

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* FRANK E. SEMERSKY, WILLIAM D. VOYLES,  
and EUGENE M. SADZEWICZ

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Appeal 2008-0736  
Application 11/015,360  
Technology Center 1700

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Decided: January 29, 2008

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Before EDWARD C. KIMLIN, BRADLEY R. GARRIS, and  
JEFFREY T. SMITH, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-9. Claim 1 is illustrative:

1. A process for preparing a container having a foamed wall, comprising the steps of:

injection molding a polymer preform having a non-reactive gas entrapped within the wall thereof;

cooling the preform to a temperature below the polymer softening temperature;

reheating the perform to a temperature greater than the polymer softening temperature; and

blow molding the perform, to prepare a container consisting essentially of a microcellular foamed polymer having a non-reactive gas contained within the microcellular foam cells.

The Examiner relies upon the following references in the rejection of the applied claims:

|        |                 |               |
|--------|-----------------|---------------|
| Kumar  | US 5,223,545    | Jun. 29, 1993 |
| Clarke | US 6,358,446 B1 | Mar. 19, 2002 |

Appellants' claimed invention is directed to a process for preparing a container having a foamed wall. The process entails injection molding a polymer preform having a gas trapped therein, cooling the preform to a temperature below it's softening point, reheating the preform to a temperature greater than the softening point, and blow molding the preform.

Appealed claims 1, 2, 4, 5, 10, 11, 13, and 14 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Clarke. Claims 6 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Clarke, and claims 3, 7-9, 12, and 16-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Clarke in view of Kumar.

We have thoroughly reviewed each of Appellants' arguments for patentability. However, we will sustain the Examiner's rejections.

We consider first the Examiner's § 102 rejection over Clarke. The basis of the Examiner's final rejection is that Clarke describes a prior art, conventional process wherein a molded preform, or parason, is formed as a

first stage in one mold, and then transported to a second mold cavity of the same machine or to a bottling plant where the preform is individually heated and then blown into its final shape in a mold (see column 5, line 49 at sic). Manifestly, in such conventional processes, the presently claimed steps of cooling the preform below its softening temperature and reheating the preform above its softening temperature are performed. As reasonably set forth by the Examiner, “the preform must be below its softening temperature during transport from one mold to another in order avoid deformation during the transportation” (page 3 of Answer, first paragraph).

Appellants’ Brief fails to address the thrust of the Examiner’s final rejection. Appellants have offered no rebuttal to the Examiner citation of conventional processes discussed by Clarke. Rather, Appellants’ arguments focus upon the inventive process of Clarke which performs the preform molding and blowing steps in the same apparatus. Appellants’ argument that the inventive process of Clarke does comprise the claimed cooling and reheating steps is not germane to the steps of the conventional processes disclosed by Clarke and relied upon by the Examiner. Accordingly, the Examiner’s underlying rationale in support of the rejection, which is reasonable on its face, has not been refuted by Appellants.

Appellants do not present separate arguments for the § 103 rejections but rely upon the asserted deficiency of Clarke with respect to the § 102 rejection. It should be pointed out that the “comprising” language of the appealed claims does not preclude but encompasses transporting the preform between the cooling and reheating steps.

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In conclusion, based on the foregoing, the Examiner's decision rejecting the appealed claims 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)(1)(iv).

AFFIRMED

PL Initials:  
sld

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