

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. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte MARK A. UTTER and JODI L. UTTER

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Appeal No. 2002-0263  
Application No. 09/377,533

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ON BRIEF

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Before COHEN, STAAB, and BAHR, Administrative Patent Judges.  
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 6 through 9 and 11 through 15. These claims constitute all of the claims remaining in the application.

Appellants' invention pertains to a hand-held plant watering device used for watering difficult to reach plants. A basic understanding of the invention can be derived from a

Appeal No. 2002-0263  
Application No. 09/377533

reading of exemplary claim 6, a copy of which appears in the APPENDIX to the brief (Paper No. 10).

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

Weston et al. (Weston)	636,598	Nov. 7, 1899
Goda et al. (Goda)	3,327,904	Jun. 27, 1967
Dempsey	5,287,994	Feb. 22, 1994

The following rejection is before us for review.

Claims 6 through 9 and 11 through 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Goda in view of Weston and Dempsey.

The full text of the examiner's rejection and response to the argument presented by appellants appears in the answer

Appeal No. 2002-0263  
Application No. 09/377533

(Paper No. 11), while the complete statement of appellants' argument can be found in the brief (Paper No. 10).

OPINION

In reaching our conclusion on the obviousness issue raised in this appeal, this panel of the board has carefully considered appellants' specification<sup>1</sup> and claims,<sup>2</sup> the applied teachings,<sup>3</sup> and the respective viewpoints of appellants and

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<sup>1</sup> In the specification, page 2, line 20, page 3, line 6, page 4, line 16, page 5, line 1, page 6, line 26, page 7, line 10, and ABSTRACT, lines 7 and 21, the term "defuser" should apparently be --diffuser--. In the specification, page 3, line 25, and page 6, lines 6 and 18, the term "plunder" should obviously be --plunger--. These informalities are deserving of correction.

<sup>2</sup> In claim 15, line 5, "defuser" should apparently be --diffuser--. This informality should be remedied during any further prosecution before the examiner.

<sup>3</sup> In our evaluation of the applied prior art, we have considered all of the disclosure of each document for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have  
(continued...)

Appeal No. 2002-0263  
Application No. 09/377533

the examiner. As a consequence of our review, we make the determination which follows.

We do not sustain the rejection of appellants' claims under 35 U.S.C. § 103(a).

Each of appellants' independent claims 6, 14, and 15 is expressly drawn to a hand-held plant watering device used for watering difficult to reach plants. The device of claims 6 and 14 includes, inter alia, a flexible water tube having a means for spraying water and a length in the range of 12 to 24 inches, a water cylinder attached to the flexible water tube and having a length in the range of 24 to 36 inches, a liquid measurement index disposed along the water cylinder for measuring a desired amount of water, and a slidable plunger slidably received in the water cylinder having a length in a range of 24 to 36 inches. The device of claim 15 includes at

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<sup>3</sup>(...continued)  
been expected to draw from the disclosure. See In re Preda,  
401 F.2d 825, 826,  
159 USPQ 342, 344 (CCPA 1968).

Appeal No. 2002-0263  
Application No. 09/377533

least all of the above features with the following exception:  
a water diffuser attached to the flexible water tube in place  
of the recited means for spraying.

The examiner concludes that the combined teachings of the  
Goda, Weston, and Dempsey patents would have been suggestive  
of the now claimed hand-held plant watering device used for  
watering difficult to reach plants. We disagree.

The basic teaching to be modified by the examiner is a  
liquid dispensing device characterized by the patentee Goda as  
a burette, pipette or syringe used in scientific and  
industrial laboratories for dispensing known volumes of liquid  
(column 1, lines 9 through 17). As depicted (Figs. 1 and 2)  
and disclosed (column 4, lines 13 through 26), a hypodermic  
needle for dispensing liquid is immersed in a reservoir of  
liquid to fill the device. Goda is clearly not a device used  
for watering difficult to reach plants.

To compensate for the deficiencies of the Goda teaching,  
the examiner looks to the respective patents to Weston and

Appeal No. 2002-0263  
Application No. 09/377533

Dempsey. Weston (Fig. 1) addresses a sprinkler for bath-tub purposes that includes a pliable pipe and nozzle fitted to a faucet. Dempsey (Fig. 1) discloses a dispenser for selectively dispensing liquid, such as water, to a plant by pressing the dispenser vertically downward against a ground surface adjacent to the plant.

Clearly, we have before us a rejection evidencing a classic hindsight reconstruction since the only basis whatsoever for completely reworking the Goda device for achieving the claimed invention from the applied prior art, as proposed by the examiner, would be impermissible hindsight reliance upon appellants' own teaching in the present application. It is for this reason that the rejection cannot be sustained.

In summary, this panel of the board has not sustained the rejection of appellants' claims under 35 U.S.C. § 103(a).

The decision of the examiner is reversed.

Appeal No. 2002-0263  
Application No. 09/377533

REVERSED

IRWIN CHARLES COHEN	)	
Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
LAWRENCE J. STAAB	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
JENNIFER D. BAHR	)	
Administrative Patent Judge	)	

ICC/LBG

Appeal No. 2002-0263  
Application No. 09/377533

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APPEAL NO. 2002-0263 - JUDGE

APPLICATION NO. 09/377533

APJ COHEN

APJ BAHR

APJ STAAB

DECISION: **REVERSED**

**PREPARED:** Nov 13, 2002

OB/HD

PALM

ACTS 2

DISK (FOIA)

REPORT