

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. 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 JARI-PEKKA RIEKKINEN  
and JUKKA SAUKKONEN

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Appeal No. 2001-0558  
Application No. 08/966,708

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ON BRIEF<sup>1</sup>

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

DECISION ON APPEAL

Jari-Pekka Riekkinen et al. originally took this appeal from the final rejection of claims 2 through 10, 22 through 25, 32 and 33. The appellants have since canceled claim 2 and amended claims 22, 23 and 32. Thus, the appeal now involves

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<sup>1</sup> An oral hearing was set and confirmed for July 11, 2001 (see Paper Nos. 27 and 28). Since counsel did not appear at the hearing to argue the appellants' case, this appeal is being decided on brief.

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claims 3 through 10, 22 through 25, 32 and 33, the only claims currently pending in the application.

#### THE INVENTION

The invention relates to a cuvette package which is defined in representative claim 32 as follows:

32. A handling package of multicell cuvettes, said package comprising:

a row of multicell cuvettes formed by a plurality of reaction vessels, said reaction vessels of the multicell cuvettes being adapted adjacent to each other so that the vessels have a common separating wall, whereby the multicell cuvettes may be packed in a contiguous row in which long sides of abutting multicell cuvettes are placed tightly adjacent to each other; and

a bonding strip adherable to a surface about a mouth of the reaction vessel of the multicell cuvettes so as to be detachable prior to use, said strip serving to join the row of multicell cuvettes into a contiguous handling package, wherein said bonding strip has a width smaller than the cross-package length of the multicell cuvettes.<sup>2</sup>

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<sup>2</sup> The language in claim 32 relating to the common separating wall is somewhat garbled. Based on the underlying specification, particularly page 1, we understand the recitation that the reaction vessels have a common separating wall to mean that any two adjacent reaction vessels in a multicell cuvette are separated by a common wall. Also, the recitation in claim 32 that the bonding strip is adherable to a surface about a mouth of the reaction vessel of the multicell cuvettes is ambiguous since the multicell cuvettes have a plurality of reaction vessels with a corresponding plurality of mouths. Finally, claims 3 and 22 and claims 6

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THE PRIOR ART

The prior art items relied on by the examiner as evidence of

obviousness are:

Shelton et al. (Shelton) 29, 1976	3,966,042	Jun.
Witty et al. (Witty) 1987	4,675,299	Jun. 23,
Winski 1993	5,269,645	Dec. 14,

The multicell cuvette assembly discussed on page 1, lines 12 through 32, of the appellants' specification (the admitted prior art)

THE REJECTIONS

Claims 3 through 8, 22 through 25 and 32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the admitted prior art in view of Witty.

Claims 9, 10 and 33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the admitted prior art in view of Witty, Winski and Shelton.

Attention is directed to the appellants' main and reply briefs (Paper Nos. 21 and 25) and to the examiner's answer

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and 23 are duplicates, and the term "the other end" in claim 10 lacks a proper antecedent basis. These matters are deserving of correction upon return of the application to the technology center.

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(Paper No. 22) for the respective positions of the appellants and the examiner with regard to the merits of these rejections.

#### DISCUSSION

Page 1, lines 12 through 32, of the appellants' specification describes the admitted prior art in the following words:

For the assay of different liquids, analytic laboratories employ automatic analyzers in which the liquids to be assayed are placed in reaction vessels, designed to perform simultaneously as cuvettes of high optical quality. Generally, a row of reaction vessels or single-cell cuvettes may be combined into a multicell module of reaction vessels, separated from each other by a vertical wall and cast into a single-piece row. Herein, the reaction vessels are adapted side-by-side into an integral module with a common wall separating any two adjacent vessels and the long vertical sides of the multicell cuvettes made straight so that the multicell cuvettes in turn can be placed side-by-side into a contiguous row in which the long sides of the cuvettes are tightly adjacent to each other. Thus, the cuvettes can be stored in a rectangular container during transport and other handling. Such a multicell cuvette design is disclosed in US Pat. No. 4,690,900. Cuvettes of the above-described type are easy to handle and give reliable measurement results.

As conceded by the examiner (see page 3 in the answer), the package of multicell cuvettes embodied by the admitted

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prior art does not respond to the limitations in independent claim 32 relating to the bonding strip.

Witty discloses a self-contained reagent package and calibration assembly comprising a plurality of reagent package devices 10 and a reagent standards device 50. Each reagent package device includes a plurality of wells with open top ends and a removable protective cover 21 sealed to the top of the package to close the open top ends of all but one of the wells. The reagent standards device includes a plurality of receptacles having open top ends and a removable protective cover 60 substantially similar to the removable cover 21 for closing these open top ends.

In proposing to combine the admitted prior art and Witty to reject claim 32, the examiner submits that

Witty et al suggest providing a strip of bonding material 60 over a plurality of test tubes 68 to seal the respective openings to protect the test cells from contamination and provide a surface for labeling information. Therefore, it would have been obvious in view of Witty et al to provide a strip of protective material to cover the openings of the cuvettes of the Admitted Prior Art and to assemble them into one package for shipping. One of ordinary skill in the . . . art would readily understand the width of the strip can be decreased as long as the strip covers the openings of the cuvettes and would have found it obvious to alter the width of the strip to anything less than the width of the

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assembly but more than the width of the holes to enable the seal to be maintained but save on the expense of the tape [answer, pages 3 and 4].

Rejections based on 35 U.S.C. § 103(a) must rest on a factual basis. In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 177-78 (CCPA 1967). In making such a rejection, the examiner has the initial duty of supplying the requisite factual basis and may not, because of doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. Id.

To the extent that Witty's reagent package devices 10 and/or reagent standards device 50 correspond to the multicell cuvettes of the admitted prior art, each has its own separate and distinct bonding strip or removable cover 21, 60. There is simply nothing in Witty's disclosure of this structure which would have suggested providing the admitted prior art multicell cuvettes with a bonding strip serving to join the row of multicell cuvettes into a contiguous handling package as recited in claim 32, let alone with such a bonding strip having a width smaller

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than the cross-package length of the multicell cuvettes as also recited in claim 32. Clearly, the examiner has resorted to hindsight reconstruction to supply the manifest deficiencies in this prior art combination. Furthermore, these deficiencies find no cure in Shelton's disclosure of a powered fastener tool nail strip and/or Winski's disclosure of tacky spacing sheets for a palletizing system.

Hence, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of independent claim 32, and dependent claims 3 through 8 and 22 through 25, as being unpatentable over the admitted prior art in view of Witty, or the standing 35 U.S.C. § 103(a) rejection of dependent claims 9, 10 and 33 as being unpatentable over the admitted prior art in view of Witty, Winski and Shelton.

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SUMMARY

The decision of the examiner to reject claims 3 through 10, 22 through 25, 32 and 33 is reversed.

REVERSED

NEAL E. ABRAMS	)	
Administrative Patent Judge	)	
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	)	BOARD OF PATENT
JOHN P. McQUADE	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
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	)	
JEFFREY V. NASE	)	
Administrative Patent Judge	)	

JPM/gjh

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BIRCH, STEWART, KOLASCH  
and BIRCH  
P.O. BOX 747  
FALLS CHURCH, VA 22040-0747

***GJH***

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APJ McQUADE

APJ NASE

APJ ABRAMS

REVERSED

3 PERSON CONFERENCE

February 13, 2002