

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 9

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN BUSSIERE

Appeal No. 98-1196
Application 08/457,045¹

ON BRIEF

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

DECISION ON APPEAL

John Bussiere appeals from the final rejection of claims

¹ Application for patent filed June 1, 1995.

Appeal No. 98-1196
Application 08/457,045

1 through 22, all of the claims pending in the application.

We reverse.

The invention relates to "a correction fluid dispenser of the pencil or pen type as is generally employed for correcting typewriter or other printed errors" (specification, page 1). A copy of the appealed claims appears in the appendix to the appellant's brief (Paper No. 7).

The references relied upon by the examiner as evidence of obviousness are:

Grund	1,485,181	Feb. 26, 1924
Balme	461,361	Dec. 27, 1913
French Patent (French Patent '361) ²		
Bunoust	964,045	Jul. 31, 1950
French Patent (French Patent '045) ³		

Claims 1 through 22 stand rejected under 35 U.S.C. § 103

² An English language translation of this reference, prepared by the Patent and Trademark Office, is appended hereto.

³ An English language translation of this reference is appended to the appellant's brief (Paper No. 7).

Appeal No. 98-1196
Application 08/457,045

as being unpatentable over French Patent '045 in view of French Patent '361 and Grund.

Reference is made to the appellant's brief (Paper No. 7) and to the examiner's answer (Paper No. 8) for the respective positions of the appellant and the examiner with regard to the merits of this rejection.

French Patent '045, the examiner's primary reference, discloses a ballpoint tip which is adapted to be mounted on a pen body having an ink reservoir. As shown in the drawing figures, the tip includes an orifice with a circular rim opening into a tubular passage, a spherical ball adjacent the circular rim, a flow metering valve means/body defining a plurality of axial cavities with the wall of the tubular passage and having a substantially planar forwardly facing surface contacting the rearwardmost surface of the ball, and means for biasing the valve member into contact with the ball. This fluid dispenser meets, or would have suggested, all of the limitations in independent claim 1 except for the one

Appeal No. 98-1196
Application 08/457,045

requiring "means disposed adjacent the periphery of said valve member planar forwardly facing surface for centering said ball on said surface." The examiner's reliance on Grund to overcome this deficiency is not well founded.

Grund discloses a marking pen having a tip which includes a circular opening 17, a ball 20, and a spring-biased thrust bearing for urging the ball into the opening. The thrust bearing contacts the ball through bearing balls 23 which provide the sole rearward support for the ball (see Figure 2). Grund teaches that "[b]y the provision of the roller thrust bearing, great freedom of motion is permitted to the ball [20] enabling the operator to write or draw with great facility" (page 2, lines 8 through 12).

According to the examiner, it would have been obvious to one of ordinary skill in the art to provide the ballpoint tip disclosed by French Patent '045 with centering means in the form of bearing balls such as those disclosed by Grund to gain the writing/drawing facilitation benefit noted by Grund (see page 3 in the answer). As indicated above, however, Grund's bearing balls provide the sole rearward support for writing ball 20. Thus, they do not center the ball on any surface

Appeal No. 98-1196
Application 08/457,045

rearward of the ball. To the extent that Grund would have suggested incorporating bearing balls into the ballpoint tip disclosed by French Patent '045, there would be no motivation to dispose the bearing balls so as to center the writing ball on the planar forwardly facing surface of the valve member/body disclosed by French Patent '045 in the manner required by claim 1. The only suggestion to combine these two references so as to meet the claim limitation in question stems from hindsight knowledge impermissibly derived from the appellant's own teachings. French Patent '361, cited for its disclosure of a pen tip having a spring and a cap, does not cure this shortcoming in the examiner's evidence of obviousness.

Therefore, we shall not sustain the standing 35 U.S.C. § 103 rejection of claim 1, or of claims 2 through 22 which depend

therefrom, as being unpatentable over French Patent '045 in view of French Patent '361 and Grund.

The decision of the examiner is reversed.

Appeal No. 98-1196
Application 08/457,045

REVERSED

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

JPM/pgg
Owen J. Meegan
24 North Street
Salem MA 01970

Appeal No. 98-1196
Application 08/457,045