

The opinion in support of the decision being entered today was **not** written for publication and is **not** precedent of the Board.

Paper No. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte BERND SCHREPFER and HANS-HELMUT REICHMANN

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Appeal No. 1999-1824  
Application No. 08/513,835

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HEARD: November 15, 2000

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Before FRANKFORT, NASE and JENNIFER D. BAHR, Administrative Patent Judges.  
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 9-11 and 13, which are all of the claims pending in this application.

BACKGROUND

The appellants' invention relates to a metal container, comprising an essentially cylindrical side wall and two curved end walls, which is capable of withstanding internal overpressure and which is provided with an intended breaking point formed as a notch at the outer surface of at least one of the end walls. An understanding of the invention can be derived from a reading of exemplary claim 9, which appears in the appendix to the appellants' brief.

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

Mozley et al. (Mozley)	4,597,505	Jul. 1, 1986
Zinkann <sup>1</sup> (German patent application)	3,737,977	May 24, 1989 <sup>2</sup>

The following rejection is before us for review.

Claims 9-11 and 13 stand rejected under 35 U.S.C. § 103 as being unpatentable over Zinkann in view of Mozley.

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<sup>1</sup> This reference has been referred to by the examiner and the appellants as "Maxton."

<sup>2</sup> An English language translation of this reference, prepared by the Patent and Trademark Office, is appended hereto.

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Reference is made to the brief and reply brief (Paper Nos. 22 and 25) and the answer (Paper No. 23) for the respective positions of the appellants and the examiner with regard to the merits of this rejection.

#### 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. For the reasons which follow, we cannot sustain the examiner's rejection.

Independent claim 9 recites "the notch being located in the at least one end wall adjacent the central bulge thereof." The only issue in dispute in this appeal relates to the location of the notch. Thus, it is essential that we fully understand the meaning of "adjacent" as used in claim 9 before addressing the examiner's rejection under 35 U.S.C. § 103.

In proceedings before it, the PTO applies to the verbiage of claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicants' specification. In re Morris, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).

The term "adjacent" is defined as "near or close; adjoining."<sup>3</sup> Further, we are informed by the appellants' specification (pages 11 and 12) that

an intended breaking point constructed as an annular notch 10 is arranged in the partial spherical surface 7a of the upper end wall 6a near the transition 11 to the upper bulge 8a. At this location is the area of the greatest extension of the end wall 6a under the influence of an internal pressure of the inner container 2.

The appellants' specification also teaches, on page 7, that

[e]xperiments have shown that the maximum extension of the end wall occurs in the spherical surface of the end wall in the immediate vicinity to the bulge of the cup-shaped bottom, and that the maximum extension of the end wall at this location occurs in tangential direction relative to a concentric circle on the spherical surface of the end wall.

It is apparent from this disclosure in the appellants' specification that an object of the appellants' invention is to locate the notch, which is the intended breaking point, in the end wall in the immediate vicinity of the central bulge because this is the location of maximum extension of the end wall under the influence of an internal pressure in the container. In light of this disclosed objective, one of ordinary skill in the field of the appellants' invention would understand the above-cited language from claim 9 as requiring that the notch be located near, in the sense of being in the immediate vicinity of, the central bulge. Accordingly, we interpret the term "adjacent" as used in claim 9 as meaning "in the immediate vicinity of."

Turning now to the prior art references cited by the examiner in support of the obviousness rejection of claims 9-11 and 13, we note that Zinkann (Figures 6-9) provides a

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<sup>3</sup> Webster's New World Dictionary, Third College Edition (Simon & Schuster, Inc. 1988).

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rupture groove 14 adjacent the transition or edge area between the bulging upper end wall 5 and the cylindrical side wall 1, since, according to Zinkann, this edge area is subjected, when pressurized, to the greatest transverse strain (translation, page 4). From our perspective, one of ordinary skill in the art would not consider the rupture groove of Figures 6-9 of Zinkann, which is located on the upper end wall 5 as remotely as possible from the central bulge (barrel sump) portion, to be "adjacent" (in the immediate vicinity of) the central bulge portion as required by claim 9 on appeal.

As conceded by the examiner on page 5 of the answer, Mozley provides no teaching or suggestion to modify the location of the Zinkann notch and, thus, does not cure the deficiency of the Zinkann reference noted above. Therefore, we shall not sustain the examiner's rejection of claim 9, or claims 10, 11 and 13 which depend therefrom, as being unpatentable over Zinkann in view of Mozley.

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CONCLUSION

To summarize, the decision of the examiner to reject claims 9-11 and 13 under 35 U.S.C. § 103 is reversed.

REVERSED

CHARLES E. FRANKFORT	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
JEFFREY V. NASE	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
JENNIFER D. BAHR	)	
Administrative Patent Judge	)	

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Friedrich Kueffner  
342 Madison Avenue  
Suite 1921  
New York, NY 10173

**NOTE: Zinkann Translation is inside of  
envelope-ready to be mailed.**

## ***Jenine Gillis***

Appeal No. 1999-1824

Application No. 08/513,635

APJ BAHR

APJ FRANKFORT

APJ NASE

DECISION: REVERSED

Panel Change: Yes No

Prepared: August 14, 2001

3 MEM. CONF. Y N

OB/HD

GAU: 3700

PALM

ACTS 2

BOOK

DISK (FOIA)