

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SHEN-YOUN CHANG, TOM LILLEGARD,
PAUL LIN, and LYMAN ALDRICH

Appeal No. 1999-2779
Application No. 08/859,763

ON BRIEF

Before CALVERT, FRANKFORT, and PATE, Administrative Patent Judges.

PATE, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the examiner's refusal to allow claims 2 through 4, 6, 9, 11, 13, 14 and 21 through 23 as amended after final rejection. Claims 15-20 and 24 stand allowed. All other claims being canceled, these are the only

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claims remaining in the application.

The claimed subject matter is directed to a flexible walled container used to store and dispense fluid to be conveyed to a patient intravenously. A port is placed on the bag for tapping the contents thereof using a piercing spike. The port has a planar body with flaps that extend upwardly and surround the flexible sides of the bag a distance greater than the length of the port.

A copy of appealed claim 22 is appended to this decision.

The references of record relied upon by the examiner as evidence of obviousness are:

Steer 3, 1974	UK	1,358,379	Jul.
Scheifel et al. 1992 (Scheifel)	DE 4 029 521		Mar. 19,

THE REJECTION

Claims 3, 4, 6, 9, 11, 13, 14 and 21 through 23 stand rejected under 35 U.S.C. § 103 as unpatentable over Scheifel. According to the examiner, the limitation of the flap length claimed by appellants is considered a design choice, obvious to one of ordinary skill.

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Claim 2 stands rejected under 35 U.S.C. § 103 as unpatentable over Scheifel in view of Steer.

OPINION

We have carefully reviewed the rejections on appeal in light of the arguments of the appellants and the examiner. As a result of this review, we have determined that the applied prior art does not establish a prima facie case of obviousness with respect to the claimed subject matter on appeal. Therefore, the rejections of all claims on appeal are reversed. Our reasons follow.

It is our finding that the Scheifel reference discloses a port provided with a flange which is saddle shaped and partially surrounds the lower portion of the flexible plastic bag. As can be seen in Figure 1, the distance the flange extends upwardly from the port member is not nearly the same distance as the length of the ports.

The examiner has held that the length of the flaps being greater than the length of the port is insufficient to be patentably distinguishing over the Scheifel prior art. We

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disagree. The examiner relies upon the rationale articulated in In re Kuhle, 526 F.2d 553, 555, 188 USPQ 7, 9 (CCPA 1975). However, Kuhle makes clear that if the differences between the prior art and the invention solve a stated problem, the differences can not be considered a mere design choice. In this instance, the claimed subject matter clearly solves the stated problem of inadvertent spiking of the container walls. This problem is discussed in several places in appellants' specification. Accordingly, we must hold that the distance limitation solves a stated problem, and can not be regarded as a mere design choice. We have also considered the Steer reference for all it teaches or suggests and find therein nothing to cure the deficiencies of Scheifel. Therefore, the examiner has not established the prima facie obviousness of any claim on appeal.

REVERSED

IAN A. CALVERT)
Administrative Patent Judge)
)
)
) BOARD OF PATENT

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CHARLES E. FRANKFORT)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
WILLIAM F. PATE, III)	
Administrative Patent Judge)	

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22. A container formed of at least one sheet of material defining a cavity for housing a fluid product, the container having a port assembly attached to an edge of the container, the port assembly comprising:

a thin body having an outer face and an inner face attached to the container, the thin body being bent around the edge of the container for defining a pair of substantially identical flaps, one on either side of the edge; and

a first tubular port projecting from the outer face of the thin body and having a base end, a distal end and an access opening extending through it for providing fluid communication to the cavity, the base end being positioned between the flaps substantially in alignment with the edge of the container and spaced from any periphery of the thin body wherein the dimension of each flap between the edge of the container and a furthest distal edge of the flap is longer than the distance between the base end and distal end of the first tubular port.