

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

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FLOYD H. BOATWRIGHT, RICHARD M. LOWMAN, and
ALAN D. WILLIAMS

Appeal No. 2006-1706
Application No. 10/216,111
Technology Center 3700

ON BRIEF

Before OWENS, BAHR, and NAPPI, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from a rejection of claims 8-14, 23 and 24, which are all of the pending claims.

THE INVENTION

The appellants claim a one-piece, polymer overcap for use with a tubular composite container for vacuum packaging products. Claim 8 is illustrative:

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8. A one-piece, polymer overcap for a tubular composite container having at least one flexible end closure attached to an end thereof and being of a type in which products can be vacuum packaged, the one-piece, polymer overcap comprising:

a base portion having inner and outer surfaces and defining an outer perimeter;

a skirt extending circumferentially about said outer perimeter of said base portion; and

a bias member extending away from said inner surface of said base portion, said bias member being adapted for biasing the at least one flexible end closure towards the products before a vacuum is applied.

THE REFERENCE

Beery 1,654,914 Jan. 3, 1928

THE REJECTION

Claims 8-14, 23 and 24 stand rejected under 35 U.S.C. § 103 as being unpatentable over Beery.

OPINION

We affirm the aforementioned rejection.

The appellants state that the claims stand or fall together (brief, page 4). We therefore limit our discussion to one claim, i.e., claim 8. See 37 CFR 41.37(c) (1) (vii) (2004).

Beery discloses a jar having a screw cap (27) that forces a presser member (1) downwardly to push solid food products below fluid in the jar to prevent molding of the food products (page 1, lines 1-8 and 78-86).

The appellants argue that Beery's screw cap is made of metal and that the piece that extends downwardly in the center

portion of the cap and pushes against the presser member (figure 1) is made of glass (brief, page 5). Beery, however, does not disclose the material of construction of any part of the cap. The appellants argue that the downwardly extending member is cross hatched in a fashion that conventionally signifies glass, see *id.*, but the appellants have provided no support for this argument.

The appellants argue that "[t]he cap **27** itself does not include any portion capable of biasing a membrane-type closure applied to the jar, since the base portion or top panel of the cap is spaced well above the top rim of the jar where the membrane would be attached if it were present, and includes only a slight dimple that would not function as a bias member" (brief, page 5). The appellants further argue that "if a flexible end closure were sealed to the top of Beery's jar, the screw cap 27 and glass disk would not engage the flexible end closure, and the presser **1** would not be usable because it extends too far below the top of the jar. Thus, even if the screw cap and disk, or the cap, disk and presser, were made of one piece, the resulting construction would not function as the claimed overcap" (brief, page 6). Those arguments pertain to the combination of Beery's jar and cap, whereas the appellants claim only a cap. The appellants' claims do not limit the

container with which the jar is used other than, as argued by the appellants (brief, pages 7-8), to require that the container is a tubular composite container that has a flexible end closure and can be used to vacuum package products. Beery's cap can be used with other tubular jars, including a composite jar having a flexible vacuum seal at the top of a neck that is higher than the lowest part of the cap's downwardly extending central portion when the cap is fastened to the jar, such that the downwardly extending portion exerts a biasing force on the vacuum seal. Also, the cap can be used with a jar having a vacuum seal that is convex upwardly such that the downwardly extending portion biases the vacuum seal.

The appellants point out that "Beery does not teach a one-piece, polymer overcap for a tubular composite container having at least one flexible end closure attached to an end thereof and being of a type in which products can be vacuum packaged, as recited by the pending claims" (brief, page 5). The appellants set forth (brief, page 6) the modifications to Berry argued by the examiner, but the appellants do not address the examiner's rationale (answer, pages 3-4) regarding those modifications and explain why the examiner's conclusion that Berry would have fairly suggested them to one of ordinary skill in the art is erroneous.

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For the above reasons we are not convinced of reversible error in the examiner's rejection.

DECISION

The rejection of claims 8-14, 23 and 24 under 35 U.S.C. § 103 over Beery is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

TERRY J. OWENS)
Administrative Patent Judge)
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JENNIFER D. BAHR) AND
Administrative Patent Judge) INTERFERENCES
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ROBERT E. NAPPI)
Administrative Patent Judge)

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ALSTON & BIRD LLP
BANK OF AMERICA PLAZA
101 SOUTH TRYON STREET, SUITE 4000
CHARLOTTE, NC 28280-4000

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