

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte THOMAS M. SEIDITA

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Appeal No. 2005-0987  
Application No. 09/946,049

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ON BRIEF

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Before FRANKFORT, MCQUADE, and NASE, Administrative Patent Judges.

MCQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Thomas M. Seidita appeals from the final rejection of claims 11 through 20 and 22 through 28, all of the claims pending in the application.

THE INVENTION

The invention relates to "twist off type closures of the type that are commonly used in the packaging of consumer

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beverages" (specification, page 1). Representative claim 11 reads as follows:<sup>1</sup>

11. A packaging assembly, comprising:

a container having a threaded finish portion; and

a closure cap mounted on said threaded finish portion of said container, said closure cap comprising an upper portion and a generally cylindrical sidewall depending downwardly from said upper portion, said cylindrical sidewall defining a threaded inner surface that is mated with said threaded finish portion, and wherein said cylindrical sidewall further has an outer surface that is stylized to resemble a conventional crown closure.

#### THE REJECTIONS

Claims 11, 13 through 20 and 22 through 28 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,715,959 to Pfefferkorn et al. (Pfefferkorn).

Claim 12 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Pfefferkorn.

Attention is directed to the brief (filed September 13, 2004) and answer (mailed November 4, 2004) for the respective positions of the appellant and examiner regarding the merits of these rejections.

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<sup>1</sup> With regard to claims 19 and 28, the underlying specification and drawings would seem to indicate that the references in these claims to the "respective outer ends" should instead be to the --respective lower ends--.

DISCUSSION

Pfefferkorn discloses a closure cap for containers, e.g., beverage containers, having mouths with external threads. The cap, which is made of plastic, comprises an upper base 1, a cylindrical wall 2 depending downwardly from the upper base, a thread 13 on the inner surface of the cylindrical wall and a plurality of axially extending ribs on the outer surface of the cylindrical wall (see Figures 1 and 3).

As indicated above, independent claims 11 and 20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Pfefferkorn. Anticipation, of course, is established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). In other words, there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. Scripps Clinic & Research Found. v. Genentech Inc., 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991).

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As framed and argued by the appellant, the dispositive issue with respect to the rejection of claims 11 and 20 is whether Pfefferkorn, and more particularly the ribbed outer surface of Pfefferkorn's cylindrical wall 2, meet the limitations in claims 11 and 20 requiring the cylindrical sidewall of the closure cap to have "an outer surface that is stylized to resemble a conventional crown closure." The underlying specification (see page 4) describes a conventional crown closure as one that is "conventionally used to seal glass beer bottles" and that has "a familiar metal crimp pattern." The record contains a 37 CFR § 1.132 declaration<sup>2</sup> which establishes, without challenge by the examiner, that a crown closure is commonly known to have the appearance illustrated on page 6 of the appellant's brief. Given this understanding of a conventional crown closure, and the manifest and considerable differences between the respective appearances of such conventional crown closure and the Pfefferkorn closure cap, a person of ordinary skill in the art

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<sup>2</sup> This declaration, which was filed by the appellant subsequent to final rejection on March 8, 2004, has been entered and considered by the examiner (see the advisory action mailed April 15, 2004).

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clearly would not view the ribbed outer surface of Pfefferkorn's cylindrical wall 2 as being stylized to resemble a conventional crown closure.<sup>3</sup>

Hence, the examiner's determination that Pfefferkorn meets the above noted limitations in claims 11 and 20 is not well founded. Accordingly, we shall not sustain the standing 35 U.S.C. § 102(b) rejection of independent claims 11 and 20, and dependent claims 13 through 19 and 22 through 28, as being anticipated by Pfefferkorn.

In addition to not teaching a closure cap comprising a cylindrical sidewall having an outer surface stylized to resemble a conventional crown closure, Pfefferkorn would not have suggested same to one of ordinary skill in the art. Therefore, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of claim 12, which depends from independent claim 11, as being unpatentable over Pfefferkorn.

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<sup>3</sup> Based on the understanding of a conventional crown closure established in the record, a person of ordinary skill in the art arguably would not view the closure cap depicted in the appellant's drawings as having a cylindrical sidewall stylized to resemble a conventional crown closure. In the event of further prosecution, consideration should be given to the question of whether these drawings comply with the requirement set forth in 37 CFR § 1.83(a) that patent application drawings "must show every feature of the invention specified in the claims."

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SUMMARY

The decision of the examiner to reject claims 11 through 20 and 22 through 28 is reversed.

REVERSED

CHARLES E. FRANKFORT	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
JOHN P. MCQUADE	)	APPEALS AND
Administrative Patent Judge	)	INTERFERENCES
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	)	
JEFFREY V. NASE	)	
Administrative Patent Judge	)	

JPM/hh

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