

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* THOMAS E. NAHILL,  
KEITH J. BARKER,  
BASSAM M. KALMOUNI,  
BRIAN A. LYNCH, and  
KIM D. LUFKIN

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Appeal 2008-3611  
Application 10/375,737  
Technology Center 1700

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Decided: July 31, 2008

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Before CHARLES F. WARREN, PETER F. KRATZ, and  
LINDA M. GAUDETTE, *Administrative Patent Judges*.

GAUDETTE, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134 the final rejection of claims 5-9. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

We AFFIRM.

## INTRODUCTION

Appellants claim a method of making a preform assembly for blow molding a container comprising, in relevant part, expanding said preform neck, and securing a finish ring to the external surface of the preform neck after expansion of the preform neck (claim 5).

Claim 5 is illustrative:

5. A method of making a perform assembly for blow molding a container, which includes the steps of:

- (a) providing a molded plastic perform having a body and a cylindrical neck with an external surface,
- (b) providing a molded plastic finish ring,
- (c) expanding said perform neck, and
- (d) securing said finish ring to the external surface of the perform neck after expansion in said step (c).

The Examiner relies on the following prior art references as evidence of unpatentability:

Smith, Sr.	3,858,741	Jan. 7, 1975
Valyi	5,884,786	Mar. 23, 1999

The rejections as presented by the Examiner are as follows:

1. Claims 5, and 7-9 are rejected under 35 U.S.C. § 103(a) as being obvious over Valyi.
2. Claim 6 is rejected under 35 U.S.C. § 103(a) as being obvious over Valyi in view of Smith, Sr.

Appellants separately argue claims 5 and 6. Because Appellants argue the same claim 5 feature with regard to the rejection of dependent claim 6, we focus on the argued limitations of claim 5 with regard to each of the rejections in this Decision.

## OPINION

### 35 U.S.C. § 103 REJECTION OVER VALYI

Appellants argue Valyi teaches away from the invention because Valyi does not teach expanding the neck prior to securing the finish ring as claimed (Br. 4-6). We do not agree.

During examination, claim terms are given their broadest reasonable interpretation consistent with the Specification. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). The Patent and Trademark Office applies to the claim terms the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicants' Specification. *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

We begin our analysis by construing steps (c) and (d) of claim 5. Step (c) recites "expanding said preform neck." Plainly, step (c) requires that the neck of the preform be expanded.

Step (d) recites "securing said finish ring to the external surface of the preform neck after expansion in said step (c)." Appellants describe that securing of the finish ring may be achieved by interference fit, adhesive,

ultrasonic welding or “by other suitable technique” (Spec. 3). Giving this claim wording its broadest reasonable meaning as it would have been understood by one of ordinary skill in the art when read in light of the Specification, Appellants clearly did not limit the scope of the claim term “securing” to any one technique. Accordingly, we construe step (d) as requiring any suitable technique to securely retain the finish ring to the neck after expansion of the neck.

Based on this claim construction, we agree with the Examiner that Valyi would have rendered obvious the argued claim feature. Specifically, Valyi discloses assembling a preform and a finish ring prior to expansion (Valyi, col. 4, ll. 30-34). Valyi discloses that the serrations or other means may be used to secure the finish ring in position during assembly of the finish ring and the preform (Valyi, col. 3, ll. 10-31). Valyi discloses expanding the preform-finish ring assembly to form bead 56 on the neck of the expanded article such that the bead 56 secures the finish ring to the neck of the container by preventing axial movement of the finish ring (Valyi, col. 4, ll. 18-30).

These disclosures clearly indicate securing the finish ring to the neck after expansion of the neck of the preform to form bead 56. In other words, because of our findings with respect to the disclosure of Valyi, we determine that Valyi not only suggests the claimed subject matter as maintained by the Examiner but provides disclosure of a method that substantially corresponds to the argued claim 5 features and the non-argued features not in dispute. Thus, we determine that Valyi furnishes more than enough evidence to establish that claim 5 would have been *prima facie* obvious to one of ordinary skill in the art. In this regard, it is well settled that anticipation is

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the ultimate of obviousness. *In re Fracalossi*, 681 F.2d 792, 794 (CCPA 1982).

We are unpersuaded by Appellants' teaching away argument for two reasons. First, as noted above, we find that Valyi teaches the argued claim features. Second, Valyi's disclosure to preassemble the preform and finish ring does not constitute a teaching away from securing the finish ring after expansion of the neck. To the contrary, Valyi discloses securing the finish ring to the neck after expansion of the neck to form bead 56.

For the above reasons, we sustain the Examiner's § 103 rejection of claims 5, and 7-9 over Valyi.

For the same reasons, we sustain the Examiner's § 103 rejection of claim 6 over Valyi in view of Smith, Sr.

## DECISION

The Examiner's decision 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

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