

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEFFREY BELL

Appeal No. 2005-0866
Application No. 09/971,739

ON BRIEF

Before KIMLIN, GARRIS and PAK, Administrative Patent Judges.
KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-20, all the claims remaining in the present application. Claims 1 and 15 are illustrative:

1. A method of making an item with a decorative void, comprising the steps of:

providing a first quantity of composition in a mold;

inserting at least one object at least partially into said first quantity of composition;

allowing said first quantity of composition to at least partially cure; and

removing said object.

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15. An item with a decorative void, comprising:

a first quantity of a composition, wherein said composition defines a decorative void created by the removal of an at-least-partially-embedded object from said first quantity of composition.

In the rejection of the appealed claims, the examiner relies upon the following references:

Wohl et al. (Wohl)	5,597,300	Jan. 28, 1997
Morrison et al. (Morrison)	WO 97/08282	Mar. 6, 1997

Appellant's claimed invention is directed to an item with a decorative void and its method of preparation. The method entails inserting an object into a composition within a mold, partially curing the composition and then removing the object to form the void. Examples of such items are air fresheners and candles.

Appealed claims 1-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Morrison in combination with Wohl. Claims 15, 17 and 20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Wohl. In addition, claims 16, 18 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wohl in combination with Morrison.

We have thoroughly reviewed the respective positions advanced by appellant and the examiner. In so doing, we find

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that the examiner's rejections are well-founded and supported by the prior art evidence relied upon. Accordingly, we will sustain the examiner's rejections.

We consider first the examiner's rejection of all the appealed claims under § 103 over the collective teachings of Morrison and Wohl.

Wohl, like appellant, discloses a method of making a decorative candle. There is no dispute that the process of Wohl includes the formation of an intermediate product, or item, which comprises a shell of wax with a void therein that may receive an inner core of wax. While appellant urges that the shell of Wohl is an intermediate product, the claims on appeal do not preclude the claimed item from being an intermediate product. Furthermore, since Wohl expressly teaches that the consumable low melting point fill wax can be added to the void of the outer shell, we are confident that one of ordinary skill in the art would have understood that the addition of the fill wax is optional. For example, we are satisfied that one of ordinary skill in the art would have found it obvious to place a separate candle in the void of the outer shell for illuminating the design on the outer shell.

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Appellant also contends that the void of Wohl is not a decorative one. However, Wohl specifically discloses that the apertures 104 and 106 "can have a variety of shapes, such as polygonal, star shaped, oval or the like" (column 4, lines 33-34). Consequently, it cannot be gainsaid that Wohl describes a decorative void in the outer shell.

As for the requirement in claim 1 that the void be formed by inserting an object into the composition and removing it after at least partially curing the composition, we fully concur with the examiner that it would have been obvious for one of ordinary skill in the art to form the void by either introducing the curable composition between inner and outer molds, as disclosed by Wohl, or by inserting the inner mold in the composition contained by the outer mold, as presently claimed. In our view, either option would have been readily apparent to one of ordinary skill in the art.

As can be seen by our analysis above, we find Morrison unnecessary for the conclusion of obviousness. Also, we note that appellant bases no argument upon objective evidence of nonobviousness, such as unexpected results.

Concerning the examiner's § 102 rejection of claims 15, 17 and 20, it should be apparent from our above discussion that we

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find that Wohl describes within the meaning of § 102 an item with a decorative void comprising a quantity of a composition which defines the void. The claim recitation "decorative void created by the removal of an at-least-partially-embedded object from said first quantity of composition" is process language that does not further define the claimed item. In any event, Wohl forms the outer shell by removing an inner mold. Although appellant's process of forming the item with a decorative void is different than the process disclosed by Wohl, the difference is not reflected in the scope of claim 15 on appeal. Furthermore, even if product-by-process claim 15 recited a process that was clearly distinct from the process disclosed by Wohl, appellant has not demonstrated that the resultant product is substantially different than the outer shell formed by Wohl.

Since we find that the subject matter of claims 1-20 would have been obvious to one of ordinary skill in the art over the disclosure of Wohl, alone, it follows that we also find that separately rejected claims 16, 18 and 19 would have been obvious over the combination of Wohl and Morrison.

In conclusion, based on the foregoing, the examiner's decision rejecting the appealed claims is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (effective Sep. 13, 2004; 69 Fed. Reg. 49960 (Aug. 12, 2004); 1286 Off. Gaz. Pat. Office 21 (Sep. 7, 2004)).

AFFIRMED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
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BRADLEY R. GARRIS)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
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CHUNG K. PAK)	
Administrative Patent Judge)	

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