

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. 28

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GILLES BLONDEEL and NICOLE LE CALVEZ

Appeal No. 2000-1292
Application No. 08/739,836

HEARD: MARCH 21, 2001

Before COHEN, ABRAMS, and McQUADE, Administrative Patent Judges.
ABRAMS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 4, 5 and 10-16.¹

We REVERSE.

¹Claims 2, 3, and 6-9 have been canceled, and claims 17-20 have been withdrawn as being directed to a non-elected invention.

BACKGROUND

The appellants' invention relates to a spray device system. An understanding of the invention can be derived from a reading of exemplary claim 1, which appears in an appendix to the appellants' Brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

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| Diamond et al. (Diamond) | 5,211,317 | May 18, 1993 |
| Brazilian Patent Publication (Reis) | 7,808,500 | Apr. 24, 1979 |
| Japanese Unexamined Application (Ebisawa) | 2-53886 | Feb. 22, 1988 |

Claims 1, 4, 5 and 10-16 stand rejected under 35 U.S.C. § 103 as being unpatentable over Diamond in view of Reis and Ebisawa.²

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the Answer (Paper No. 23) for the examiner's complete reasoning in support of the rejections, and to the Brief (Paper No. 22) for the appellants' arguments thereagainst.

²Our understanding of the two foreign language references was obtained from PTO translations, copies of which are enclosed.

OPINION

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

The claims on appeal are directed to the combination of a spray device, mineralized water in the spray device, and a mixture of nitrogen and carbon dioxide gas in a specified relationship to propel the mineralized water out of the spray device. The claims stand rejected as being unpatentable over Diamond in view of Reis and Ebisawa. It is the examiner's view that Diamond discloses all of the subject matter recited in independent claim 1 except for the mineralized water and the volume percentages of the claimed gas mixture. The examiner finds in Reis a teaching of dispensing mineralized water from a spray device and in Ebisawa a teaching of using the claimed volume percentages of nitrogen and carbon dioxide in a mixture to propel liquids from a spray device, and concludes that it would have been obvious to modify the Diamond device in such a manner as to meet the terms of the claim. The appellants argue in rebuttal, inter alia, that these references would not have suggested to one of ordinary skill in the art dispensing mineralized water from a spray dispenser utilizing a mixture of nitrogen and carbon dioxide as the propellant.

The test for obviousness is what the combined teachings of the prior art would have suggested to one of ordinary skill in the art. See, for example, In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In establishing a prima facie case of obviousness, it is incumbent upon the examiner to provide a reason why one of ordinary skill in the art would have been led to modify a prior art reference or to combine reference teachings to arrive at the claimed invention. See Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Int. 1985). To this end, the requisite motivation must stem from some teaching, suggestion or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art and not from the appellant's disclosure. See, for example, Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1052, 5 USPQ2d 1434, 1439 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988).

Diamond discloses a spray dispenser comprising a container, a propellant, a valve, and means for atomizing a liquid material, and Reis teaches dispensing mineralized water from a spray dispenser. We agree with the examiner that one of ordinary skill in the art would have found it obvious to dispense mineralized water from the Diamond spray dispenser in view of the explicit suggestion provided by Reis. However, this is where we part company with the examiner's rationale. The examiner points to a first statement in Diamond that "[c]ompressed gas propellants have included carbon dioxide, nitrous oxide, nitrogen, air etc." (column 2, lines 34 and 35), and a second statement that the invention

uses “a liquified gas propellant or a compressed gas propellant, or mixture of them” to propel the product from the dispenser (column 4, lines 3 and 4), as the basis for concluding that Diamond teaches using a mixture of nitrogen and carbon dioxide gases to propel the product from the spray dispenser (Answer, page 3). In our view, this conclusion is misplaced. From our perspective, the phrase “or mixture of them” should be interpreted to mean a mixture of liquified and pressurized gas propellents, and not a mixture of several gas propellants. We arrive at this understanding because Diamond earlier states that aerosol spray dispensers “use various liquified and compressed gas propellants” (column 2, line 27, emphasis added), and while in the subsequent explanation of the invention there is reference to compressed gases and liquified gases, and mixtures of compressed gases and liquified gases, there is no explicit mention of mixtures of several gases nor, in our view, is there any reason from a consideration of the disclosure as a whole to conclude that such was contemplated. It therefore is our conclusion that Diamond would not have taught one of ordinary skill in the art to propel material from a spray dispenser by means of a mixture of several gases.

Ebisawa is directed to solving problems associated with dispensing alcohol-based products from spray dispensers. In this regard, the reference teaches that advantages are gained in using gases that are hard to dissolve in alcohol, such as a mixture of nitrogen and carbon dioxide (translation, pages 1 and 3). However, no mention is made of using

this mixture to dispense materials other than those having an alcohol base. We therefore agree with the appellants that the artisan would not have found suggestion in Ebisawa to utilize a mixture of nitrogen and carbon dioxide gases to dispense materials other than those with an alcohol base, such as mineralized water, from a spray dispenser.

For the above reasons, it is our conclusion that the combined teachings of Diamond, Reis and Ebisawa fail to establish a prima facie case of obviousness with respect to the subject matter recited in independent claim 1. This being the case, we will not sustain the rejection of claim 1 or, it follows, of claims 4, 5 and 10-16, which depend therefrom.

SUMMARY

The rejection is not sustained.

The decision of the examiner is REVERSED.

IRWIN CHARLES COHEN
Administrative Patent Judge

NEAL E. ABRAMS
Administrative Patent Judge

JOHN P. McQUADE
Administrative Patent Judge

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