

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHRISTOPHER B. ARNOLD
MARK T. LUND and
DONALD E. HERSHEY

Appeal No. 98-3303
Application 08/568,211¹

ON BRIEF

Before CALVERT, COHEN and FRANKFORT, Administrative Patent Judges.

COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claim 21. As indicated in the brief (page 1), while claims 1 through 5,

¹ Application for patent filed December 6, 1995.

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7 through 11, 13 through 15, and 21 were finally rejected, claim 21 is the only rejected claim on appeal. Claims 16 through 20, the only other claims pending in the application, stand withdrawn pursuant to 37 C.F.R. § 1.142(b) as being based upon a nonelected species.

Appellants' invention pertains to a manually-actuated spray pump for dispensing fluid. An understanding of the invention can be derived from a reading of claim 21, a copy of which appears in the APPENDIX to the brief (Paper No. 12).

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

Collins	1,814,504	Jul. 14, 1931
Montaner et al. (Montaner)	5,025,958	Jun. 25, 1991

The following rejection is before us for review.

Claim 21 stands rejected under 35 U.S.C. § 103 as being unpatentable over Collins in view of Montaner.

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The full text of the examiner's rejection and response to the argument presented by appellants appears in the answer (Paper No. 13), while the complete statement of appellants' argument can be found in the brief (Paper No. 12).

OPINION

In reaching our conclusion on the obviousness issue raised in this appeal, this panel of the board has carefully considered appellants' specification and claim 21, the applied patents, and the respective viewpoints of appellants and the examiner. As a consequence of our review, we make the determination which follows.

We reverse the examiner's rejection of appellants' claim 21.

Contrary to the view of appellants (brief, page 2), this panel of the board shares the examiner's view (answer, page 5) to the effect that one having ordinary skill in the art would

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have understood that there is an annular chamber formed by the
outer

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surface of the plunger 18 spaced away from the interior surface of the pump barrel 12 in the applicator of Collins (Fig. 1) such that there is no frictional contact between the outer surface and the interior surface; the relationship of the plunger, pump barrel, and packing 22 (page 2, lines 27 through 32) providing for a reduced effective area of the plunger (as compared to the area of a typical piston type plunger in sealing relationship with the interior surface).

We also appreciate that the applicator of Collins includes a flexible tube 29 which carries a conventional spray gun 30 intended to apply very poisonous material held in tank 1. As expressed by the patentee (page 3, lines 17 through 22), to clear the hose the plunger must be drawn out, allowing ball valve 14 to open; then, if the trigger on the spray gun is tripped, the liquid in the hose will run back to the tank.

As argued by appellants (brief, page 3), and as acknowledged by the examiner (answer, page 6), the hose clearing operation would be precluded by the proposed

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combination of reference teachings. In our opinion, one having ordinary skill in the art simply would not have been motivated to make the proposed combination since the modification would have added a valve which defeats the patentee's expressly stated intention of returning poisonous material within the hose to the tank. Since we cannot support the examiner's rationale, the rejection of claim 21 must be reversed.

REMAND

We remand the application to the examiner to assess the patentability of appellants' claimed subject matter, in particular the content of claim 21 on appeal, taking into account the basic and known manually-actuated plunger type spray pumps of record in the application viewed in light of the prior art showing by Collins, in the manually-actuated spray pump art, of a known plunger arrangement wherein there is no frictional contact between an outer surface of the plunger and an interior surface of a pump barrel.

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In summary, this panel of the board has reversed the rejection of claim 21 under 35 U.S.C. § 103 as being unpatentable

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over Collins in view of Montaner. Additionally, we have
remanded the application to the examiner for the reason set
forth, supra.

The decision of the examiner is reversed.

REVERSED AND REMANDED

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IAN A. CALVERT))
Administrative Patent Judge)	
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)	BOARD OF PATENT
IRWIN CHARLES COHEN))
Administrative Patent Judge)	APPEALS AND
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)	INTERFERENCES
)	
CHARLES E. FRANKFORT)	
Administrative Patent Judge)	

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RODNEY M. YOUNG
THE PROCTER & GAMBLE COMPANY
WINTON HILL TECHNICAL CENTER
6110 CENTER HILL AVE.
CINCINNATI, OH 45224