

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 STEFAN VON DER HEIDE
and
MARTIN PRESCHE

Appeal No. 2006-1629
Application No. 10/104,569

ON BRIEF

Before WALTZ, JEFFREY T. SMITH and FRANKLIN, *Administrative Patent Judges*.

JEFFREY T. SMITH, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal from the Examiner's final rejection of claims 4, 7, and 9 to 14, all of the pending claims. We have jurisdiction under 35 U.S.C. § 134.

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CITATION OF REFERENCES

The Examiner relies on the following references in rejecting the appealed claims:

Reichinger (PCT International Application)	WO 99/54229	Oct. 28, 1999
Dunn et al. (Dunn) (PCT International Application)	WO 96/36545	Nov. 21, 1996

Claims 4, 7, and 9 to 14 stand rejected under 35 U.S.C. § 103(a) over the combined teachings of Reichinger and Dunn. (Answer, pages 3 to 6).

Rather than reiterate the conflicting viewpoints advanced by the Examiner and the Appellants regarding the above-noted rejection, we make reference to the Answer mailed September 21, 2005 for the Examiner's reasoning in support of the rejection and to the Briefs filed August 1, 2005 and November 25, 2005 for Appellants' arguments thereagainst.

OPINION

Appellants' invention relates to an insert for insertion into a container for liquids under pressure. The insert comprises a component chamber and a gas-filled pressure chamber. The component chamber is completely surrounded in a radial direction by the pressure chamber. The claimed invention also specifies an outer bore that is located at a position farthest removed from the median point or median access point in an outer wall of the insert number. Representative claim 14, as presented in the Brief, is reproduced below:

14. An insert for insertion into a container for liquids under pressure, the insert comprising an elongate insert member configured to be freely moveable in the container, the insert member defining a component chamber for receiving an active substance, a gas-filled pressure chamber for effecting an introduction of the active substance into the liquid when the container is opened, wherein the component chamber is completely surrounded in a radial direction by the pressure chamber, wherein a pressure of the pressure chamber is in an

equilibrium with the pressure of the container through a small outer bore in the pressure chamber, wherein, after opening the container, the resulting relative overpressure in the pressure chamber in relation to the decreased pressure in the container effects an opening of the component chamber, wherein the insert member has in the axial direction an identical cross-section over the length of the insert member and wherein in the radial direction the cross-section of the insert member has a median point or a median point axis moved to one side of the insert member, wherein the cross-section of the insert member is drop-shaped or egg-shaped, wherein the outer bore is located at a location farthest removed from the median point or median point axis in an outer wall of the insert member, wherein the component chamber is moved within the pressure chamber toward an end of the pressure chamber opposite the outer bore to such an extent that the insert which is freely moveable within the container on a surface of the liquid assumes a stable floating position, so that the outer bore is always located above the liquid level and causes an optimized pressure equalization of the pressure chamber and the pressure the container, further including a lid, the component chamber having a wall and one end of the wall engages an annular groove of the lid when the insert is closed.

Upon careful review of the respective positions advanced by the Appellants and the Examiner, we affirm the rejection of claims 4, 7, and 9 to 14 for the reasons expressed in the Answer, and we add the following for emphasis.

Appellants (Brief, page 9) argue that unlike the prior art, in the present invention the component chamber moves freely within the pressure chamber towards the end of the pressure chamber opposite the outer bore. This argument is not persuasive because the invention of Reichinger discloses an outer bore (8) of a gas-containing compartment (7) that includes the component-containing chamber (6) wherein the inner walls of the compartment chamber do not extend to the outer walls of the second component chamber. (See page 6, lines 16 to 31). As recognized by Appellants, the insert of Reichinger does not necessarily have to be attached to the bottom of the container. (Brief, page 9). Consequently, when the beverage insert is not attached to the bottom of the surrounding beverage container and when the inner walls of the component

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chamber are completely surrounded by the gas chamber (which includes an outer bore), the structural requirements of the present invention are met by the cited reference.

Appellants' arguments regarding the outer bore always being located above the liquid level have been noted. These arguments are not persuasive because the claimed invention is directed to the insert. The structural components of the insert of the present invention and that of Reichinger are similar. Appellants have not explained how this utility distinguishes the insert of Reichinger (that contains a bore) from the claimed invention. Reichinger discloses that the bottom of the two-component chamber can be in the shape of an outward extending dome. (See page 6). When the component chamber of Reichinger has this arrangement the bore would be at the opposite end of the above-recognized dome. According to the examiner, Dunn establishes that a spherical shaped bottom allows an insert to upright itself in a liquid container. (Note Answer, pages 5 and 6). Thus, Appellants have not established a structural difference between the cited references and the claimed invention.

Appellants' arguments regarding the characteristics of the axial direction and radial direction have been considered, but are not persuasive of patentability. The appellants have not identified the specific orientation of the egg-shaped or drop-shaped insert that distinguishes the orientation from the cited reference. That is, the insert disclosed by Reichinger when comprising the dome-shaped bottom section can be oriented to meet Appellants' described bore location and radial and axial properties.

Appellants present similar arguments regarding the shape of the claimed insert member. Appellants particularly reiterate their position that the cited references disclose cylindrical

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inserts. (Reply Brief, page 3). These arguments are not persuasive for the reasons set forth above and in the Answer. Appellants have not considered the features of the cited references discussed above. In particular, the Reichinger reference discloses that the bottom portion can be in the form of an outward extending dome, and that the interior component chamber is not attached to the surrounding gas containing chamber.

Based on our consideration of the totality of the record before us, having evaluated the prima facie case of obviousness in view of Appellants' arguments, we determine that the Examiner has established a prima facie case of obviousness that has not been adequately rebutted by Appellants. Accordingly, the Examiner's rejection under 35 U.S.C. § 103 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

THOMAS A. WALTZ)	
Administrative Patent Judge)	
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JEFFREY T. SMITH)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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BEVERLY A. FRANKLIN)	
Administrative Patent Judge)	

JTS:clm

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