

The opinion in support of the decision being entered today
is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES H. BARRETT, JR.

Appeal 2007-2203
Application 10/311,659
Technology Center 1700

Decided: September 6, 2007

Before BRADLEY R. GARRIS, PETER F. KRATZ, and
LINDA M. GAUDETTE, *Administrative Patent Judges*.

GAUDETTE, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 28-36, the only claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

The invention relates to vent cap for a battery cell cover which prevents entry of contaminants while minimizing loss of electrolyte.

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Specification 2, l. 26-p. 3, l. 2. Claim 28 is illustrative of the invention and is reproduced below:

28. A battery cell cover and cap assembly comprising:
- a battery cell cover having at least one aperture formed therein;
 - a cap for aperture of said cover; and
 - a hinge for pivotally interconnecting said cap directly to said cell cover for selectively covering and uncovering the aperture of said cover.

The Examiner relies on the following prior art references to show unpatentability:

Krabatsch	DE 33 30 823 A1	Mar. 1, 1984
Shestok	US 4,778,735	Oct. 18, 1988
Francisco	US 5,278,003	Jan. 11, 1994

- The Examiner made the following rejections:
1. Claim 28 under 35 U.S.C. § 102(b) as anticipated by Francisco.
 2. Claims 29 and 30 under 35 U.S.C. § 103 as unpatentable over Francisco.
 3. Claims 28 and 31-34 under 35 U.S.C. § 102(b) as anticipated by Krabatsch.
 4. Claims 35 and 36 under 35 U.S.C. § 103 as unpatentable over Krabatsch in view of Shestok.

I. REJECTIONS BASED ON FRANCISCO – Claims 28-30

Issue

Appellant asserts that Francisco's cap is not connected to the battery cell cover (the primary cover), but is mounted in a secondary cover. Br. 10.

Appellant thus contends that Francisco fails to disclose or suggest the claim limitation of a battery cell cover and cap assembly wherein the cap is hingedly connected *directly* to the battery cell cover. Br. 10. The Examiner contends that the combination of Francisco's primary and secondary covers is properly characterized as the claimed "battery cell cover" because they are securely engaged with each other and cover the battery container. Answer 6-7. Thus, the issue for us to determine is whether the claim language "battery cell cover" reads on the combination of Francisco's primary and secondary covers.

Relevant Findings of Fact

- 1) Francisco discloses a cover assembly for maintenance-free lead-acid batteries.
- 2) The cover assembly comprises "a primary cover generally designated 50 having an upper flat portion or raised platform 1 with rims or tabs 2 for securing a secondary cover 60." Col. 2, ll. 54-57.
- 3) A gas condensation chamber base 85 is located on the primary cover 50. Col. 3, ll. 9-11. The gas condensation chamber base 85 receives and secures the gas condensation chamber housing 80. Col. 3, ll. 14-16.
- 4) Six circular chambers 23 are arranged in series across the gas condensation chamber base 85. Col. 3, ll. 23-24. The chambers 23 are positioned over respective cells of the battery. Col. 3, ll. 28-29. Each chamber 23 is covered by a removable plug 26. Col. 3, l. 32.
- 5) The secondary cover 60 includes stops 60b which engage the rims or tabs 2 of the primary cover 50. Col. 3, ll. 52-54. The lower edge of

the secondary cover 60 engages a recess or groove 16 in the top surface of the primary cover 50. Col. 3, ll. 57-59. The secondary cover 60 is also locked to the housing 80. Col. 3, ll. 49-52. “Because of the unique securing arrangement of the secondary cover 60 to the primary cover 50 and the gas condensation chamber housing 80, the removal of the secondary cover 60 is not possible without causing damage to either the rims 2, 14 or the secondary cover 60.” Col. 4, ll. 12-17.

- 6) Secondary cover 60 includes a lid 22 which pivots on a crease hinge 31. Col. 3, ll. 62-65. “Lid 22 permits access to the six plugs 26 in the chamber housing 80, to check the electrolyte level in each battery cell.” Col. 4, ll. 6-8. Lid 22 may be reclosed and held in a closed position. Col. 4, ll. 1-2.

Analysis and Conclusions

During prosecution claims are given their broadest reasonable construction “in light of the specification as it would be interpreted by one of ordinary skill in the art.” *In re Am. Acad. Of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364, 70 USPQ2d 1827, 1830 (Fed. Cir. 2004). The claims, as drafted, broadly recite “a battery cell cover.” We are in agreement with the Examiner that the plain meaning of the claim language reads on a cover having a single, as well as a multi-piece construction. Moreover, as noted by the Examiner, Francisco’s primary and secondary covers are securely engaged so as to form a single cover structure. Finding of Fact 5. Appellant has not explained why a narrower claim construction is warranted. Nor do we find any basis in the Specification for limiting the battery cell cover to a single piece construction. Thus, we are in agreement with the Examiner that claim 28 reads on Francisco’s battery cover assembly.

Accordingly, we affirm the rejection of claim 28 under 35 U.S.C. § 102(b) as anticipated by Francisco. Because Appellant has not presented any additional substantive arguments with respect to claims 29 and 30 (Br. 11), we also affirm the rejection of claims 29 and 30 under 35 U.S.C. § 103 as unpatentable over Francisco for the reasons stated in the Examiner's Answer.

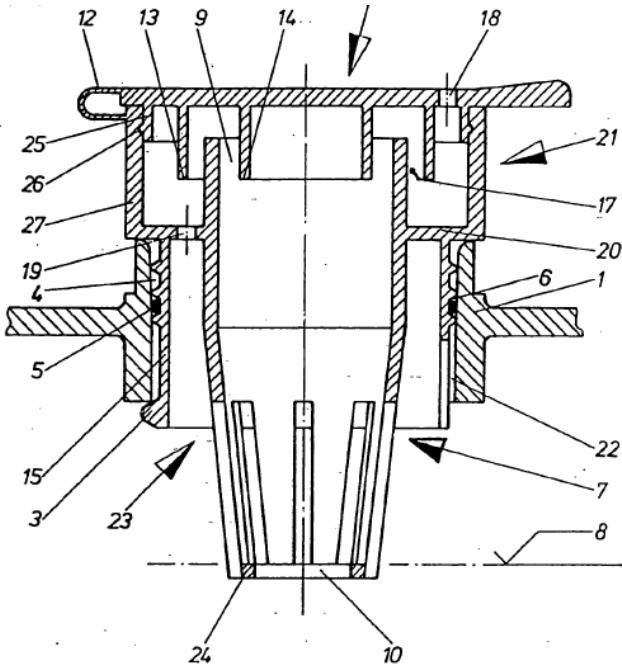
II. REJECTIONS BASED ON KRABATSCH – Claims 28 & 31-36

Issue

Appellant asserts that Krabatsch's cap is connected to an insert sleeve, and is not connected to the battery cell cover. Br. 11. Appellant thus contends that Krabatsch fails to disclose or suggest the claim limitation of a battery cell cover and cap assembly wherein the cap is hingedly connected directly to the battery cell cover. Br. 1. The Examiner contends that the combination of Krabatsch's insertion part and cell cover is properly characterized as the claimed battery cell cover because the insertion part is integrated with the cell cover. Answer 7. Thus, the issue for us to determine is whether the claim language "battery cell cover" reads on Krabatch's two-part structure (i.e., insert and cover).

Relevant Findings Of Fact

- 7) Krabatsch discloses a plug for a lead acid battery cell having an integral hinged cap and concentric tubular parts.
- 8) Figure 1 of Krabatsch is shown below:



Krabatsch Figure 1 shows a battery cell cover 1 having an insert 21 extending through the cover 1 and locked thereto. Abstract. Insert 21 includes a filler tube 23 for filling the battery cell. Abstract. A hinged cap 11 covers filler tube 23. Cap 11 is integrally connected to the insert 21 and locked in place by a snap action with the top of the insert. Abstract.

ANALYSIS AND CONCLUSIONS

As noted above, we interpret the language “a battery cell cover” as reading on a cover having a single, as well as a multi-piece construction. Thus, we are in agreement with the Examiner that the claimed cover reads on Krabatsch’s combined cover 1 and insert 21. In addition, as noted by the Examiner, the insert 21 is locked to the cell cover 1 so as to form a single cover structure. Finding of Fact 7.

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Accordingly, we affirm the rejection of claims 28 and 31-34 under 35 U.S.C. § 102(b) as anticipated by Krabatsch. Because Appellant has not presented any additional substantive arguments with respect to claims 35 and 36 (Br. 12), we also affirm the rejection of claims 35 and 36 under 35 U.S.C. § 103 as unpatentable over Francisco in view of Shestok for the reasons stated in the Examiner's Answer.

ORDER

The rejection of claim 28 under 35 U.S.C. § 102(b) as anticipated by Francisco is affirmed.

The rejection of claims 29 and 30 under 35 U.S.C. § 103 as unpatentable over Francisco is affirmed.

The rejection of claims 28 and 31-34 under 35 U.S.C. § 102(b) as anticipated by Krabatsch is affirmed.

The rejection of claims 35 and 36 under 35 U.S.C. § 103 as unpatentable over Krabatsch in view of Shestok is affirmed.

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

AFFIRMED

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