

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte EDWARD ALBERT SKINNER, ROBERT E. ROCHELLE,  
and JOHN A. WEBER

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Appeal No. 2000-2024  
Application No. 09/059,207

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ON BRIEF

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Before CALVERT, ABRAMS, and NASE, Administrative Patent Judges.

CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 3, 5 to 22 and 24 to 26, all the claims remaining in the application.

The disclosed invention concerns the attachment of an

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article, in particular a pour spout fitment, to a container. The claims on appeal are drawn to methods (claims 1, 3, 5 to 9, 20, 22, 25 and 26) and apparatus (claims 10 to 19, 21 and 24), and are reproduced in the appendix of appellants' brief.

The references applied in the final rejection are:

Konaka 1985	4,507,168	Mar. 26,
Hardigg et al. (Hardigg) 22, 1994	5,296,075	Mar.
Keeler 1995	5,473,857	Dec. 12,
Bachner et al. (Bachner) 16, 1996	5,484,374	Jan.

The appealed claims stand finally rejected under 35 U.S.C.

§ 103(a) on the following grounds:<sup>1</sup>

(1) Claims 1, 3, 5, 6, 10 to 13, 20, 21 and 25, unpatentable over Keeler;

(2) Claims 7, 14 and 19, unpatentable over Keeler in view of Konaka;

(3) Claims 8, 9 and 15 to 18, unpatentable over Keeler in view

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<sup>1</sup> A rejection of claims 7, 8, 9, 25 and 26 under 35 U.S.C. § 112, second paragraph, is not repeated in the answer and is deemed to be withdrawn, the examiner conceding that those claims are not indefinite (answer, page 4).

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of Konaka and Hardigg;

(4) Claim 22, unpatentable over Konaka in view of Hardigg;

(5) Claim 24, unpatentable over Bachner in view of Konaka and Hardigg.

Rejection (1)

Keeler discloses apparatus wherein cartons 12 on a continuous line conveyor 22 have been formed, filled and sealed. At the end of conveyor 22 a mechanism may be retrofitted for applying spout fitments to the cartons, this mechanism consisting of a flight conveyor 24 with a fitment application station 20 thereover, and an intermediate conveyor 60 between conveyors 22 and 24.

Claim 1 may be summarized as reciting a method of forming, filling and sealing a first container and then advancing the first container by first conveying means, "subsequently installing attaching means over said first conveying means without altering said first conveying means," forming, filling and sealing a second container, advancing the second container by the first conveying means, and operating the attaching means to attach an article to the second container.

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We do not consider that claim 1 is unpatentable over Keeler. Even assuming that the retrofitting of Keeler's application mechanism 20 would not alter conveyor 22, which corresponds to the recited first conveying means, Keeler's attaching means 20 is not subsequently installed "over" first conveying means 22, as required by the claim. On the other hand, if Keeler's conveyors 22, 24 and 60 were collectively considered to constitute the claimed first conveying means, attaching means 20 is not "subsequently" installed over them, but rather would be installed at the same time as conveyors 24 and 60, as part of the modular mechanism (col. 2, lines 48 to 51).

The examiner states that little patentable weight is given the location of the attaching means (final rejection, page 2), but specific limitations in a claim cannot be ignored, In re Glass, 472 F.2d 1388, 1392, 176 USPQ 489, 491 (CCPA 1973). The examiner has provided no reason as to why it would have been obvious to locate Keeler's attaching means 20 over conveyor 22, and none is apparent to us.

The rejection of claim 1, and of claims 3, 5 and 6 dependent thereon, will not be sustained.

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Reading apparatus claim 10 on Keeler, we find that Keeler discloses forming means, filling means and sealing means (col. 1, lines 19 to 21; col. 3, lines 61 to 63), article attaching means 20, and conveying means 22, 60, 24 for advancing a container past these four means. Claim 10 further recites "characterized in that said attaching means is installed at said conveying means without said conveying means having been altered." We consider that Keeler meets this limitation, since, as discussed above, conveyors 24 and 60 and attachment means 20 are all installed as a unit. Thus, the installation of attachment means 20 does not "alter" conveying means 24, 60, since attachment means 20 is installed along with those conveyors. As far as conveyor 22 is concerned, the installation of conveyors 24, 60 and attachment means 20 does not "alter" conveyor 22, since all that is required is to coordinate the speed of those conveyors with conveyor 22. Keeler does not disclose that there is any connection between conveyor 22 and conveyors 24 and/or 60, or that conveyor 22 would operate any differently than it did prior to installation of attachment means 20 and conveyors 24 and 60.

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We therefore will sustain the rejection of claim 10,<sup>2</sup> as well as of dependent claims 11 to 13, which appellants have not argued as being separately patentable. 37 CFR § 1.192(c)(7).

On pages 5 and 6 of their brief, appellants include claims 20 and 21 along with the other claims to which rejection (1) applies, and present the same argument as to all the rejected claims, which is, in essence, that Keeler does not disclose an attaching means which can be mounted over an existing conveyor without altering the existing conveyor. This argument is not applicable to claims 20 and 21, however, since those claims contain no limitations concerning the installation of an attaching means to an existing conveyor, and in fact do not recite a conveyor at all. Accordingly, since no relevant argument has been presented as to claims 20 and 21, their rejection will be sustained.

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<sup>2</sup> We recognize that our conclusion that claim 10 is readable on Keeler is tantamount to a holding that claim 10 is anticipated by Keeler under § 102(b). However, this conclusion is an appropriate basis for sustaining the § 103(a) rejection, since "The complete disclosure of an invention in the prior art is the ultimate or epitome of obviousness." In re Avery, 518 F.2d 1228, 1234, 186 USPQ 161, 166 (CCPA 1975).

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We will not sustain the rejection of claims 25 and 26. In reading these claims on Keeler, conveyor 24 would have to be considered as constituting at least a part of the "first conveying means," since attachment means 20 of Keeler is installed over it. However, claims 25 and 26 further recite installing a second conveying means in parallel with the first conveying means; the only second conveyor disclosed by Keeler which is in parallel with first conveyor 24 is the corresponding conveyor in the parallel production line (Fig. 5), but that conveyor would not meet the additional requirement that "said advancing of said container past said attaching means [i.e., the attaching means installed over the first conveying means] is performed by said second conveying means" (claim 25) or "said advancing of said containers past said dual attaching means is performed by said second conveying means" (claim 26). Also, contrary to the examiner's implication at page 2 of the final rejection, Keeler's conveyor 26 cannot be read as constituting the claimed second conveying means, because it does not advance container 12 past attaching means 20, as required by the claim language quoted above. Claims 25 and 26 therefore are not readable on Keeler,

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nor has the examiner explained why they would have been obvious thereover notwithstanding the above-discussed differences between Keeler and the claimed subject matter.

Rejection (2)

In view of the fact that we will not sustain the rejection of claim 25, we likewise will not sustain the rejection of claim 7, dependent thereon, inasmuch as Konaka does not supply the deficiencies noted above with regard to Keeler.

Turning to claims 14 and 19, the examiner concluded that those claims are unpatentable in that it would have been obvious to modify the apparatus of Keeler by providing Keeler with the fitment applying means disclosed by Konaka (first action (Paper No. 7), pages 3 to 4).

Appellants do not disagree that the combination proposed by the examiner would have been obvious. They argue, however (brief, pages 6 and 7), that the combination would not be such that "said attaching means is installed at said conveying means without said conveying means having been altered." This argument is not persuasive. If the Keeler apparatus were modified as the examiner proposes, the containers would be

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conveyed past the forming, filling and sealing means by Keeler's conveyor 22, the end of which would correspond to Konaka's conveyor 11. They would then be conveyed past Konaka's attaching means by conveying means consisting of chain 17 and wheels 19, 22 and 89, thence to conveyor 90. As discussed above with regard to rejection (1), the attaching means (here, of Konaka) and the conveying means would all be installed together; in fact, Konaka's conveying means 17, 19, 22, 89 is in one unit with the attaching means. Therefore, the attaching means would be installed at the conveying means without altering the conveying means, as recited in claim 10, since both means would be installed at the same time.

Appellants further argue that "there is no attaching means over a first conveying means" (brief, page 7), but neither of claims 14 or 19, nor parent claim 10, recites a "first" conveying means, nor that the attaching means is "over" the conveying means.

We therefore will sustain the rejection of claims 14 and

19.<sup>3</sup>

Rejection (3)

Hardigg discloses apparatus for welding the plastic jar and cover of a battery, using a heating assembly 18. The heating assembly 18 is attached to a crank 30, and is moved horizontally by movement of shaft 54 of a piston-and-cylinder, which causes the crank 30 to pivot about shaft 32. Vertical movement of the heating assembly 18 is caused by vertical movement of pneumatic or hydraulic activated rods or cables 52, 53 (col. 3, lines 14 to 32). The examiner concludes that it would have been obvious, in view of Hardigg, to use a pivoting means and pneumatic piston means to move Konaka's receiver 85 instead of the camming means (142) disclosed by Konaka (first action, page 4).

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<sup>3</sup> Claims 14 and 19, like claims 9, 12, 13, 17 and 18, are in multiple dependent form, but neither appellants nor the examiner have treated them as such. Instead, they seem to have treated them as being of their broadest possible scope, e.g., claim 14 is treated as if it were dependent on claim 10, only. Since appellants have not argued the multiple dependencies separately (e.g., they have not argued that claim 14/11/10 or 14/12/10 is separately patentable from claim 14/10), we have treated them in the same manner.

We also note that some multiple dependent claims (e.g., claim 14) are improperly dependent on other multiple dependent claims, contrary to 37 CFR § 1.175(c).

We do not consider this rejection to be well taken. In the Hardigg apparatus, as noted previously, pivoting is provided so that the heating assembly 18 can move horizontally, but in the Konaka apparatus camming means 142 causes the receiver 85 to move only along a vertical axis, not horizontally.<sup>4</sup> We therefore agree with appellants that Hardigg would not provide any teaching or suggestion to pivot receiver 85 of Konaka instead of using camming means, since Hardigg's pivoting means is used to provide horizontal movement, and Konaka's camming means is used to provide vertical movement.

Accordingly, the rejection of claims 15 and 16 will not be sustained. However, we will sustain the rejection of claims 17 and 18, since appellants' only argument as to rejection (3) is that Hardigg would not suggest substitution of a pivoting action, and a pivoting action is not recited in claims 17 and 18.

Rejection (4)

This rejection will not be sustained for the reasons

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<sup>4</sup> Except insofar as it rotates about the axis of wheel 22, which is not relevant here.

given above concerning the rejection of claims 15 and 16. While Konaka's receiver 85 is displaced as recited in steps c and d, see col. 9, lines 46 to 64, Hardigg would not in our view suggest displacing Konaka's receiver 85 by "progressive pivoting," as claimed.

Rejection (5)

Bachner discloses spout-attaching apparatus in which, following the language of claim 24,<sup>5</sup> there is a pivotally mounted, fluidic, piston-and-cylinder device having a reciprocable receiver thereon (anvil 184 is rotated on shaft 200) and pneumatically extended and retracted by drive 204 (col. 12, lines 5 to 14), and a second stationarily mounted, fluidic, piston-and-cylinder device 186 with a reciprocable heated tool for heating a surface of the article (spout). Bachner does not disclose (1) a first stationarily mounted, fluidic, piston-and-cylinder device for pushing the article into the receiver, but rather portion 208 of the receiver 184 is pushed into the article (col. 13, lines 35 to 41); and (2) that the pivotally mounted piston-and cylinder [device], after

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<sup>5</sup> It appears that in line 13, --device-- should be inserted after "cylinder."

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further pivoting from the article-heating position, places the heated surface of the article on the panel of the container. Nevertheless the examiner's conclusion, as we interpret it, is that it would have been obvious to heat the spout prior to attaching it in view of Konaka, and, in view of Hardigg, to use pneumatic rods in place of Konaka's cams.

We note that the Bachner and Konaka systems differ in that in Bachner the container and spout are heated after they are in contact, whereas in Konaka they are heated while separated and then brought into contact, without further heating. In view of this difference, it is not apparent why Konaka would have motivated one of ordinary skill to preheat the spout of Bachner before bringing it into contact with the container. Moreover, in the Konaka apparatus a heater 86 is placed in between the container A and spout (faucet) B to heat them, then is moved out of the way to allow the spout to be pressed against the container. At most, we consider that this would teach one of ordinary skill to modify the Bachner apparatus by placing a heating means between the spout and the container at the spout-attaching position (i.e., between 44 and 208' in Fig. 24), but even if this could be done, the

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device 184 would still not further pivot to place the article on the panel, as required by claim 24.

The rejection of claim 24 therefore will not be sustained.

Conclusion

The examiner's decision to reject claims 1, 3, 5 to 22 and 24 to 26 under § 103(a) is sustained as to claims 10 to 14 and 17 to 21, and is reversed as to claims 1, 3, 5 to 9, 15, 16, 22, and 24 to 26.

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

AFFIRMED-IN-PART

IAN A. CALVERT )  
Administrative Patent Judge )  
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NEAL E. ABRAMS ) APPEALS AND  
Administrative Patent Judge )  
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