

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEVE ACHATZ and JOHN E. NEMAZI

Appeal No. 2006-0228
Application No. 10/158,028

ON BRIEF

Before FRANKFORT, CRAWFORD, and BAHR, Administrative Patent Judges.
FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 2, 3, 5, 6 and 9. Claims 4, 7, 8 and 10 through 27, the only other claims remaining in the application, have been withdrawn from further consideration.

As noted on page 1 of the specification, appellants' invention relates generally to a product dispenser, and more specifically to a product dispenser for confections or tablets including a clip adapted to secure the dispenser to another article. A significant aspect of the problem associated with

prior art dispensers addressed by appellants is the ability of such prior art dispensers to be easily misplaced or difficult to locate among the numerous articles that can be carried in a user's purse, bag, pocket or automobile console (specification, page 1). The clip of the present invention is said to solve this problem by allowing the user to easily find and access the dispenser by securing the dispenser to another article, such as a user's clothing, belt, or pocket, or an automobile interior such as a visor, storage console, or glove compartment. In addition, it is noted that the dispenser may be secured to a carrying case such as a briefcase, purse, athletic bag, or other device for transporting articles to enable the user to readily access the dispenser (specification, page 6). Independent claim 1 is representative of the subject matter on appeal and a copy of that claim can be found in the Claims Appendix attached to appellants' brief.

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

Omata et al. (Omata)	5,947,294	Sep. 7, 1999
Mahaffey et al. (Mahaffey)	6,283,334	Sep. 4, 2001
Aylward	6,625,955	Sep. 30, 2003

Claims 1 through 3, 5 and 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Omata in view of Mahaffey.

Claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Omata in view of Mahaffey as applied to claim 1 above, and further in view of Aylward.

Rather than attempt to reiterate the examiner's commentary with regard to the above-noted rejections and the conflicting viewpoints advanced by appellants and the examiner regarding those rejections, we make reference to the answer (mailed August 12, 2004) for the examiner's reasoning in support of the rejections, and to appellants' brief (filed June 21, 2004) and reply brief (filed October 18, 2004) for the 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 references, and to the respective positions articulated by appellants and the examiner. As a consequence of

our review, we have made the determination that each of the examiner's obviousness rejections will be sustained. Our reasons follow.

In rejecting claims 1 through 3, 5 and 6 under 35 U.S.C. § 103(a) as being unpatentable over Omata in view of Mahaffey, the examiner has determined that Omata discloses the invention substantially as claimed except that it does not include an attachment member integrally formed with the molded product container or a clip adapted to secure the container to another object. To address the deficiencies of Omata, the examiner turns to Mahaffey, noting that this patent discloses a product dispenser including a product container having a mounting element located thereon in the form of a ridge (116) adaptable to removably secure a clip thereto to allow the dispenser to be worn by a user, such as on a user's belt, pocket or waistband (col. 3, lines 58-60). From the examiner's perspective, it would have been obvious to one of ordinary skill in the art at the time of appellants' invention to provide the product container of Omata with an attachment member and/or clip like that in Mahaffey to facilitate attachment of the dispenser to a user's belt or another surface. We agree.

Appellants contend (brief, page 7) that Mahaffey is non-analogous art to the art of the present invention, which appellants characterize as being limited to the art of two piece molded containers, and urge that the examiner's use of Mahaffey stems from improper hindsight derived from appellants' invention.

We do not agree with either of appellants' assertions. In considering the question of non-analogous prior art for resolution of obviousness under 35 U.S.C. § 103, the law presumes full knowledge by the hypothetical worker having ordinary skill in the art of all the prior art in the inventor's field of endeavor. With regard to prior art outside the inventor's field of endeavor, knowledge is presumed only as to those arts reasonably pertinent to the particular problem with which the inventor was involved. See In re Clay, 966 F.2d 656, 23 USPQ2d 1058, 1061 (Fed. Cir. 1992), In re Wood, 599 F.2d 1032, 202 USPQ 171 (CCPA 1979) and In re Antle, 444 F.2d 1168, 170 USPQ 285 (CCPA 1971). Thus, the determination that a reference is from a non-analogous art is twofold. First, it must be decided if the reference is from within the inventor's field of endeavor. If

it is not, then it must be determined whether the reference is reasonably pertinent to the particular problem with which the inventor was concerned.

In the present case, we find that both Omata and Mahaffey are within appellants' field of endeavor which the specification of the present application (page 1) indicates relates generally to product dispensers. More particularly, we find that Mahaffey is within the more limited field of appellant's endeavor relating to product dispensers including a clip adapted to secure the dispenser to another article. In addition, we find that Mahaffey also satisfies the second prong of the above noted test because it is reasonably pertinent to the particular problem with which appellants were concerned., i.e., product dispensers that are easily misplaced and difficult to locate, or are not readily available when needed or wanted. Thus, we conclude that Mahaffey is analogous prior art and was properly considered by the examiner in the obviousness rejections before us on appeal. As a further point, we note that it is well settled that in cases involving relatively simple every-day mechanical concepts, like those involved in the present application, it is reasonable

to permit inquiry into other areas where one of even limited technical skill would have been aware that similar problems exist. See In re Heldt, 433 F.2d 808, 811, 167 USPQ 676, 679 (CCPA 1970).

As for appellants' assertion that there is no motivation to combine Omata and Mahaffey, we must agree with the examiner that it would have been obvious to one of ordinary skill in the art from the combined teachings of the applied references to utilize the attachment member and clip of Mahaffey on the container of Omata to allow the dispenser therein to be worn on a user's person, such as on the user's belt, pocket or waistband, as expressly noted in Mahaffey column 3, lines 58-60, and thereby be readily available to allow a user to dispense the product contained therein when needed or desired. Appellants' assertion that Mahaffey's teachings are limited to professional and occupational environments wherein the contents of the dispenser are required for the given work environment is belied by the broader teachings therein regarding product dispensers in general (col. 1, lines 27-29 and lines 35-42; col. 1 line 53 to col. 2, line 16; and claim 6 of the patent).

In light of the foregoing, we will sustain the examiner's rejection of claim 1, and dependent claims 2, 5 and 6, under 35 U.S.C. § 103(a) as being unpatentable over Omata in view of Mahaffey.

Although appellants contend that dependent claim 3 on appeal is separately patentable, we note that the argument presented is the same as that treated above and is equally unconvincing here, especially since Mahaffey expressly teaches a product dispenser wherein the attachment member is in the form of a ridge (116) adaptable to secure a clip thereto (Mahaffey Figures 9 and 10). Thus, the rejection of claim 3 under 35 U.S.C. § 103(a) as being unpatentable over Omata in view of Mahaffey is also sustained.

Claim 9 depends from claim 1 and sets forth the requirement that the product within the dispenser is "a plurality of mint tablets." In addition to using Omata and Mahaffey as set forth above, the examiner adds Aylward for its teaching of a flat tablet case for dispensing mints shaped as pills or tablets (see, e.g., col. 1, lines 26-27 and lines 35-37). Although Omata specifically mentions use of the flat tablet case therein with "refreshing tablets or the like" (col. 1, lines 5-6), it does not

specifically mention mints or mint tablets. Aylward supplies that deficiency and we conclude that the combined teachings of the applied references would have rendered the subject matter of claim 9 on appeal obvious to one of ordinary skill in the art at the time of appellants' invention. Thus, the examiner's rejection of claim 9 under 35 U.S.C. § 103(a) as being unpatentable over Omata in view of Mahaffey and Aylward is sustained.

Since each of the § 103 rejections before us on appeal has been sustained, it follows that the decision of the examiner 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).

AFFIRMED

CHARLES E. FRANKFORT)
Administrative Patent Judge)
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) BOARD OF PATENT
MURRIEL E. CRAWFORD) APPEALS
Administrative Patent Judge) AND
) INTERFERENCES
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JENNIFER D. BAHR)
Administrative Patent Judge)

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