

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. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte
SONJA A. SANDIN

Appeal No. 2000-1098
Application No. 08/661,415

ON BRIEF

Before KIMLIN, OWENS and LIEBERMAN, Administrative Patent Judges.

LIEBERMAN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the refusal of the examiner to allow claims 1, 3, 5, 6, 11, 18 through 22, 24 through 27 and 29 through 31, which are all the claims pending in this application.^{1 2}

¹The Brief states that claims 23, 28 and 32 were withdrawn from consideration as being directed to a non-elected invention. See Brief, page 2. In contrast, the Answer states that claims 23, 28 and 32

THE INVENTION

The invention is directed to a beverage device comprising a beverage pack and a shield including a first and second member, wherein the shield has the characteristic of substantially encapsulating the beverage pack within the bottom of a vessel. Additional limitations are provided in the following illustrative claim.

THE CLAIM

Claim 1 is illustrative of appellants' invention and is reproduced below.

1. A beverage device to be placed within a vessel having a bottom to add flavor to a liquid in the vessel, the beverage device comprising:

a shield; and

a beverage pack for adding flavor to the liquid, wherein the beverage pack is attached to the shield,

wherein the shield includes a first member, at least one sealing layer located between the first member and the beverage pack and a second member,
wherein the first member is configured to engage the second member, and

wherein the shield is configured to substantially encapsulate the beverage pack

"embody patentable subject matter." See Answer, pages 8 and 9. In either event, the record is clear that the above claims are not before us for consideration.

² Each of the Office actions contains a rejection of claim 11. The Answer however, does not include claim 11 in the statement of the rejection. In the "Response to argument," Answer, page 5, the rejection of claim 11 is included. Accordingly, we conclude that the omission of claim 11 from the statement of the rejection is inadvertent, and we include it in our consideration.

within the bottom of the vessel when the beverage device is pushed to the bottom of the vessel after the flavor is added to the liquid to prevent further addition of flavor to the liquid.

THE REFERENCES OF RECORD

As evidence of obviousness, the examiner relies upon the following references.

Mihailide	3,935,318	Jan. 27, 1976
Bondanini	4,650,583	Mar. 17, 1987

THE REJECTION

Claims 1, 3, 5, 6, 11, 18 through 22, 24 through 27, 30 and 31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Mihailide in view of Bondanini.

OPINION

We have carefully considered all of the arguments advanced by the appellant and the examiner and agree with the appellant for the reasons set forth below that the rejection of claims 1, 3, 5, 6, 11, 18 through 22, 24 through 27, 30 and 31 are not well founded. Accordingly, we reverse the rejection.

The Rejection under § 103

"[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability," whether on the grounds of

anticipation or obviousness. In re Oetiker, 977 F.2d. 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). On the record before us, the examiner relies upon a combination of two references to reject the claimed subject matter and establish a prima facie case of obviousness.

Our initial inquiry is directed to the scope of the claimed subject matter. During patent prosecution, claims are to be given their broadest reasonable interpretation consistent with the specification, and the claim language is to be read in view of the specification as it would be interpreted by one of ordinary skill in the art. In re Morris, 127 F.3d 1048, 1053-54, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997); In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983); In re Okuzawa, 537 F.2d 545, 548, 190 USPQ 464, 466 (CCPA 1976).

Our construction of the subject matter defined by appellants' claim 1 is directed to the scope of the language, "wherein the shield is configured to substantially encapsulate the beverage pack." The issue at hand is directed to the scope of the aforesaid language. The specification states that, "the present invention relates to a device for encapsulating a tea bag within the bottom of a cup for clean, efficient disposal." See specification, page 1, lines 13-14. The specification further states that, if the tea bag is left in the cup, the tea bag will continue to steep causing the liquid tea to turn bitter." See specification, page 1, lines 27-

28. The Appellant thereafter states that, "it is an object of the present invention to provide a device for infusing an infuser, such as a tea bag, in a liquid which allows the tea bag to be retained within the cup after a desired strength of the beverage has been reached. It is a further object of the invention to provide a device for encapsulating the tea bag within the bottom of a cup." See specification, page 2, lines 12-18. We find the invention provides for, "a shield 14 for substantially encapsulating the beverage pack 12 within a bottom 16 of a vessel." See specification, page 3, lines 30-31. Moreover, the specification states that, "when the shield 14 is in the closed position, the sealing materials 32, 34 seal the interfaces to effectively isolate the beverage pack 12 from the water in the cup above the shield 14. This prevents continued infusion of the material in the beverage pack 12 into the liquid above the shield." See specification, page 4, lines 15-20. Based upon the above findings, we interpret the aforesaid language of the claim as requiring substantial encapsulation of the beverage pack in the bottom of the vessel so as to encapsulate and isolate the beverage pack and prevent the further infusion of the tea or other beverage material in order to maintain the beverage at the desired strength. Furthermore, the encapsulation is temporary. Moreover, the encapsulation is not obtained by steeping the beverage and impacting the bottom of a vessel as a part of a steeping process. We conclude that the unequivocal requirement of the claimed subject matter is to encapsulate the beverage pack at the bottom of the vessel, maintain the desired strength of the beverage by

preventing further addition of flavor to the liquid, such that the beverage may be consumed without further infusing it with additional flavor from the beverage pack.

Applying this interpretation of the claimed subject matter to the Mihailide reference, we find that Mihailide is likewise directed to a device for brewing a beverage such as tea. See Abstract and column 1, lines 6-10. We find that Mihailide discloses an apparatus comprising a member which is “a lower portion having a generally flat perforated lower surface exposing the beverage material to the hot water.” See column 2, lines 34-36. We find Mihailide discloses that, “[t]he upper portion of the device contains the flexible membrane that is preferably concave and non-permeable to water. The upper portion is sealed to the lower portion of the device locking in the beverage material and the filter.” See column 2, lines 38-42. We find that, “[t]he upper and lower portions of the receptacle are joined during manufacture by conventional heat sealing.” See column 3, lines 1-3 and column 4, lines 40-45.

The examiner relies on the structure which in Figure 3, “shows the apparatus wedged in the bottom of a cup thereby preventing further addition of flavor to the liquid.” See Answer, page 4. In light of our interpretation, supra, given the scope of the claim language, we disagree with the examiner’s conclusion. Figures 3 and 4 illustrate the operation of the device. See column 4, lines 53-54. Mihailide, states in part,

Grasping the actuating stick 13, the user presses the stick downwardly flexing the membrane 14 as shown in Fig. 3. Membrane 14, flexing

downwardly like a plunger, creates a positive air pressure change in receptacle 12 and expels most of the air contained in the receptacle. Although the bottom of the device 10 may come into contact with the bottom of the cup, air bubbles are forced out of the perforations 22 along the lower surface of the receptacle. The user then slightly lifts actuating stick 13 causing membrane 14 to flex upwardly to its initial state, as shown in Fig. 4. This upward flexing of membrane creates a negative pressure change in receptacle 12 and sucks hot water through perforations 22 and filter 18 to soak the beverage material B contained within the receptacle. The user then repeatedly impulses the actuating stick 13 up and down like a plunger, causing hot water to be alternately sucked up into and expelled out of receptacle 12 through the perforations 22. Preferably, impulsing actuating stick 13, the bottom of receptacle contacts the bottom of the cup during down-thrusts. This increases the amount of flexing of membrane 14 and assists in the forced purging of the receptacle of air and circulation of the hot water throughout the inside of receptacle 12. The flexing action of membrane 14 creates a thorough circulation of the hot water throughout the beverage material B.

See Mihailide, column 4, lines 56 to column 5, lines 15. Based upon the above findings, we conclude that Mihailide neither discloses nor suggests the step of substantially encapsulating the beverage pack within the bottom of the vessel when the beverage pack is pushed to the bottom of the vessel after the flavor is added to the liquid to prevent further addition of flavor to the liquid. Indeed the thrust of Mihailide, as derived from the above cited is directly contrary to the requirements of the claimed subject matter. Mihailide thrusts the actuator to the bottom of the vessel in order to enhance the circulation of the hot water throughout the inside of the receptacle and beverage material B. The express intent is to add additional flavor to the hot water as opposed to encapsulating the beverage pack to prevent further addition of flavor to the liquid as required by the claimed subject

matter.

In addition, the claimed subject matter requires that at least one element of the device be a “sealing layer.” See claim 1. The examiner’s finding is limited to a quotation from Mihailide that, “other suitable means of joining the portions 14 and 16 could be used.” See Mihailide column 4, lines 40-45. The examiner thereafter relies on Bondanini for its disclosure of a filter for coffee percolators wherein pins penetrate through two layers to be secured in a third thereby securing the filter. See Answer, pages 4 and 5. The examiner however, has made no finding of a sealing layer located between the first member and the beverage pack as required by the claimed subject matter.

In order to establish a *prima facie* case of obviousness, the Examiner must show that each and every limitation of the claim is described or suggested by the combination of prior art references or would have been obvious based on the knowledge of those of ordinary skill in the art. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). The Examiner simply does not adequately address these limitations of the claimed subject matter. Accordingly, we reverse the decision of the examiner.

DECISION

The rejection of claims 1, 3, 5, 6, 18 through 22, 24 through 27, 30 and 31 under 35 U.S.C. § 103(a) as being unpatentable over Mihailide in view of Bondanini is

reversed.

The decision of the examiner is reversed.

REVERSED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
TERRY J. OWENS)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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