

1 The opinion in support of the decision being entered today was *not* written
2 for publication and is *not* binding precedent of the Board
3

4 UNITED STATES PATENT AND TRADEMARK OFFICE
5

6
7 BEFORE THE BOARD OF PATENT APPEALS
8 AND INTERFERENCES
9

10
11 *Ex parte* CHARLES L. WILLIAMS
12

13 Appeal 2007-0135
14 Application 10/138,088
15 Technology Center 3700
16
17

18 Decided: April 23, 2007
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22 *Before:* JENNIFER D. BAHR, STUART S. LEVY, and ANTON W.
23 FETTING, *Administrative Patent Judges.*
24

25 LEVY, *Administrative Patent Judge.*
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27
28 DECISION ON APPEAL
29

30 STATEMENT OF CASE

31 Appellant appeals under 35 U.S.C. § 134 (2002) from a final rejection
32 of claims 1 to 42. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

33 Appellant invented a closure for a beverage container. (Specification
34 1). The closure comprises a cap and a monolithic cap liner coupled to an
35 interior surface of the cap. The cap liner includes concentric seal rings to
36 establish a seal with the rim of the beverage container. (Specification 2).

1 Claim 1 is representative of the claims under appeal and reads as
2 follows:

3 1. A beverage container closure in combination with a beverage
4 container comprising
5 a beverage container including a mouth having an annular rim
6 and a top surface,
7 a cap including a top wall and an annular skirt depending from
8 the top wall,
9 a monolithic cap liner including a mount coupled to the top
10 wall, a first seal ring having a crest arranged to depend from the mount by a
11 certain distance, and a second outermost seal ring having a crest arranged to
12 depend from the mount by a lesser distance and surround the first seal ring,
13 and
14 the first and second seal rings spaced inwardly from the annular
15 skirt at a distance that provides compressive sealing of the crests on the top
16 surface of the beverage container and wherein the first seal ring engages the
17 top surface of the beverage container and is compressed by contact with the
18 top surface prior to the second seal ring contacting the top surface of the
19 beverage container.

20

21 The Examiner rejected claims 1 and 17-25 under 35 U.S.C. § 103(a)
22 (2004) as being unpatentable over Crisci in view of Guinet and Luch.

23 The Examiner rejected claims 2-16 and 26-42 under 35 U.S.C.

1 § 103(a) as being unpatentable over Crisci in view of Guinet, Luch, and
2 Ohmi. The rejection of claims 3-5 under 35 U.S.C. § 112(second paragraph)
3 has been withdrawn by the Examiner (Answer 2).
4

5 The prior art relied upon by the Examiner in rejecting the claims on
6 appeal is:

7 Guinet	US 2,768,762	Oct. 30, 1956
8 Ohmi	US 4,415,096	Nov. 15, 1983
9 Crisci	US 4,658,977	Apr. 21, 1987
10 Luch	US 5,415,306	May 16, 1995

11
12
13 We begin with the rejection of claims 1 and 17-25 under 35 U.S.C.
14 § 103(a) as being unpatentable over Crisci in view of Guinet and Luch.

15 With respect to claim 1, Appellant contends that in figures 6-8,
16 sealing flanges 35 engage inclined annular flange which may be tapered, and
17 that Crisci shows in figures 7 and 8 that the flanges 35 contact sloping flange
18 at the same time. (Br. 7). Appellant contends (*id.*), that there is no teaching
19 in Crisci, Guinet or Luch that the first seal ring is compressed prior to the
20 second seal ring, as required by claim 1. Appellant further contends that it
21 would not have been obvious to apply the closure of Crisci to a container
22 having no inclination as taught by Luch. (Br. 8).

23 With respect to the rejection of claims 2-16 and 26-42, Appellant
24 contends, with respect to independent claim 26, that there is no disclosure in
25 Crisci, Guinet, Luch, and Ohmi of the first seal ring engaging the top surface
26 of the beverage container and being compressed by contact with the top
27 surface of the beverage container prior to the second seal ring contacting the

1 top surface of the beverage container. Appellant contends that the
2 Examiner's reasoning has no basis in the references being combined, and
3 that the rejection was constructed only after a hindsight review of
4 Appellant's disclosure. (Br. 19-21). With respect to independent claim 34,
5 Appellant asserts that there is no disclosure in Crisci, Guinet, Luch, and
6 Ohmi of the first seal being compressed prior to the second seal contacting
7 the top surface of the beverage container. (Br. 23-25).

8 Appellant's contentions regarding the dependent claims are largely
9 inapplicable and moot, for the reasons which follow.

10

11 We affirm-in-part, remand, and enter a new ground of rejection under
12 the provisions of 37 C.F.R. § 41.50(b).

13

14

ISSUE

15 Has Appellant shown that the Examiner erred in rejecting claims 1
16 and 17-25 under 35 U.S.C. § 103(a) as being unpatentable over the
17 combined teachings and suggestions of Crisci, Guinet, and Luch? The issue,
18 with respect to independent claim 1, turns on whether the references would
19 have suggested the first seal contacting and being compressed by the top
20 surface of the beverage container prior to the second seal contacting the top
21 surface of the beverage container. With respect to the rejection of claims
22 2-16 and 26-42, the issue is whether Appellant has shown that the examiner
23 erred in rejecting these claims under 35 U.S.C. § 103(a) as being obvious
24 over the combined teachings of Crisci, Guinet, Luch, and Ohmi. With
25 respect to independent claims 26 and 34, the issue turns on whether the

1 combined teachings and suggestions of Crisci, Guinet, Luch, and Ohmi
2 would have suggested the first seal contacting and being compressed by the
3 top surface of the beverage container prior to the second seal contacting the
4 top surface of the beverage container. With respect to independent claims
5 26 and 34, the issue does not additionally turn on whether the prior art would
6 have suggested the inner and outer webs as advanced by Appellant (Br. 20,
7 21, and 23-25), as these limitations are not present in independent claims 26
8 and 34.

9
10 FINDINGS OF FACT

- 11 1. Appellant invented a closure for a beverage container. The closure
12 includes a liner coupled to the inside of the cap of the closure
13 member. The liner includes concentric sealing rings adapted to
14 engage the rim of the beverage container. (Specification 2). As
15 shown in Fig. 6, inner ring 21 extends to a lower height than outer
16 ring 22.
- 17 2. Figure 6 of Crisci shows several depending sealing flanges 35
18 which engage the top surface of the inclined annular flange 36,
19 which may be tapered. Flexible sealing flanges 35 are of different
20 diameters and depend from the top portion 28 of the closure in
21 different lengths. (Crisci, col. 4, ll. 41-53).
- 22 3. From this disclosure of Crisci, we agree with Appellant (Reply
23 Br. 2) that, although the flange 36 of Crisci may not be tapered, it
24 is always inclined, and the flanges 35 contact the inclined flange
25 36 at the same time. In Crisci, the sealing flanges protrude from
26 the cap for the beverage container. (Crisci, Fig. 6).

- 1 4. Guinet discloses in Fig. 1, a separate beverage closure cap 10 and a
2 sealing member 1 that includes depending lips 4-6 that follow the
3 top wall surface 7 of the beverage container 3. (Guinet, col. 1, ll.
4 66-70).
- 5 5. In Figs. 4-5 of Guinet, alternate embodiments are shown where the
6 cap seal does not include a separate sealing member, but rather, the
7 depending lips 22, 23 (Guinet, Fig. 4) and 36-38 (Guinet, Fig. 5)
8 extend directly from the cap. (Guinet, col. 2, ll. 30-33 and 44-47).
- 9 6. Guinet additionally discloses that in Fig. 5, the outer or free edges
10 of the lips are flat to contour to the (flat) surface 33 of the beverage
11 container. (Guinet, col. 2, ll. 48-51).
- 12 7. From the disclosure of Guinet, we find that the cap can either
13 contain the sealing projections, or the sealing projections can be a
14 separate element for use with the cap. However, we do not find
15 that in Guinet, the inner seal member engages the top surface or
16 rim of the beverage container before the outer seal member(s).
- 17 8. Luch discloses (Luch, Fig. 2) a cap 21 having a depending seal
18 member 61 which contacts, through an adhesive, the horizontal
19 flange 24 of cap 21.
- 20 9. Ohmi discloses a closure 4 for a container. The closure includes a
21 synthetic resin liner 10 that is press molded to the inner surface of
22 metal shell 4. (Ohmi, col. 2, l. 64 to col. 3, l. 1).
- 23 10. As shown in Fig. 2, liner 10 includes two circular projecting rims
24 12 and 14. As shown in Fig. 5, the projecting rim 14 contacts the
25 top surface 24b of the container 18. As shown in Figs. 5 and 6,

1 seal 14 is compressed before seal 12 contacts top surface 24b.
2 (Ohmi, col. 3, lines 12-18, col. 3, l. 65-col. 4, l. 3, and col. 4,
3 l. 56–col. 5, l. 12). Figure 7 of Ohmi shows frusto-conical rim 113
4 and flat crests on rims 112 and 114, as well as a flat top surface of
5 container 118.

6 11. Ohmi additionally discloses that in the press molding process, a
7 high pressure polyethylene was melted at 220° C., and introduced
8 to the underside of the metal shell, which was heated to
9 approximately 180° C. and was pressmolded into a liner having a
10 shape indicated in Ohmi, Figs. 1 and 2. (Ohmi, col. 6, l. 56 – col.
11 7, l. 1). The dimensions of the liner are indicated in Ohmi (col. 7,
12 ll. 4-11).

13 12. From the description in Ohmi, we find that the pressmolding
14 operation adhered the liner to the metal shell, due to the melting,
15 heating and pressure applied.

17 PRINCIPLES OF LAW

18 On appeal, Appellant bears the burden of showing that the Examiner
19 has not established a legally sufficient basis for combining the teachings of
20 the applied prior art. Appellant may sustain this burden by showing that,
21 where the Examiner relies on a combination of disclosures, the Examiner
22 failed to provide sufficient evidence to show that one having ordinary skill
23 in the art would have done what Appellant did. *United States v. Adams*, 383
24 U.S. 39 (1966); *In re Kahn*, 441 F.3d 977, 987-988, 78 USPQ2d 1329, 1336
25 (Fed. Cir. 2006); *DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H.*

1 *Patrick, Co.*, 464 F.3d 1356, 1360-1361, 80 USPQ2d 1641, 1645 (Fed. Cir.
2 2006). The mere fact that all the claimed elements or steps appear in the
3 prior art is not per se sufficient to establish that it would have been obvious
4 to combine those elements. *United States v. Adams, id.; Smith Industries*
5 *Medical Systems, Inc. v. Vital Signs, Inc.*, 183 F.3d 1347, 1356, 51 USPQ2d
6 1415, 1420 (Fed. Cir. 1999).

7
8 ANALYSIS

9 From the description in Guinet that the cap can integrally contain the
10 depending seal members or can have a liner that includes the depending seal
11 members (facts 5 and 7) we find that an artisan would have been motivated
12 to replace the cap with integral depending seal members of Crisci (Fig. 6)
13 with a cap and separate seal member. In addition, we note that the Examiner
14 has relied upon Luch for a flat top surface of the container. However,
15 independent claim 1 does not recite that the top surface of the container is
16 flat. In addition, because Crisci describes extending seal members 35 of
17 different lengths which engage the inclined flange 36 at the same time, and
18 Guinet also describes that a flat top surface is used with flat edged lips 22,
19 23, and 35-37 for the purpose of conforming to the shape of the flat wall or
20 curved shape of the bottle, we find that an artisan would not have been
21 motivated to provide Crisci with a flat top surface of the beverage container
22 for the purpose of having the inner seal member contact and compress
23 against the top surface of the beverage container prior to the outer seal
24 contacting the top surface of the beverage container. Accordingly, we agree
25 with Appellant (Br. 8) that it would not have been obvious to have provided
26 Crisci with a flat top surface, as disclosed by Luch, such that the inner seal

1 would contact the top surface of the beverage container before the outer seal
2 contacted the top surface of the beverage container. It follows that we agree
3 with Appellant (Br. 7) that the teachings and suggestions of Crisci, Guinet,
4 and Luch would not have suggested the invention of claim 1. Therefore, we
5 cannot sustain the rejection of claims 1 and 17-25.

6 We turn next to the rejection of claims 2-16 and 26-42 under 35
7 U.S.C. § 103(a) as being unpatentable over Crisci in view of Luch, Guinet,
8 and Ohmi. We turn first to independent claims 26 and 34. At the outset, we
9 make reference to our findings, *supra*, with respect to the teachings and
10 suggestions of Crisci, Guinet, and Luch. Turning to Ohmi, we find from
11 facts 11-12, that Ohmi describes adhering the liner to the cap. Accordingly,
12 we are not persuaded by Appellant's assertion (Br. 6) that in Ohmi, the liner
13 appears, at best, to be juxtaposed to the cap. In addition, we find from fact
14 10 that in Ohmi, Fig. 2 shows inner seal or rim 14 and outer seal or rim 12
15 do depend from liner 10. In addition, inner seal 14 extends below the
16 bottom of outer seal 12 and contacts top surface 24b of the beverage
17 container 18 and is compressed before seal member 12 contacts the top
18 surface of the beverage container. Thus, we find that Ohmi meets the
19 limitations of claims 26 and 34, and we consider the other references to be
20 surplusage.

21 We turn next to claim 2. Appellant's contentions are directed to why
22 Appellant considers it unobvious to modify Crisci. We will sustain the
23 rejection of claim 2 because the liner 10 of Ohmi, which is adhered to the
24 top wall of the cap, is in the form of a web that terminates at the first seal

1 ring and causes the first seal ring to surround the web; see Fig. 1 of Ohmi
2 and Figs. 10-11 of Appellant.

3 We turn next to claim 3. We will not sustain the rejection of claim 3
4 because there is no evidence in the record to establish the obviousness of
5 providing Ohmi with a central dome in the cap and liner. The domed
6 portion, unlabeled in the top portion 28 of Crisci would not have suggested a
7 dome in both the top and the liner, as recited in claim 3.

8 We turn next to claims 4 and 5. We will not sustain the rejection of
9 these claims due to their dependency from claim 3.

10 We turn next to claim 9. We will sustain the rejection of claim 9
11 because the depending sealing rims 12 and 14 of Ohmi meet the claimed
12 profile heights, as shown in Fig. 2 of Ohmi.

13 We turn next to claim 13. We will sustain the rejection of claim 13
14 because liner 10 of Ohmi extends between the two seal rings 12, 14. See
15 Figs. 1-2 of Ohmi.

16 We turn next to claim 16. We will sustain the rejection of claim 16
17 because the liner 10 of Ohmi meets the claimed outer web. See Fig. 1 of
18 Ohmi.

19 We turn next to claim 27. In Ohmi, we find that top surface 24b is not
20 flat. However, we find that in Figs. 8 and 9 of Ohmi, the top surface of the
21 container is flat, at least in the central portion. Accordingly, we will sustain
22 the rejection of claim 27.

23 We turn next to the rejection of claim 28. We will sustain the
24 rejection of claim 28 because the rim 114 of Ohmi is of a frusto-conical
25 shape, as illustrated in Figs. 7-8 where rim 114 will contact the top surface

1 of 118 and be compressed before rim 112 will contact the top surface of the
2 container 118.

3 We turn next to claim 35. We will sustain the rejection of claim 35
4 because the rims 12, 14 of Ohmi meet the claimed merging surfaces between
5 the two rims.

6 We turn next to claim 36. We will sustain the rejection of claim 36
7 because Ohmi, in Figs. 7 and 8, illustrates rim 114 to be frusto-conical.

8 We turn next to claim 40. We will sustain the rejection of claim 40
9 because in Ohmi, the ends of the rims 112, 114 are flat; see Fig. 7.

10 In our sustaining of the claims listed, *supra*, we have relied upon the
11 prior art in a manner that is completely different than the Examiner, making
12 Appellant's remarks inapplicable and moot. Accordingly, we designate our
13 affirmance of these claims as a New Ground of Rejection under the
14 provisions of 37 C.F.R § 41.50(b).

15 We turn next to claims 6-8, 10, 11, 12, 14-15, 29-33, 37-39, 41,
16 and 42. We will reverse the rejection of these claims because the examiner
17 has failed to specifically address the limitations of these claims. None of
18 these claims have been referred to by their claim number in an attempt to
19 point out where their limitations are found or suggested by the prior art. Nor
20 have any of these claims, which Appellant has argued separately, been
21 specifically addressed, in either the rejection or the Response to Arguments
22 section of the Answer. The Examiner's rejection and response to Appellant's
23 arguments is a generic argument to the effect that the angles, shapes, and
24 specified heights would all have been obvious to an artisan as a design

1 choice expedient, since Appellant has not disclosed that these limitations
2 have solved any stated problem.

3 We are in agreement with Appellant that the Examiner's
4 conclusionary statements are not a substitute for evidence in the record. We
5 Remand this application for the Examiner to separately address each of the
6 above listed claims, by claim number, and provide an explanation as to why
7 the differences between the prior art and the claimed invention would have
8 been obvious to an artisan. If the Examiner considers the claimed sizes,
9 shapes, angles, etc. to be within the skill of an artisan, or considers the
10 claimed sizes, shapes, angles, etc. to be result dependent variables that are
11 within the level of skill of an artisan, (*see In re Aller*, 220 F.2d 454, 105
12 USPQ 233 (CCPA 1955) and *In re Boesch*, 617 F.2d 272, 205 USPQ 215
13 (CCPA 1980)), then the Examiner should individually address the language
14 in each claim and articulate reasons why the examiner considers each claim
15 to have been obvious.

16 New ground of Rejection of claim 1 under 35 U.S.C. § 102(b) as
17 being anticipated by Ohmi, under the provisions of 37 C.F.R. § 41.50(b).

18 We reject claim 1 in view of Ohmi's description of having inner and
19 outer extending sealing rims 12, 14, which depend from liner 10 of cap 4,
20 and in which rim 14 extends below the crest of rim 12, and contacts and is
21 compressed by the top surface 24b of container 18, prior to the rim 12
22 contacting top surface 24b (facts 9 and 10).

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Appeal 2007-0135
Application 10/138,088

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