

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 CARLOS ORLANDO VILACHA ZANONI
and KLAUS UHLIG PETERSSEN

Appeal No. 2004-0187
Application No. 09/745,098

ON BRIEF

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

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-16, which are all of the claims pending in this application.

We AFFIRM-IN-PART.

BACKGROUND

The appellants' invention relates to a crown closure for a bottle. An understanding of the invention can be derived from a reading of exemplary claim 1, which has been reproduced below.

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

Ferngren	2,099,056	Nov. 16, 1937
Myer	3,497,098	Feb. 24, 1970
Leenaards <u>et al.</u> (Leenaards)	3,827,594	Aug. 6, 1974

Claims 1-12 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Leenaards.

Claim 13 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Leenaards in view of Ferngren.

Claims 14-16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Leenaards in view of Myer.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the Answer (Paper No. 13) and the final rejection (Paper No. 8) for the examiner's complete reasoning in support of the rejections, and to the Amended Brief (Paper No. 12) and Reply Brief (Paper No. 14) for the appellants' arguments thereagainst.

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. As a consequence of our review, we make the determinations which follow.

The appellants' invention is an improved crown closure for a bottle. The crown closure has a curved portion that is adapted to be the same shape as the mouth contour of the bottle which, according to the appellants, avoids crown tilting, eliminates lacquer breakdown during crowning and during opening of bottles, improves the useful life of the crown elements, and reduces the blank diameter of crown shells, resulting in more crowns produced per sheet of material (specification, page 2).

The invention is manifested in independent claim 1 in the following manner:

A crown closure comprising:

a shell having an inside, a top, a skirt, a curved portion and a plurality of serrations which do not project into said curved portion;

said curved portion disposed between said top and said skirt;

a liner secured to said inside; and

wherein said curved portion is adapted to be the same shape as the mouth contour of a bottle.

It is the examiner's position that all of the subject matter recited in claim 1 is anticipated¹ by Leenaards. The appellants take issue with this conclusion, arguing that Leenaards does not disclose or teach that the curved portion is adapted to be the same shape as the mouth contour of a bottle, as is required by claim 1.

In evaluating this rejection, we first note the appellants have defined "mouth contour" of the bottle to mean the curved portion at the mouth, as shown at 42 in Figure 2a, which comprises an upper portion 43 and a lower portion 45. Leenaards is directed to a twist-off crown closure that utilizes a seal, and the examiner has made reference to Figures 2 and 5, contending that the terms of the claim are met because the crown closure has "a curved portion that is the same shape as the mouth contour of the bottle prior to crimping" (Paper No. 8, page 4). We do not agree. There is no description in Leenaards that supports the examiner's conclusion and, from our perspective, neither do the drawings. It appears to us from Figures 2-6 that the inner curve of the Leenaards' crown closure merely touches the outer curve of the bottle mouth over at most a very small arc, and therefore does not meet the requirement in the claim that it

¹Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of the claimed invention. See, for example, RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). A reference anticipates a claim if it discloses the claimed invention such that a skilled artisan could take its teachings in combination with his own knowledge of the particular art and be in possession of the invention. In re Graves, 69 F.3d 1147, 1152, 36 USPQ2d 1697, 1701 (Fed. Cir. 1995), cert. denied, 116 S.Ct. 1362 (1996), quoting from In re LeGrice, 301 F.2d 929, 936, 133 USPQ 365, 372 (CCPA 1962).

be adapted to be “the same shape” as that portion of the bottle, considering the definition the appellants have provided for this terminology. As is particularly evident from Figures 3 and 6, which depict the crown after crimping over the mouth of the bottle, a space exists between the inner curved surface of the crown seal and the outer surface of the mouth of the bottle to accommodate seal 16, which in our view supports the appellants’ argument that the curved portion is not the “same shape as the mouth contour.” This being the case, Leenaards fails to disclose or teach this feature of the appellants’ invention and therefore the reference is not anticipatory of the subject matter of claim 1.

The rejection of independent claim 1 and dependent claims 2-6 is not sustained.

We reach the same conclusion, for the same reason, with regard to independent claim 7, which contains the same limitation, and dependent claims 8-12.

Claim 13, which depends from claim 7, stands rejected as being obvious² in view of the combined teachings of Leenaards and Ferngren. This claim adds to claim 7 the requirement that the bottle mouth includes upper and lower portions with a fulcrum therebetween, and Ferngren was being cited for teaching these features. First of all,

²The test for obviousness is what the combined teachings of the prior art would have suggested to one of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). However, the mere fact that the prior art structure could be modified does not make such a modification obvious unless the prior art suggests the desirability of doing so. See, *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). The initial burden of establishing a basis for denying patentability to a claimed invention rests with the examiner. See *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984).

evaluating Leenaards in the light of Section 103 does not cause us to depart from our opinion that this reference fails to disclose or teach that the curved portion of the crown be adapted to be the same shape as the contour of the mouth of the bottle. Notably, the examiner has not contended that Ferngren overcomes this shortcoming. Thus, we are left to conclude that the combined teachings of Leenaards and Ferngren fail to establish a prima facie case of obviousness with regard to the subject matter recited in claim 7, from which claim 13 depends, and we will not sustain this rejection.

Claims 14-16 stand rejected as being unpatentable over Leenaards in view of Myer. Claim 14 is directed to a method of producing crown closures which comprises the steps of providing a die press, providing metal sheets which may be die pressed into crown closures, using the die press to form blanks having a diameter of about 1.4 inches (35.5 mm), and using the die press to form crown closures using the blanks. The examiner asserts that Leenaards discloses all of the subject matter recited in independent claim 14 except for the method of forming the crown closures from metal sheets by the use of a die press. However, it is the examiner's opinion that it would have been obvious to do so in view of the teachings of Myer.

Leenaards is silent as to how the crown closures disclosed therein are formed. Myer discloses crown closures for bottles, and teaches forming them by "conventional single cycle operation of a punch press" (column 2, lines 69-71). Thus, it is our view that Myer provides evidence that at the time of the appellants' invention it was known in

the art to form crown closures by means of a punch press operation, a process which necessarily would include the use of blanks. We therefore agree with the examiner that one of ordinary skill in the art would have sufficient skill to appreciate that the Leenaards blanks also could be formed by the process disclosed by Myer, considering that in an obviousness assessment skill is presumed on the part of the artisan, rather than the lack thereof. In re Sovish, 769 F.2d 738, 743, 226 USPQ 771, 774 (Fed. Cir. 1985). Thus, we are not persuaded by the appellants' arguments that there is no suggestion to combine these references.

With regard to the dimensions of the blanks used to create the crown closure, Leenaards discloses finished crown closures having a skirt diameter within the range of 20-40 mm, but does not disclose the diameter of the blanks from which they are produced, specifically, no teaching of utilizing blanks having a diameter of "about 1.4 inches (35.5 mm)," as is required by claim 14. The examiner has concluded that this feature would have been obvious in view of the teachings of Leenaards. The only argument set forth by the appellants with regard to the diameter of the blanks is that neither reference specifically discloses or teaches a crown closure blank of the claimed diameter, and therefore the obviousness rejection cannot stand (Amended Brief, page 7). However, while this argument might be applicable in the case of an anticipation rejection 35 U.S.C. § 102, the rejection before us is one of obviousness under

35 U.S.C. § 103, and the appellants have not explained why the selection of such a blank size would not have been obvious to the artisan, especially in view of the range of skirt diameters disclosed by Leenaards. The examiner's position thus is uncontroverted on the record.

It therefore is our conclusion that the combined teachings of Leenaards and Myer establish a prima facie case of obviousness with regard to the subject matter recited in claim 14, which has not been persuasively rebutted by the appellants. The rejection of claim 14 is sustained. Moreover, since the appellants have elected to group dependent claims 15 and 16 with claim 14 (Amended Brief, page 3), the rejection of claims 15 and 16 also is sustained.

CONCLUSION

The rejection of claims 1-12 under 35 U.S.C. § 102(b) as being anticipated by Leenaards is not sustained.

The rejection of claim 13 under 35 U.S.C. § 103(a) as being unpatentable Leenaards in view of Ferngren is not sustained.

The rejection of claims 14-16 under 35 U.S.C. § 103(a) as being unpatentable Leenaards in view of Myer is sustained.

The decision of the examiner is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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