

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 SHINJI SHIMADA, KAZUAKI NOSE,
ATSUSHI OTA and KEISUKE MIYAIRI

Appeal No. 2006-0906
Application No. 09/424,056

HEARD: April 6, 2006

Before FRANKFORT, MCQUADE and OWENS, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from a rejection of claims 1-6, 10 and 11. Claim 15 has been canceled and claims 7-9 and 12-14 have been withdrawn from consideration by the examiner.

THE INVENTION

The appellants claim a squeezable plastic bottle having deformable portions in its body and handle. Claims 1 and 4 are illustrative:

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1. A squeezable plastic bottle having a longitudinal axis that defines a longitudinal direction of the bottle and a handle that extends in the longitudinal direction between upper and lower end portions of the handle, the handle including a middle portion between the upper and lower end portions, wherein the middle portion of the handle includes a bending deformation portion in the handle that allows the middle portion of the handle to bend radially inwardly towards the longitudinal axis of the body.
4. A squeezable plastic bottle having a longitudinal axis that defines a longitudinal direction of the bottle and comprising a neck, a body including a handle, and a bottom, wherein

 said body comprises an upper body including the handle and a lower body,

 the body is squeeze-deformable by disposing a bending rib in the lower body, and

 the handle extends in the longitudinal direction between upper and lower end portions of the handle, the handle including a middle portion between the upper and lower end portions, the handle including a bending deformation in the middle portion of the handle that allows the middle portion of the handle to bend radially inwardly towards the longitudinal axis of the body.

THE REFERENCES

Goodrich et al. (Goodrich) 3,638,834 Feb. 1, 1972
Pieri Des. 271,746 Dec. 13, 1983
Green et al. (Green) 4,747,519 May 31, 1988
Tobler 5,255,808 Oct. 26, 1993
Collette et al. (Collette) 5,469,612 Nov. 28, 1995

Hiroizumi et al. (JP '734)¹ 60-24734 Feb. 20, 1985
(Japanese published unexamined utility model application)

¹ Citations herein to JP '734, JP '534 and JP '946 are to the English translations thereof which are of record.

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Naoshi (JP '534) 8-324534 Dec. 10, 1996
(Japanese Kokai)

Atsushi et al. (JP 946) 9-254946 Sep. 30, 1997
(Japanese Kokai)

THE REJECTIONS

The claims stand rejected as follows: claims 1-6, 10 and 11 under 35 U.S.C. § 102(b) as anticipated by JP '734; claims 1-3 under 35 U.S.C. § 102(b) as anticipated by Collette; claims 1-5 under 35 U.S.C. § 102(b) as anticipated by JP '946; claims 1-3 under 35 U.S.C. § 103 as obvious over Collette in view of Goodrich; claims 4 and 5 under 35 U.S.C. § 103 as obvious over Collette in view of JP '534; claims 4 and 5 under 35 U.S.C. § 103 as obvious over Collette in view of Goodrich and JP '534; claim 6 under 35 U.S.C. § 103 as obvious over Collette in view of JP '534 and either Green or Pieri; claim 6 under 35 U.S.C. § 103 as obvious over Collette in view of Goodrich, JP '534 and either Green or Pieri; claim 6 under 35 U.S.C. § 103 as obvious over JP '946 in view of either Green or Pieri; claim 10 under 35 U.S.C. § 103 as obvious over JP '946;² and claim 11 under 35 U.S.C. § 103 as obvious over JP '946 in view of Tobler.

² In the statement of the rejection in the examiner' answer, JP '946 is erroneously referred to as JP 2549545 (page 7).

OPINION

We reverse the aforementioned rejections and remand the application to the examiner. We need to address only the independent claims, i.e., claims 1 and 4. The examiner does not rely upon the additional references applied to the dependent claims under 35 U.S.C. § 103 for any disclosure or suggestion that remedies the deficiency in the references applied to the independent claims. Thus, the rejections of dependent claims 2, 3, 5, 6, 10 and 11 are reversed for the reasons given regarding the independent claim from which those claims depend.

*Rejection of claims 1 and 4 under
35 U.S.C. § 102(b) over JP '734*

Claims 1 and 4 require a bottle having a handle including a middle portion between upper and lower portions, wherein the middle portion includes a bending deformation portion that allows the middle portion to bend radially inwardly toward the longitudinal axis of the body of the bottle.

The portion of JP '734 relied upon by the examiner (answer, pages 3-4) is figure 6 which shows a bottle having a handle (9) connected to a body (1) by bellows-like thin sections (9a, 9b) at each end of the handle. The examiner argues that the bellows-like thin sections are in the middle portion because they are intermediate the ends (answer, page 8). As figure 6 shows, the bellows-like thin sections are at the ends of handle 9.

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Consequently, they cannot reasonably be considered to be in the middle portion of the handle. Accordingly, we reverse the rejection under 35 U.S.C. § 102(b) over JP '734.

*Rejection of claim 1 under
35 U.S.C. § 102(b) over Collette*

The examiner argues that the collapsible accordion members (244, 246) at the end of Collette's handle (240) have bending deformations when folded as shown in figure 12, and that when the accordion members are collapsed, portions of the accordion members move radially inwardly toward an axis through the bottle's width direction, which can be considered the longitudinal axis (answer, page 4). The accordion members are at the ends of the handle and, therefore, cannot reasonably be considered to be in the handle's middle portion. Moreover, "longitudinal" means: "**1** : of or relating to length or the lengthwise dimension **2**: placed or running lengthwise". *Webster's New Collegiate Dictionary* 678 (G. & C. Merriam 1973). Hence, an axis through the width of Collette's bottle cannot reasonably be considered the longitudinal axis. For these reasons we reverse the rejection under 35 U.S.C. § 102(b) over Collette.

*Rejection of claims 1 and 4 under
35 U.S.C. § 102(b) over JP '946*

The examiner argues that the cylindrical central portion of the JP '946 bottle between fold lines 21 is a handle, and that the middle portion of the handle has a

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bending deformation portion at concave 17 (answer, pages 4-5). A handle is “a part that is designed esp. to be grasped by the hand”. *Webster’s New Collegiate Dictionary* at 519. The appellants’ specification does not give “handle” a meaning broader than the dictionary definition. Although the JP ‘946 bottle is a hand-held bottle, the cylindrical body is designed for holding the contents of the bottle, and is not designed especially for being grasped by the hand. The cylindrical body, therefore, is not a handle. Consequently, we reverse the rejection under 35 U.S.C. § 102(b) over JP ‘946.

*Rejection of claim 1 under 35 U.S.C. § 103
over Collette in view of Goodrich*

Goodrich discloses a collapsible, throwaway polyethylene milk container for dispensers of the type commonly used in restaurants (col. 1, lines 5-9). The container has a handle (37), preferably about 1/8 inch thick, that is foldable along light score lines 38 to be parallel to the top of the container (col. 3, lines 15-18).

The examiner argues that it would have been obvious to one of ordinary skill in the art to include Goodrich’s score lines in Collette’s handle to make the handle easier to bend (answer, page 5). Any bending of the handles of both Collette and Goodrich takes place at the ends of the handle. There is no bending deformation portion that allows the middle portion of the handle to bend radially inwardly. We therefore reverse the rejection under 35 U.S.C. § 103 over Collette in view of Goodrich.

*Rejections of claim 4 under 35 U.S.C. § 103
over Collette in view of JP ‘534, and over
Collette in view of Goodrich and JP ‘534*

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JP '534 discloses a plastic bottle that can be folded flatly (page 1). The bottle's body has a hollow (7) with a bellows-like wall surface (8) (page 2; figure 5). The examiner argues that it would have been obvious to one of ordinary skill in the art to use the JP '534 hollow in Collette's bottle, as modified according to Goodrich, to make the bottle collapsible (answer, pages 5-6). Even if that modification to Collette's bottle were made, the bottle would lack the handle as discussed above regarding the rejection of claim 1 under 35 U.S.C. § 102(b) over Collette. We therefore reverse the rejection under 35 U.S.C. § 103 over Collette in view of JP '534 and, for the additional reason given above regarding the rejection of claim 1 over Collette in view of Goodrich, we reverse the rejection under 35 U.S.C. § 103 over Collette in view of Goodrich and JP '534.

Remand

Figure 4 of JP '734 shows a handle (6) having, in its middle portion, a bending portion (6b) that permits the handle to be deformed from the bent shape in figure 4 to the straight shape in figure 5. We remand the application for the examiner to consider rejecting the appellants' claims over figure 4 of JP '734, alone or in combination with other prior art.

DECISION

The rejections of claims 1-6, 10 and 11 under 35 U.S.C. § 102(b) over JP '734, claims 1-3 under 35 U.S.C. § 102(b) over Collette, claims 1-5 under 35 U.S.C. § 102(b) over JP '946, claims 1-3 under 35 U.S.C. § 103 over Collette in view of Goodrich, claims

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4 and 5 under 35 U.S.C. § 103 over Collette in view of JP '534, claims 4 and 5 under 35 U.S.C. § 103 over Collette in view of Goodrich and JP '534, claim 6 under 35 U.S.C. § 103 over Collette in view of JP '534 and either Green or Pieri, claim 6 under 35 U.S.C. § 103 over Collette in view of Goodrich, JP '534 and either Green or Pieri, claim 6 under 35 U.S.C. § 103 over JP '946 in view of either Green or Pieri, claim 10 under 35 U.S.C. § 103 over JP '946, and claim 11 under 35 U.S.C. § 103 over JP '946 in view of Tobler, are reversed. The application is remanded to the examiner.

REVERSED and REMANDED

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