

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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte CLAUDE-GEORGES MARTIN and LUDOVIC PETIT

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Appeal No. 2001-2057  
Application No. 09/155,574

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ON BRIEF

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Before COHEN, ABRAMS, and FRANKFORT, Administrative Patent Judges.

COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 5 and 7 through 9. Claim 6, the only other claim in the application, stands objected to as being dependent upon a rejected base claim, but would be allowable according to the

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examiner, if rewritten in independent form including all the limitations of the base claim and any intervening claims.

Appellants' invention pertains to a dispenser device for dispensing a single dose of liquid. A basic understanding of the invention can be derived from a reading of exemplary claim 1, a copy of which appears in the APPENDIX to the main brief (Paper No. 10).

As evidence of anticipation and obviousness, the examiner has applied the documents listed below:

Fuchs	5,368,201	Nov. 29, 1994
Weston 1994	5,370,318	Dec. 6,
Solignac	5,511,698	Apr. 30, 1996

The following rejections appear in the final rejection dated June 6, 2000 (Paper No. 8).

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Claims 1, 2, and 9 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Fuchs.

Claims 3 and 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Fuchs in view of Weston.

Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Fuchs in view of Solignac.

Claims 5 and 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Fuchs.

The full text of the examiner's rejections and response to the argument presented by appellants appears in the final rejection and the answer (Paper Nos. 8 and 11), while the complete statement of appellants' argument can be found in the main and reply briefs (Paper Nos. 10 and 12 ).

In the main brief (page 4), appellants indicate that the rejection of claims 2 through 5 and 7 through 9 will be decided on the basis of whether claim 1 is properly rejected

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under 35 U.S.C. § 102(b) as being anticipated by Fuchs. Therefore, claims 2 through 5 and 7 through 9 stand or fall with independent claim 1.

OPINION

In reaching our conclusion on the anticipation issue raised in this appeal, this panel of the board has carefully considered appellants' specification<sup>1</sup> and claim 1, the applied patent to Fuchs, and the respective viewpoints of appellants and the examiner. As a consequence of our review, we make the determination which follows.

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<sup>1</sup> We are informed by appellants (specification, page 2) that "[d]ocument WO 91/13281 describes a device including the characteristics mentioned in the preamble of claim 1." The aforementioned is the published PCT document of the applied Fuchs patent, as can be discerned from page 1 of the Fuchs reference.

We cannot sustain the rejection of claim 1. It follows that we likewise cannot sustain the rejection of claims 2 through 5 and 7 through 9 since these claims stand or fall with claim 1, as earlier indicated.<sup>2</sup>

Claim 1 is drawn to a dispenser device for dispensing a single dose of liquid comprising, inter alia, a closure member being "secured to" a spray nozzle.

The examiner's view is that, "as can be best seen in Figure 3", the valve body (closure body) 17 of Fuchs is secured to the piston shaft (spray nozzle) 10. As further explained by the examiner, the closure is secured to the spray nozzle in an initial closed position (Figure 1) covering opening 16, and at a final open position (Figure 3) moved away from the opening 16. Appellants do not agree with this assessment.

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<sup>2</sup> It is worthy of noting that the rationales for each of the examiner's rejections based upon 35 U.S.C. § 103, applying the Fuchs teaching alone or with additional prior art, did not involve the "secured to" recitation of claim 1.

We are of the opinion that one skilled in the art would comprehend the meaning of the recitation "secured to" in the context used in claim 1, consistent with the underlying specification (pages 3 and 8) and drawing (Figures 4 and 5), to denote that the closure body is fixed to the spray nozzle.

With the above understanding of claim 1 in mind, it is quite apparent that claim 1 is not anticipated by the Fuchs showing in Figure 3, since valve body (closure member) 17 moves between different positions within the piston shaft (spray nozzle) 10 and, thus, cannot be fairly said to be secured to or fixed to the piston shaft. Accordingly, even though the valve body 17 may be held or restrained in its initial position within the piston shaft prior to the generation of sufficiently high pressure that rolls or slides it off the valve seat 18, this holding does not effect a securing of the valve body to the piston shaft, as required by appellants' claim 1. It is for this reason that the rejection of claim 1 cannot be sustained.

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In summary, this panel of the board has not sustained each of the examiner's rejections under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a).

The decision of the examiner is reversed.

REVERSED

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IRWIN CHARLES COHEN	)	
Administrative Patent Judge	)	
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	)	
	)	
	)	BOARD OF PATENT
NEAL E. ABRAMS	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
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CHARLES E. FRANKFORT	)	
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