

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JACQUELINE L. BUTCHER

Appeal No. 1998-2424
Application 08/515,269

ON BRIEF

Before PATE, NASE, and JENNIFER D. BAHR, Administrative Patent Judges.

PATE, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 20 through 22. These are the only claims remaining in the application.

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The claimed invention is directed to a method for maintaining a chain of sterility when sterilizing a bacteriologically compromised appliance, a system for sterilizing such an appliance, and an article, namely, a bacteriologically impermeable, flexible sheath. These inventions find utility in the sterilization of dental appliances using liquid sterilant and an ultrasonic sterilizer. The invention may be further understood by reference to the appealed claims, a copy of which is appended to appellant's brief.

The references relied upon by the examiner as evidence of obviousness are:

Boston	3,161,311	Dec. 15, 1964
Frew et al. (Frew)	3,933,263	Jan. 20, 1976
Fortin	5,198,176	Mar. 30, 1993

Additionally, the examiner is relying on the admitted prior art found on page 1, lines 9 - 18 of the specification.

THE REJECTIONS

Claims 20 and 21 stand rejected under 35 U.S.C. § 103 as unpatentable over appellant's admission of prior art in view of either Frew or Boston.

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Claims 20 and 21 stand rejected under 35 U.S.C. § 103 as unpatentable over appellant's admission of prior art in view of Fortin.

Claims 20 and 21 stand rejected under 35 U.S.C. § 103 as unpatentable over appellant's admission of prior art in view of Frew or Boston and Fortin.

Claim 22 stands rejected under 35 U.S.C. § 103 as unpatentable over Fortin or Boston.

OPINION

We have carefully reviewed the rejections on appeal in light of the arguments of the appellant and the examiner. As a result of this review, we have come to the determination that the applied prior art establishes the prima facie obviousness of claims 20 and 22. This prima facie case of obviousness has not been rebutted by additional evidence from the appellant. Therefore, we will sustain the rejections of claims 20 and 22. Likewise, we have reached the determination that claim 21 is not prima facie obvious in view of the cited prior art. Therefore, the rejection of this claim is not affirmed. Our reason follows.

Turning first to a consideration of claim 20, we are in agreement with the examiner's finding that the admitted prior art establishes the obviousness of a method, including the steps of providing a container with an open top and closed bottom, placing an appliance into the container, filling the container with a sterilant, and cleaning the appliance by placing the container in an ultrasonic sterilizer. The admitted prior art does not include the step of lining the container with a bacteriologically impermeable sheath, nor does it address the step of disposing of the sheath after the appliance has been cleaned. With respect to Boston and Frew, while these patents disclose liners for containers, we noted that no processing, cleaning, or any reaction is undergone in the container while lined by these disposable liners. The teachings of Boston and Frew are merely for lining a container; there is no disclosure of lining a reaction chamber where some process is to take place.

On the other hand, Fortin teaches a thermoplastic cylindrical container which can be either a rigid, freestanding container for use as a substitute for a beaker,

or it could be used as a disposable liner for a glass laboratory beaker. The thermoplastic beaker disclosed can be made with extremely thin walls and has excellent physical, optical, and thermal characteristics which ideally suits it for use in medical, biological, or chemical laboratories as an inexpensive, disposable, generally chemically inert and high temperature stable beaker. See column 4, lines 58 - 61. Such containers are made so that they will fit snugly within standard laboratory glassware such as beakers. See column 5, lines 13 - 15. The beakers so made can be freestanding laboratory beakers. In some embodiments, those to be used as beaker liners, the sidewall 74 and bottom 76 are less than 0.010 inches thick. The thin bottom of such a beaker liner is nonetheless quite strong because it has the highest polymer orientation in the container. See column 12, lines 5 - 12.

The above noted disclosure of Fortin evidences a recognition in the art that disposable beaker liners which are autoclaveable and suited for biological tasks are made inexpensive and disposable for the self-evident advantage of eliminating the need to wash laboratory glassware. In view of

this self-evident advantage, possessed by the Fortin inexpensive, disposable beaker liner, it would have been obvious to modify the process of the admitted prior art to utilize an inexpensive and disposable beaker liner for the advantage of eliminating cleaning of laboratory glassware. As to appellant's argument that the beaker of Fortin is not bacteriologically impermeable, we certainly disagree. The beakers therein disclosed have excellent biological property and are disclosed as autoclaveable. In our

view, such a beaker must be considered bacteriologically impermeable. We further note that claim 20 does not require flexibility of the lining of step b.¹

With respect to claim 21 as noted above, neither Frew nor Boston discloses processing occurring in the lining of the

¹For autoclaveability note column 27, lines 61 and 62.

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container. For this reason, the admitted prior art in view of Frew or Boston does not establish the prima facie obviousness of claim 21. With respect to Fortin, we note that Fortin's liner is not of sufficient flexibility to permit folding into a compact form for storage and dispensing. Therefore, the disclosure of Fortin and the admitted prior art does not establish the prima facie obviousness of claim 21.

Turning to a consideration of claim 22, the claim is directed to a liner or sheath for a container. While we note that the preamble states that such a sheath is for sterilization of a contaminated appliance in a ultrasonic cleaning machine, we regard this as only an intended use limitation that does not give life and meaning to the recited structure in the body of the claim. The structure of the sheath in the claim is merely a flexible material that can be folded and unfolded to be placed in

a container while having bacteriologically impermeability. In our view, Boston would have rendered such a sheath prima facie

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obvious. Boston shows an impermeable sheath that can be folded or unrolled to be dispensed and placed in a container, the open end of the sheath coinciding with the open end of the container. Appellant argues that the sheath is not bacteriologically impermeable. However, Boston is clearly intended to keep the interior of the sheath sanitary and sterile. Therefore, we regard bacteriological impermeability as an inherently property of the sheath of Boston. For this reason, we will affirm the 35 U.S.C. § 103 rejection of claim 22 based on the Boston reference.

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SUMMARY

The rejection of claim 20 and the rejection of claim 22 under 35 U.S.C. § 103 have been affirmed.

AFFIRMED-IN-PART

WILLIAM F. PATE III)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
JEFFREY V. NASE)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
JENNIFER D. BAHR)	
Administrative Patent Judge)	

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