

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHARLES BRADLEY GREEN,
Appellant

Appeal 2008-3518
Application 10/885,362¹
Technology Center 1700

Decided: August 7, 2008

Before ADRIENE LEPIANE HANLON, THOMAS A. WALTZ, and
MARK NAGUMO, *Administrative Patent Judges*.

NAGUMO, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ Application 10/885,362 filed 6 July 2004, titled *Coffee and Tea Dispenser*, referred to as the “362 Specification.” The real party in interest is listed as The Coca-Cola Company (Appeal Brief filed 20 December 2006, “Br.” at 1).

A. Introduction

Charles Bradley Green (“Green”) timely appeals from the rejection of claims 1-7, 9, 10, and 52, which are all of the pending claims. (Br. 2.) We AFFIRM.

The claimed subject matter relates to a coffee dispenser. Claims 1 and 52 are representative and read as follows:

Claim 1:

A beverage system for brewing a beverage from a beverage material and a source of hot, pressurized water, comprising:

- a rotatable plate;
- a rigid plastic single use cartridge with the beverage material therein;
- said rigid plastic single use cartridge removable from said plate and disposable;
- an airtight sealing layer surrounding the beverage material; and
- an injection system for injecting the hot, pressurized water into said cartridge so as to brew the beverage from the beverage material.

(Claims App., Br. 12; indentation added.)

Claim 52:

A beverage system for brewing a beverage from a beverage material and a source of hot, pressurized water, comprising:

- a rigid plastic non-fixed cartridge with the beverage material therein;
- an insert positioned within and enclosing a top end of the rigid plastic non-fixed cartridge;
- an airtight sealing layer surrounding the beverage

material; and

an injection system for injecting the hot, pressurized water into said cartridge so as to brew the beverage from the beverage material.

(Claims App., Br. 13; indentation added.)

The Examiner has maintained the following grounds of rejection:

A1. Claim 1 stands rejected under 35 U.S.C. § 103(a) in view of the combined teachings of Vicker² and Piana.³ (Ans. 3.)

A2. Claims 2-7 and 10 stand rejected under 35 U.S.C. § 103(a) in view of the combined teachings of Vicker, Piana, and Favre.⁴ (Ans. 4-5.)

A3. Claim 9 stands rejected under 35 U.S.C. § 103(a) in view of the combined teachings of Vicker, Piana, and Schaeffer.⁵ (Ans. 5.)

B1. Claim 52 stands rejected under 35 U.S.C. § 103(a) in view of the combined teachings of Brown⁶ and Cordon.⁷ (Ans. 3-4.)

² Wayne Vicker, *Automatic Coffee or Like Beverage Making Machine*, U.S. Patent 5,134,924 (1992).

³ Giuseppe S. Piana, *Disposable Cartridge for Use in Beverage Extracting and Dispensing Machines*, U.S. Patent 4,471,689 (1984).

⁴ Eric Favre, *Apparatus for the Preparation of an Edible Liquid*, U.S. Patent 5,472,719 (1995).

⁵ Jacques Schaeffer and Alfred Yoakim, *Cartridge Having Sheared Thinned Areas for Promoting Opening for Beverage Extraction*, U.S. Patent 5,948,455 (1999).

⁶ William F. Brown, *Beverage Apparatus*, U.S. Patent 2,283,967 (1942).

B2. Claim 52 stands rejected under 35 U.S.C. § 103(a) in view of the combined teachings of Cordone and Brown.
(Ans. 4.)

Rejections Involving Vicker

The Examiner finds that Vicker teaches all the limitations of claim 1 but for a plastic brewing cartridge. (Ans. 3.) In particular, the Examiner finds that rigid cartridge 30 is removable, and that the system includes an eccentric cam 60 for maneuvering the injection system. (*Id.*) The Examiner relies on Piana for the teaching of a plastic brewing cartridge, and argues that it would have been obvious to modify the cartridge taught by Vicker with the cartridge taught by Piana. Similarly, the Examiner finds that it would have been obvious to combine the teachings of Favre and Schaeffer with those of Vicker to arrive at embodiments within the scope of the claimed invention. (Ans. 4-5.)

Green argues that all of the rejections over Vickers fail because Vickers does not teach the limitation of “a plastic single use cartridge that is removable from the [rotatable] plate and disposable.” (Br. 7.) In particular, Green reproduces Figure 9, which is shown below:

⁷ Carlo Cordone and Corso Garibaldi, *A Disposable Cartridge for Use in Machines for Extraction and Dispensing of Hot Drinks*, WO 93/17,932 (1993).

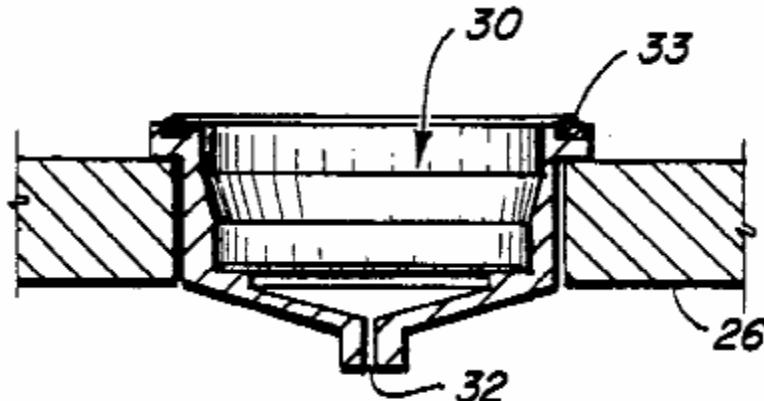


FIG. 9

{Vicker Figure 9 is said to show cartridge 30 in removable plate 26 of a coffee dispenser.}⁸

of Vicker and argues:

As is shown, the pocket 30 is part of the beverage system of Vicker as opposed to a plastic single use cartridge that is removable and disposable as is claimed herein. Although the pocket 30 is shown in Fig. 9 as apparently being separable from the rotating plate, there is no disclosure in the specification of Vicker as to whether the pocket is removable or not. As such, Vicker simply does not show the limitations of a plastic single use cartridge that is removable and disposable.

(Br. 8, underlining added.) Moreover, according to Green, even if the pocket 30 could be modified to be removable and disposable, there is no suggestion in the prior art that such a pocket would be desirable. (Br. 9.)

With respect to claims 6 and 7, which depend from claim 1, Green argues for the first time in its principal brief on appeal that “[t]he cited references simply do not show the use of an eccentric cam or the specific

⁸ The text in curly braces following the Figures is provided to ensure compliance with section 508 of the U.S. Rehabilitation Act for publication of this Decision on the USPTO website pursuant to the Freedom of Information Act. It is not part of the Decision.

pressures produced herein. The specific pressure range is significant in that the plastic pod can support such pressures without excessive deformation.”” (Br. 11.)

In the Reply Brief,⁹ Green argues only that “[t]here is absolutely no disclosure in the reference [Vicker] itself of the pocket being removable or disposable.” (Reply Br. 1-2.)

Green does not, in either its principal brief on appeal nor in its reply brief, dispute any of the Examiner’s findings as to the teachings of the secondary references.

Rejections over Brown

The Examiner finds that Brown teaches all limitations of claim 52 but for a rigid plastic non-fixed beverage cartridge. (Ans. 3-4.) In particular, the Examiner finds that Brown teaches “an airtight sealing layer 14, 15 surrounding the beverage material, the layers including a hardened gelatin coating; and an injection system 19 for injecting hot, pressurized water into the cartridge.” (Ans. 4.) The Examiner relies on Cordone for its teaching of the missing limitation, and argues that it would have been obvious to use that rigid plastic non-fixed beverage container in the brewing system taught by Brown, or to modify the cartridge taught by Cordone with the airtight sealing layers taught in Brown, together with the injection system taught by Brown. (*Id.*)

Green argues only that “Brown simply does not show the claimed airtight sealing layer surrounding the beverage material.” (Br. 10.) More

⁹ Reply Brief filed 18 April 2007 (“Reply Br.”).

particularly, Green argues that the previous filter paper [elements 14 and 15] is clearly not an airtight sealing layer. Accordingly, Green concludes the Examiner's rejections must be reversed.

B. Discussion

Claimed subject matter is not patentable if it would have been obvious to a person having ordinary skill in the art. 35 U.S.C. § 103(a); *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727 (2007); *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966).

On appeal, the procedural burden is on Green, as the Appellant, to demonstrate reversible error in the Examiner's rejections. See, e.g., *In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) ("On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of prima facie obviousness or by rebutting the prima facie case with evidence of secondary indicia of nonobviousness.") (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

Arguments not timely presented are waived absent a showing of good cause. 37 C.F.R. § 41.37(c)(1)(vii). In particular, claims not argued separately stand or fall with the representative claim considered by the Board of Patent Appeals and Interferences ("Board"). *Id.*

Vicker

Green's arguments on appeal are directed, with the exception of claims 6 and 7, solely to claim 1. Accordingly, all other arguments have been waived.

Green's argument that Vicker does not disclose or suggest a rigid plastic single use removable disposable cartridge is without merit. The Examiner found that Vicker teaches pocket 30. As Green noted, "the pocket 30 is shown in Fig. 9 as apparently being separable from the rotating plate." (Br. 8, emphasis added.) Our reviewing court has repeatedly instructed that "a prior art reference is relevant for all that it teaches to those of ordinary skill in the art." *In re Fritch*, 972 F.2d 1260, 1264 (Fed. Cir. 1992). We have also been reminded that "[a] person of ordinary skill is also a person of ordinary creativity, not an automaton." *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1742 (2007) Green has not directed our attention to any credible evidence that Vicker teaches the person having ordinary skill in the art that pocket 30 could not be removed. The absence of an express teaching in Vicker that pocket 30 is removable does not detract from the Examiner's finding that it is removable. Nor does that absence detract from Green's statement that pocket 30 appears to be removable. The weight of the evidence indicates that the person having ordinary skill in the coffee dispensing device art would have regarded pocket 30 to be an element that was or could be made to be removable.

Moreover, the characterization of the cartridge as "disposable" does not suffice to distinguish the claimed invention from what would have been obvious in view of the combined teachings of Vicker and Piana. Whether or not a replaceable part is "disposable" is, in the absence of an express definition of "disposable" that imparts some structural or material limitation, a matter of intended use. Green has not directed our attention to any definition or disclosure in the 362 Specification providing some special structural or compositional definition of the term "disposable." Nor has

Green directed our attention to any credible evidence that Vicker teaches the person having ordinary skill in the art that pocket 30 could not be replaced, with any necessary modifications, with cartridges taught by Piana. Nor has Green come forward with credible evidence or argument that the combined brewing system of Vicker and Piana does not contain a single use, removable, disposable cartridge.

Finally, Green has not shown error in the Examiner's argument that the ordinary worker would have considered using a less costly material as a reason to make the proposed combination. The Examiner has proposed a "real world" reason to combine the teachings of the references. As the Supreme Court explained recently:

When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense. In that instance the fact that a combination was obvious to try might show that it was obvious under § 103.

KSR Int'l Co. v. Teleflex Inc., 127 S.Ct. 1727, 1742 (2007). Green has not shown that there is no reasonable expectation of success in the proposed combination. Nor has Green come forward with credible evidence of unexpected results or other secondary considerations indicative of patentability.

Regarding claim 6, Green has not shown error in the Examiner's repeated findings¹⁰ that Vicker teaches an eccentric cam for maneuvering

¹⁰ See the Office Action mailed 24 October 2005 at 2; the Office Action mailed 5 June 2006 at 2; the Office Action mailed 18 September 2006 at 2.

the injection head. Nor has Green shown error in the Examiner's finding that optimizing the pressure would have been a routine matter for one of ordinary skill in the coffee and tea dispensing art. As the Examiner indicates, Vicker teaches accommodating various water pressures at column 5, lines 50-65. Moreover, as Green's specification notes (Spec. 1:27-29), high pressure systems have long been known to brew espresso. Green has not indicated that there is any novelty in the pressure range recited in claim 7 for brewing coffee. Nor has Green directed our attention to any credible evidence that accommodating the recited pressures would have posed any difficulties or required undue experimentation for a person having ordinary skill in the relevant arts.

As Green has not shown reversible error in the Examiner's rejection of claims 1-7, 9, and 10 in view of the combined teachings of Vickers and the other references, the Examiner's rejections are AFFIRMED.

Brown

Green's only argument against the rejection of claim 52 in view of Brown and Cordone is that Brown does not teach an airtight sealing layer surrounding the beverage material. (Br. 10.)¹¹ This is not persuasive because it is contradicted by Brown in the sentence immediately following the description of the "pervious wafer liners 14, 15, of filter paper or the like" that form a coffee-containing packet or cartridge. (Brown 1:52-54.) Brown states, "[f]or the purpose of holding the flavor and keeping the material fresh, the entire cartridge may be sealed as by dipping the same in tasteless gelatin." (Brown 1:54 to 2:2.)

¹¹ Green does not address the rejection of claim 52 in its Reply Brief.

E. Summary

In view of the record and the foregoing considerations, it is:

ORDERED that the rejection of claim 1 under 35 U.S.C. § 103(a) in view of the combined teachings of Vicker and Piana is AFFIRMED;

FURTHER ORDERED that the rejection of claims 2-7 and 10 under 35 U.S.C. § 103(a) in view of the combined teachings of Vicker, Piana, and Favre is AFFIRMED;

FURTHER ORDERED that the rejection of claim 9 under 35 U.S.C. § 103(a) in view of the combined teachings of Vicker, Piana, and Schaeffer is AFFIRMED;

FURTHER ORDERED that the rejection of claim 52 under 35 U.S.C. § 103(a) in view of the combined teachings of Brown and Cordone, taken in either order, is AFFIRMED; and

FURTHER ORDERED that no time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

qsg

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