

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte GARRETT L. SCOTT  
and JAMES E. FENSTERMACHER

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Appeal No. 2002-2201  
Application No. 09/699,539

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ON BRIEF

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Before OWENS, KRATZ and DELMENDO, Administrative Patent Judges.  
KRATZ, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 17-24. Claims 25-27, which are the only other claims pending in this application, stand withdrawn from further consideration by the examiner as drawn to a non-elected invention.

BACKGROUND

Appellants' invention relates to an apparatus for forming a cased glass stream that is used in glassware manufacture. An understanding of the invention can be derived from a reading of claim 17, which is reproduced below.

17. Apparatus for forming a cased glass stream having an inner core glass surrounded by an outer casing glass, said apparatus including:

a core glass source for delivering core glass through a first orifice,

a housing forming a second orifice vertically spaced beneath and aligned with said first orifice with a chamber surrounding said second orifice and communicating with said second orifice through a gap between said first and second orifice,

a casing glass source for delivering casing glass to said chamber, such that glass flows by gravity from said sources through said orifices to form said cased glass stream,

said casing glass source including a spout having an outlet opening, and

a source of gas at continuous elevated pressure coupled to said interior volume of said tube, and through said tube to said opening, continuously maintaining said interior volume of said tube at a pressure above ambient pressure surrounding said spout.

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

Barkhau et al. (Barkhau)	4,740,401	Apr. 26, 1988
McCauley (Great Britain patent specification)	114,583	Apr. 11, 1918

Claims 17-24<sup>1</sup> stand rejected under 35 U.S.C. § 103 as being unpatentable over Barkhau in view of McCauley.<sup>2</sup>

We refer to the brief and reply brief and to the answer for a complete exposition of the opposing viewpoints expressed by appellants and the examiner concerning the issues before us on this appeal.

#### OPINION

Upon careful review of the respective positions advanced by appellants and the examiner with respect to the rejection that is before us for review, we find ourselves in agreement with appellants' viewpoint in that the examiner has failed to carry the burden of establishing a prima facie case of obviousness. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Piasecki, 745 F.2d 1468, 1471-1472, 223

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<sup>1</sup> While the examiner refers to claims 1-27 as being rejected at page 3 of the answer, the inclusion of non-elected claims 25-27 in the statement of rejection in the answer is considered to be an inadvertent oversight as evident by a review of the final rejection and item No. 7 of the answer.

<sup>2</sup> We note that the examiner does not list or mention Kulig (U.S. Patent No. 4,717,412) (final rejection, page 4) as a relied upon reference in the answer. Nor has the examiner complained that appellants' briefs do not address Kulig. Accordingly, we do not consider Kulig as evidence being relied upon by the examiner in the rejection before us for review.

USPQ 785, 787-788 (Fed. Cir. 1984). Accordingly, we will not sustain the examiner's rejection.

The examiner has determined that Barkhau discloses an apparatus with associated orifices for forming a cased glass stream from core and skin (casing) glass sources. The examiner acknowledges that Barkhau does not disclose a spout, spout tube for controlling casing glass delivery, and a gas source at continuous elevated pressure coupled to the interior volume of the spout tube, as here claimed. According to the examiner, however:

[i]t would have been obvious to a person of ordinary skill in the art at the time the invention was made to add the flow orifice and tubular member of McCauley to the apparatus of Barkhau et al because McCauley teaches that the tubular member would have been helpful for controlling the flow of glass through the flow orifice.

The glass feeder of McCauley, to which the examiner refers, is constructed for transferring glass from an extension (2, FIG. 1) of a tank or furnace (1, FIG. 1) containing molten glass (14, FIG. 1). The extension has a discharge orifice (upper edge 15 of nozzle 16, FIG. 1) located at a height that is above the level of the molten glass in the tank or furnace and a tubular member (19, FIG. 1) associated therewith. In order to discharge molten glass, McCauley employs a suction pump connected to a pipe (36,

FIG. 1) via a valve (38, FIG. 1) to draw molten glass upward in the extension above the level of the upper edge of the discharge nozzle. Compressed air is connected to a pipe (35, FIG. 1) via a valve (37, FIG. 1). The valves (38 and 37) are operated by an arm (39, FIG. 1) and cam (41, FIG. 1) in what appears to be a cyclical manner as evident by the construction thereof.

Here, the examiner has not reasonably explained why one of ordinary skill in the art would have been led to employ the glass feeder assembly of McCauley as a component of the apparatus of Barkhau in a manner so as to arrive at the here claimed subject matter. While the examiner asserts that such a feeder would be helpful for controlling the flow of molten glass through an orifice, the examiner has not explained how that feeder structure would be applicable as an alternative or addition to the apparatus of Barkhau. In this regard, we note that Barkhau describes several apparatus embodiments and the examiner has not established with any particularity how the combination of the flow orifice and tubular member of McCauley would have been suggested as being helpful in controlling molten casing glass flow in any of the embodiments of Barkhau let alone established how a modification of Barkhau resulting in the claimed structure including a source of gas at continuous elevated pressure coupled

to a casing glass spout tube interior would have been suggested by the combined teachings of the references.

Accordingly, on this record, the rejection fails for lack of a sufficient factual basis and analysis by the examiner upon which to reach a conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073-74, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

CONCLUSION

The decision of the examiner to reject claims 17-24 under 35 U.S.C. § 103 as being unpatentable over Barkhau in view of McCauley is reversed.

REVERSED

TERRY J. OWENS	)	
Administrative Patent Judge	)	
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	)	
	)	
	)	BOARD OF PATENT
PETER F. KRATZ	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
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ROMULO H. DELMENDO	)	
Administrative Patent Judge	)	

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