

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today  
(1) was not written for publication in a law journal and  
(2) is not binding precedent of the Board.

Paper No. 33

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte FRANK J. LANG  
and  
ROBERT W. CHADFIELD

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Appeal No. 96-3035  
Application 07/945,430<sup>1</sup>

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HEARD: February 4, 1998

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Before McCANDLISH, Senior Administrative Patent Judge, and COHEN  
and Staab, Administrative Patent Judges.

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<sup>1</sup> Application for patent filed September 14, 1992.  
According to appellants, the application is a continuation-  
in-part of Application 07/705,560, filed May 24, 1991, abandoned;  
which is a continuation-in-part of Application 07/613,285, filed  
November 15, 1990, abandoned.

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COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claim 8, the sole claim remaining in the application.

Appellants' invention pertains to a dispensing implement for applying semi-solid material by rubbing contact. An understanding of the invention can be derived from a reading of claim 8, with a copy thereof appearing in "APPENDIX A" appended to appellants' brief.

As evidence of obviousness, the examiner has applied the documents listed below:<sup>2</sup>

Cardia (European Patent Application)	387,213	Sep. 12, 1990
von Schuckmann (Germany)	3,118,893	Nov. 11, 1982
Goncalves (France)	2,556,941	Jun. 28, 1985

The following rejection is before us for review.

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<sup>2</sup> Our understanding of the French and German documents is derived from a reading of translations thereof prepared in the United States Patent and Trademark Office. Copies of these translations are appended to this opinion.

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Claim 8 stands rejected under 35 U.S.C. § 103 as being unpatentable over Goncalves (French document) in view of Cardia (European document) and von Schuckmann (German document).

The full text of the examiner's rejection and response to the argument presented by appellants appears in the answer (Paper No. 27), while the complete statement of appellants' argument can be found in the brief (Paper No. 26).

#### OPINION

In reaching our conclusion on the obviousness issue raised in this appeal, this panel of the board has carefully considered appellants' specification and claims, the attachments to appellants' brief including the statement (declaration) of Robert W. Chadfield dated September 1, 1994, the applied teachings,<sup>3</sup> and the respective viewpoints of appellants and the

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<sup>3</sup> In our evaluation of the applied teachings, we have considered all of the disclosure of each teaching for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

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examiner. As a consequence of our review, we make the determination which follows.

We reverse the examiner's rejection of claim 8 under 35 U.S.C. § 103.

Our reading of both appellants' disclosure and the Goncalves reference (French document) makes us aware that the presently claimed dispensing implement and the device disclosed in the reference each differ from earlier known devices wherein a screw activating knob is at the lower or remote end of the device (appellants' Figures 1 and 2 and Figure 1 of Goncalves) by having the knob positioned at an upper part of the device or dispensing implement.

However, as did the examiner, we readily perceive differences between the claimed dispensing implement and the device taught by Goncalves. The claimed invention requires a cap 34 arranged for removable attachment to a cap holder 36 on the tubular plastic body 20 of the implement (Figure 3), while the reference device (Figure 3) has its cap 105 releasably secured to the decorative body 104. Additionally, the claimed

implement requires a tube 29 having one open end and one closed end, with the closed end being arranged to engage the knob 22 of the screw 23 and prevent relative rotary motion between the screw with respect to the body 20, and with the open end of the tube abutting but rotatable with respect to a knurled collar ring 28 on the body 20. On the other hand, Goncalves teaches (translation, page 13 and Figure 3) a decorative body 104 configured as a tubular element, "open at both ends," with its upper edge 120 constituting a support element for the annular bearing surface 110 of the sheath 102.

Turning to the additional references relied upon by the examiner, we find that the Cardia disclosure (European document) reveals a dispensing container characterized in part by an outer tubular body 3 having a closed bottom 2 and an integral rod 5 and hollow rod 18 with threading 17 (Figure 3). As to the von Schuckmann reference (German document), a deodorant stick is disclosed therein having a covering cap 7 screwed on to the protruding segment 2N of the housing tube 2 (Figure 1).

We certainly understand the examiner's point of view as to the asserted obviousness of altering the device of Goncalves,

as articulated in the rejection. However, it is clear to us, from a combined assessment of the applied prior art teachings, that the proposed alterations would not only significantly modify the device of Goncalves but would require motivation from appellants' own teaching (impermissible hindsight) to make same. In other words, it is our opinion that the applied art itself would not have provided a suggestion for the selective and significant modification of the Goncalves device. In particular, we note that with the device of Goncalves, the patentee expressly calls for a tubular element (body 104) open at both ends (translation, page 13). As readily perceived from the Goncalves document (translation, pages 15 and 16), the reason for a tubular element is that the wall 110 of sheath 102 is intended to rest on the upper edge 120 of the body 104 while the plate 128 through its outer portion 129 is intended to be stopped against the set-back 121 of the body 104 (Figure 3). In light of the above, it is apparent to us that the proposed addition of a closed bottom tube for the device of Goncalves would clearly defeat the patentee's intended assembly procedure for the device. For the above reasons, we determine that the applied prior art evidence does not establish a prima facie case of obviousness relative to the claimed invention. Under this circumstance, it follows that we

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need not address appellants' showing of commercial success (the statement of Robert W. Chadfield).

In summary, this panel of the board has reversed the rejection of claim 8 under 35 U.S.C. § 103.

The decision of the examiner is reversed.

REVERSED

HARRISON E. McCANDLISH	)	
Senior Administrative Patent Judge	)	
	)	
	)	
	)	
IRWIN CHARLES COHEN	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
LAWRENCE J. STAAB	)	
Administrative Patent Judge	)	

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