

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. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HANS REISINGER, MARTIN FRANOSCH,
SCHAFFER HERBERT, REINHARD STENGL, VOLKER LEHMANN,
GERRIT LANGE and HERMANN WEBDT

Appeal No. 2002-2065
Application No. 09/397,688

ON BRIEF

Before ABRAMS, FRANKFORT, and McQUADE, Administrative Patent Judges.
ABRAMS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 2 and 5-16, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellants' invention relates to a vessel of the type used to contain liquids. An understanding of the invention can be derived from a reading of exemplary claim 16, which has been reproduced below.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

UK Patent Application (GB 032)	2001032	Jan. 24, 1979
German Patent Publication ¹ (GE 085)	3937085	May 10, 1990
European Patent Application (EP 817)	0614817A1	Sep. 14, 1994

Claims 2 and 5-16 stand rejected under 35 U.S.C. § 103 as being unpatentable over GB 032 in view of GE 085 or EP 817.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejection, we make reference to the Answer (Paper No. 14) for the examiner's complete reasoning in support of the rejection, and to the Brief (Paper No. 13) and Reply Brief (Paper No. 15) for the appellants' arguments thereagainst.

¹Our understanding of this foreign language document was obtained from a PTO translation, a copy of which is enclosed.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

Claim 16 is the only independent claim before us, and the appellants have chosen to allow dependent claims 2 and 5-16 stand or fall with claim 16 (Brief, page 5).

The appellants' invention relates to improvements in vessels of the type for containing beverages. Cited on page 1 of the specification is GB 032, which the examiner has applied as the primary reference, and over which the appellants believe their invention to be an improvement. The problem to which the appellants have directed their inventive efforts concerns the strength of the upper and lower support rings, which protect the body of the vessel from deformation during loading and transporting. The invention is manifested in claim 16 in the following manner:

16. A vessel, comprising a vessel body formed of metal and having an approximately cylindrical wall, a bottom and a cover; and a plastic ring provided at each of opposite ends of the vessel body and extending radially beyond the vessel body, wherein at least one of the plastic rings includes a flange ring, an arc-shaped ring which abuts a section of the vessel body, and an intermediate ring which connects the flange ring with the arc-shaped ring and has a reduced diameter waist-like portion,

wherein the arc-shaped ring comprises a retaining ring engageable in an associated circular groove formed in the vessel body, a curved section encompassing a transition region between the wall of the vessel body and one of the bottom and the cover, and a section

extending past a connection point of the arc-shaped ring with the intermediate ring and toward a center of the one of the bottom and cover, and

wherein the section, which extends past the connection point of the arc-shaped ring with the intermediate ring, has a thickness which constantly decreases from the connection point to an inner edge of this section.

It is the examiner's view that all of the subject matter recited in claim 16 is disclosed in GB 032 except for the section which extends past the connection point of the arc-shaped ring with the intermediate ring having a thickness which constantly decreases from the connection point to an inner edge of the section (Answer, pages 3 and 4). According to the examiner, it would have been obvious² to modify the structure of GB 032 to provide this feature, in view of the teachings of either of the secondary references. Among the arguments raised by the appellants in opposition to this rejection are two which we agree cause this rejection to be fatally defective.

²The test for obviousness is what the combined teachings of the prior art would have suggested to one of ordinary skill in the art. See, for example, In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In establishing a prima facie case of obviousness, it is incumbent upon the examiner to provide a reason why one of ordinary skill in the art would have been led to modify a prior art reference or to combine reference teachings to arrive at the claimed invention. See Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Int. 1985). To this end, the requisite motivation must stem from some teaching, suggestion or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art and not from the appellant's disclosure. See, for example, Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1052, 5 USPQ2d 1434, 1439 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988).

The first is that GB 032 does not disclose or teach the “intermediate ring which connects the flange ring with the arc-shaped ring and has a reduced diameter waist³-like portion” (emphasis added). The examiner has not explained in the rejection exactly where each of the structural elements recited in claim 16 is found in GB 032; the only indication of this is found on a marked-up copy of Figure 1 of the reference, which markings presumably were placed thereupon by the examiner. In this rendition of the GB 032 vessel, the lowermost portion of upper rim 4⁴ is provided with, to use the language of the appellants’ claim 16, an arc-shaped ring (at numerals 3 and 15) which abuts a section of the vessel body. However, considering the portion of rim 4 which lies immediately above the arc-shaped ring portion to be the required “intermediate ring which connects the flange ring with the arc-shaped ring,” and the remaining upper portion of rim 4 to be the claimed “flange ring,” as in the labels placed on the drawing by the examiner, results in there being no “reduced diameter waist-like portion” transcribed by the intermediate ring. From our perspective, the only “waist-like portions” present in GB 032 are where the arc-shaped rings (at numerals 3) engage the circular grooves in the wall of the vessel which, of course, are not located in the intermediate rings.

³The common applicable definition of “waist” is “the part of something corresponding to or resembling the human waist” (the narrowed part of the human body between the thorax and hips). See, for example, Webster’s New Collegiate Dictionary, 1973, page 1315.

⁴Lower rim 5 is essentially a mirror image of upper rim 4.

The second of the appellants' arguments to which we refer is that there exists no evidence that it would have been obvious to combine the teachings of GE 085 or EP 817 with those of GB 032 in the manner proposed by the examiner. In the explanation of the rejection of claim 16, the examiner concedes that GB 032 fails to disclose or teach the required "section extending past a connection point of the arc-shaped ring with the intermediate ring toward a center of the one of the bottom and the cover" which constantly decreases in thickness to its inner edge. However, the examiner is of the view that such a feature is taught by either of the two secondary references, and it would have been obvious to one of ordinary skill in the art to "incorporate such a section . . . into the structure of GB 032 for the purpose of strengthening the reinforcement and protection of the bottom or cover" (Answer, page 4).

GE 085 also is mentioned by the appellants on page 3 of their specification. The appellants there comment that the ring structure shown therein is intended to provide high resistance to vessel body, but is formed of a polymer material having metallic parts secured therein, which has the disadvantages a large expenditure of material, high manufacturing costs, and the creation of gaps which allow the accumulation of dirt and moisture. GE 085 explains that previous polymer protective rings were adhesively attached to the vessels, but could become detached if the adhesive failed (translation, pages 2 and 3). This reference seeks to improve upon the prior art devices by attaching the polymer rims to the vessel by incorporating a metal element into each and

then welding the ends of the metal element to the outer wall of the vessel. As illustrated in Figure 1, an annular metal rim 11 is substantially entirely encapsulated in the annular polymer rim 10, with metal rim ends 12 and 19 protruding in order to be welded to the outer wall of the vessel.

While it is true that the GE 085 arrangement results in an inwardly oriented polymer ring portion, in our opinion there are two reasons why the artisan would not have found suggestion to combine the references in the manner proposed by the examiner. First, GE 085 does not deal with the situation wherein the polymer ring is attached to the vessel by means including an interlocking arcuate section, such as that shown in GB 032 at 3 and 15. In the absence of the mention of such an attachment system in the secondary reference, the conclusion that providing the attachment system disclosed therein would solve a problem in the primary reference, that is, be an improvement thereto, is mere speculation. Second, and continuing further on this theme, GE 085 teaches one of ordinary skill in the art that the solution to problems in attaching the polymer rings to the vessels is to embed metal rings therein and then weld the rings to the vessels. This is contrary to the objective of GB 032, which is to provide a ring that is removable (page 1, lines 40-45), whether attached by means of the interaction of curved portions on the rings and on the tanks (Figures 1-3), or when attached by the means specified in the other embodiments. To follow the teachings of GE 085 in modifying GB 032 would necessitate that the objective of removable polymer

rings be discarded, along with the structure by which it was accomplished, which in our view would operate as a disincentive to one of ordinary skill to do so.

On the basis of the reasoning set forth above, it is our view that the combined teachings of GB 032 and GE 085 fail to establish a prima facie case of obviousness with regard to the subject matter recited in independent claim 16.

The examiner has focused upon Figure 1b of EP 817 in concluding that the teachings of this reference would have suggested to one of ordinary skill in the art the constantly decreasing section which was lacking in GB 032. Shown in Figure 1b is a vessel having on each end a rubber protector 10 that is attached to the vessel by an adhesive (column 7, lines 1 and 2). The examiner has not pointed out where in EP 817 one of ordinary skill in the art is instructed that the inwardly extending portion of rubber protector 10 provides additional strength and protection, and in the absence of such the examiner's conclusion that this would be the case (Answer, page 4) is unsupported. In addition, as was the case with GE 085, modification of GB 032 in accordance with the teachings of EP 817 would require that the removable feature of the primary reference be discarded. Therefore, GB 032 and EP 817 also do not establish a prima facie case of obviousness with regard to claim 16, and the rejection is not sustained.

CONCLUSION

The rejection of claims 2-16 is not sustained.

The decision of the examiner is reversed.

NEAL E. ABRAMS
Administrative Patent Judge

CHARLES E. FRANKFORT
Administrative Patent Judge

JOHN P. McQUADE
Administrative Patent Judge

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