

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte ROBERT WOOLSTON, CHRISTOPHER NIGEL LANGLEY,
and LEE SIMON ADAMS

Appeal 2008-0102
Application 10/307,300
Technology Center 3700

Decided: August 4, 2008

Before DONALD E. ADAMS, ERIC GRIMES, and JEFFREY N.
FREDMAN, *Administrative Patent Judges*.

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DECISION ON REQUEST FOR REHEARING

Appellants have requested rehearing of the decision entered January 15, 2008. That decision reversed the Examiner's rejection and entered a new grounds of rejection under 35 U.S.C. § 103(a).

Appellants' request has been granted to the extent that the decision has been reconsidered, but such request is denied with respect to making any modifications to the new grounds of rejection under 35 U.S.C. § 103(a).

DISCUSSION

Appellants “submit that ‘rubber stopper’ does not correspond to ‘membrane’ as recited in the pending claims. A rubber stopper, while arguably fluid impermeable, does not provide a structure that would allow for ‘piercing by a needle arrangement’” (Req. Reh’g 2).

Appellants also contend that “to assert that Stefan, Spengler and Reifsnyder are analogous art, one must interpret the Applicants [sic] field of endeavor far broader than one skilled in the art would reasonably undertake” (Req. Reh’g 3). Appellants also argue that “[n]one of the newly applied references teach, nor would they have suggested to one skilled in the art, any type of improvement to the disclosure of Bonnichsen” (Req. Reh’g 4).

We have reviewed our Decision in light of the arguments presented by Appellants in the Request. However, we are not persuaded that our Decision was in error. Appellants are in error in arguing that the Bonnichsen rubber stopper does not permit needle piercing. Bonnichsen teaches that the “adaptor **19** is designed so that one end of the two-point needle will penetrate the stopper **17** when the adaptor **19** is screwed into the screw hole **40**” (Bonnichsen, col. 4, ll. 39-42). Bonnichsen further teaches that “the neck cap preferably comprises an additional layer made from natural rubber which is characterized by having a high degree of elasticity and thus shuts tightly to the penetrated needle” (Bonnichsen, col. 3, ll. 9-12). The text of Bonnichsen directly rebuts Appellants’ contention that the rubber stopper

would not allow for piercing by a needle, since Bonnichsen expressly teaches that the adaptor 19 is designed to permit a needle to penetrate the rubber stopper.

We are also not persuaded by Appellants' argument that Stefan, Spengler, and Reifsnyder are non-analogous art. We note that the test for non-analogous art is first whether the art is within the field of the inventor's endeavor and, if not, whether it is "reasonably pertinent to the problem with which the inventor was involved." *In re Wood*, 599 F.2d 1032, 1036 (CCPA 1979). "A reference is reasonably pertinent if, even though it may be in a different field" of endeavor, it logically would have commended itself to an inventor's attention in considering his problem "because of the matter with which it deals." *In re Clay*, 966 F.2d 656, 659 (Fed. Cir. 1992).

In our opinion, references teaching improved methods of closure of containers are reasonably relevant to Bonnichsen's inventive context of designing a cap for the closure of an ampoule. One concern of Bonnichsen is in "handling the syringe . . . it frequently occurs that the holding cap slips out of its engagement position. When the syringe is accidentally dismantled . . . the syringe and the medicament . . . must be discarded due to risk of contamination" (Bonnichsen, col. 1, ll. 43-50).

Stefan addresses this concern since Stefan teaches that an advantage of the collar flange is that "the cover automatically locks and secures itself when placed on the neck or mouth of the body and closes and hermetically seals thus enabling its contents to be indefinitely preserved" (Stefan, col. 1, ll. 16-20). Similarly, Spengler and Reifsnyder teach improved closures

which also address the engagement concerns of Bonnichsen (*see* Spengler fig. 2; Reifsnnyder, fig. 1).

We conclude that the Stefan, Spengler, and Reifsnnyder references relating to improved methods of closure with caps are precisely the sort of references which an ordinary practitioner would consult in designing caps for ampoules such as those of Bonnichsen. As taught by *KSR*, “the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). In our opinion, the creative person of ordinary skill would look to the general knowledge of the closure art in designing closures for ampoules.

SUMMARY

We have carefully reviewed the original opinion in light of Appellants' request, but we find no point of law or fact which we overlooked or misapprehended in arriving at our decision.

Therefore, Appellants' request has been granted to the extent that the decision has been reconsidered, but such request is denied with respect to making any modifications to the decision which entered a new grounds of rejection under 35 U.S.C. § 103(a).

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

DENIED

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