

**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(2) is not binding precedent of the Board.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. 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 DONALD SPECTOR

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Appeal No. 97-4153  
Application 08/498,375<sup>1</sup>

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ON BRIEF

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Before CALVERT, MEISTER, and ABRAMS, Administrative Patent Judges.

ABRAMS, Administrative Patent Judge.

**DECISION ON APPEAL**

This is an appeal from the decision of the examiner finally rejecting claim 1, which is the only claim remaining of record in the application.

The appellant's invention is directed to a squeeze canteen

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<sup>1</sup>Application for patent filed July 5, 1995.

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for producing a soft drink in situ and for dispensing the drink.

It reads as follows:

1. A squeeze canteen for producing in situ a soft drink and for dispensing this drink comprising:

A. collapsible pouch molded to simulate a character provided with a female socket creating the mouth of the pouch and a charge of flavor crystals deposited in the pouch;

B. a removable male nozzle plug insertable in the socket to seal the pouch after it has been filled with liquid to dissolve the flavor crystals to produce a soft drink, said plug being provided with a normally-closed valve which when opened and the pouch is then squeezed permits the discharge of said soft drink from the nozzle plug; said pouch being formed of synthetic plastic material.

#### **THE REFERENCES**

The references relied upon by the examiner to support the final rejection are:

Nadler	3,157,314	Nov. 17, 1964
Paquette	4,702,473	Oct. 27, 1987

#### **THE REJECTION**

Claim 1 stands rejected under 35 U.S.C. § 103 as being unpatentable over Nadler in view of Paquette.

The rejection is explained in the Examiner's Answer.

The opposing viewpoints of the appellant are set forth in the Brief and the Reply Brief.

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**OPINION**

In rejections under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness (see *In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993)), which is established when the teachings of the prior art itself would appear to have suggested the claimed subject matter to one of ordinary skill in the art (see *In re Bell*, 991 F.2d 781, 783, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993)).

This is a combination claim in which the combination comprises a collapsible pouch having a female socket creating the mouth of the pouch, a charge of flavor crystals deposited in the pouch, and a removable male plug insertable in the pouch and provided with a normally closed valve. Nadler discloses a collapsible pouch for dispensing liquid juices. At the very least, Nadler fails to disclose or teach the charge of flavor crystals located in the pouch, and the examiner's position that the flavor crystals limitation is merely an intended use is totally without merit. Paquette, the secondary reference, fails to alleviate this deficiency. This being the case, the references fail to establish a *prima facie* case of obviousness with regard to the subject matter of the claim.

The rejection is not sustained.

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The decision of the examiner is reversed.

REVERSED

Ian A. Calvert	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
James M. Meister	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
Neal E. Abrams	)	
Administrative Patent Judge	)	

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