiner sees as lacking in Asbeck is that the spray head therein (apparently that portion of the barrel (11) of the spray gun body from and including the extension (67) up to the discharge orifice (136)) is not detachably mounted on the spray gun body. To overcome this difference, the examiner points to the spray head (15) of Grime which is detachably mounted on the spray gun body (11) therein. From these teachings the examiner concludes (answer, page 4) that

[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the spray gun of Asbeck . . . to have a detachably mounted spray head as taught by Grime.

Appellants urge that the examiner's modification of Asbeck in view of Grime is made only with hindsight after considering appellants' invention. We tend to agree. Moreover, even if the spray gun of Asbeck were to be modified to have the

Appeal No. 97-2906  
Application 08/367,837

barrel portion of the spray gun from the extension (67) to the discharge orifice (136) made detachable from the remainder of the spray gun body, the resulting structure would not be the same as that set

forth in appellants' claim 1 on appeal. Modifying Asbeck so as to have the valves (80) in the detachable spray head, as urged by the examiner, would also result in the passages (69, 70) being in the detachable spray head, thereby creating a spray head which is not for use with a spray gun having "passages in a spray gun body for delivering fluid and pressurized air to said spray head" (emphasis added), as set forth in appellants' claim 1 on appeal. The resulting spray head in the examiner's modification of Asbeck would be a spray head wherein the fluid inlet passage thereof is not intended or adapted to receive fluid "from a passage in the spray gun body and to deliver such fluid to said fluid discharge orifice," as required in the spray head of appellants' claim 1. For these reasons, we will not sustain the examiner's rejection of claim 1 under 35 U.S.C. § 103.

The examiner's rejection under § 103 of claims 2 through 6, which depend from claim 1, will likewise not be

Appeal No. 97-2906  
Application 08/367,837

sustained. In this regard, we note that the variable gas flow valve of Atwater, even if it is considered to be analogous prior art, does nothing to overcome the deficiencies we have noted above in the combined teachings of Asbeck and Grime.

As should be apparent from the foregoing, the decision of the examiner rejecting claims 1 through 6 of the present application under 35 U.S.C. § 103 is reversed.

REVERSED

IAN A. CALVERT	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
CHARLES E. FRANKFORT	)	APPEALS AND
Administrative Patent Judge	)	INTERFERENCES
	)	
	)	
LAWRENCE J. STAAB	)	
Administrative Patent Judge	)	

Appeal No. 97-2906  
Application 08/367,837

MacMillan Sobanski & Todd  
One Maritime Place  
4th Floor  
720 Water Street  
Toledo, OH 43604