

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WALTER J. KREISEDER,
JOHN A. SEKOWSKI, and WILLIAM C. SCHMEISSER

Appeal No. 1999-0953
Application 08/576,618

ON BRIEF

Before STAAB, MCQUADE, and JENNIFER D. BAHR, Administrative Patent Judges.

STAAB, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the examiner's final rejection of claims 1-13, all the claims currently pending in the application.

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Appellants' invention pertains to "product dispensers, and more particularly, to a dispensing cover for [a] dispenser for a cream or gel deodorant product in which the product is advanced within a sleeve to such a dispensing cover"

(specification, page 1). A further understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced in the appendix to appellants' brief.

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

Clark	1,017,957	Feb. 20, 1912
Jakubowski	2,917,765	Dec. 22, 1959
Laauwe	4,230,240	Oct. 28, 1980
Lathrop et al. (Lathrop) 1991	5,073,057	Dec. 17,
Bihler ¹ (French)	1,441,112	Apr. 25, 1966
Murphy (EP)	0 100 204	Feb. 8, 1984

Claims 1-13 stand rejected under 35 U.S.C. § 103 as being unpatentable over Murphy in view of Laauwe, Lathrop, Bihler, Jakubowski and Clark.

¹Our understanding of this French language document is derived from a translation prepared in the Patent and Trademark Office. A copy of the translation is included as an attachment to this decision.

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Claim 1, the sole independent claim on appeal, calls for a dispensing cover for a product dispenser, comprising

a *relatively thick* dome portion with an external top surface and an internal underside surface, a depending skirt portion co-joined^[2] with the dome portion about a peripheral edge thereof, . . . and a weakened *relatively thin* area formed in the cover about said peripheral edge acting as a peripheral hinge to permit the dome portion to flex into contact with the product when a force is exerted against said external top surface . . . and to return to its original unflexed position out of contact with the product when the force is removed . . . [Emphasis added.]

Murphy, the examiner's primary reference, pertains to an applicator for creams and viscous liquids (translation, page 1). The applicator includes a dispensing cap 24 that corresponds generally to the claimed dispensing cover. Murphy describes cap 24 as follows:

As shown more particularly in Fig. 2, the cap 24 has an outer section 27, which is *relatively thick*[,] and an inner section 28 *which is thin*. At the center of the inner section there is provided an orifice 29. The cap 24 is made of a material which is strong and resilient so that if the inner section 28 is pressed it will bend inwardly toward the container 10, but when released will resume its original shape. [Page 4; emphasis added.]

²We consider the term "co-joined" to mean that the depending skirt portion and the dome portion are joined.

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It is thus apparent that the claimed cover comprises a relatively thick dome portion surrounded by a relatively thin peripheral hinge area, whereas the cap 24 of Murphy comprises a relatively thin inner or dome portion 28 surrounded by a relatively thick outer portion 27. Notwithstanding the above, the examiner has taken the position that the claimed cover does not distinguish over Murphy. This is so because, according to the examiner, "the [claim] terminology 'relatively thick dome portion' and 'weakened relatively thin area' are not distinguish[able], and could be the same thickness (see *Seattle Box Company v Industrial Crating Packing Inc.* 221 USPQ 568)" (answer, page 3). Based on this interpretation, the examiner considers that "[p]ortion #28 [of Murphy] is a 'weakened relatively thin area formed in the cover' #24. Portion #28 would also appear to be a 'relatively thick dome portion'." (answer, pages 4-5). In what appears to be an alternative rationale in support of the rejection, the examiner further maintains that it would have been obvious to provide a peripheral weakened area about the inner portion 28 of Murphy to improve the flexibility thereof in view of the weakened peripheral areas P and P' of Laauwe.

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Concerning the examiner's first position, namely, that the claim language "relatively thick" dome portion and "relatively thin" area forming a peripheral hinge can both be simultaneously read on inner section 28 of Murphy, while appellants' claim language does not state precisely what the thickness of the dome portion and the thickness of the hinge area are, or how much thicker the dome portion is than the hinge area, it is nevertheless crystal clear that the relationship between the thicknesses of these parts of the cover are such that the dome portion is thicker than a surrounding area that acts as a hinge. Nothing in *Seattle Box Co. v. Industrial Crating & Packing, Inc.*, 731 F.2d 818, 221 USPQ 568 (Fed. Cir. 1984)³, cited by the examiner in support of his first theory of obviousness, justifies the strained claim language interpretation proposed by the examiner. Because the inner section 28 of Murphy is of uniform thickness, it cannot simultaneously satisfy both the "relatively thick" and "relatively thin" limitations of claim

³*Seattle Box* stands for the proposition that when words of degree are used in a claim, the specification should be consulted for determining some standard for measuring that degree.

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1, which require two *different* thicknesses. Moreover, since the inner section 28 of Murphy is expressly stated to be thinner than the peripheral outer section 27, sections 28 and 27 of Murphy have precisely the opposite thickness relationship as is called for in claim 1. Accordingly, we cannot accept the examiner's first rationale, namely, that claim 1 does not structurally define over Murphy.

As to the examiner's alternative theory of obviousness, Laauwe pertains to an applicator for a viscous product comprising a valve head having a thin flat wafer 4 stationarily supported by a set of spokes 5, and an elastically deflectable diaphragm 7 having a central opening 8 and an annular hinge in the form of a pleat P or reduced wall thickness R connecting the diaphragm to a depending flange 9. Laauwe describes the operation of the valve head as follows:

. . . [The] hinging action [of P or R] results in the diaphragm extending from the annular hinging portion to the central opening 8, moving with a swinging action when the product to be dispensed is pressurized by squeezing of the bottle, resulting in the diaphragm's opening having a slight swinging or wiping action with respect to the valve seat formed by the wafer 4.

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The diaphragm structurally tends to resist bending when a viscous product applies pressure to its inside or bottom, displacement of the diaphragm required for valve opening being obtained largely if not entirely via the annular hinging portion of the flange which is free from restraint to radial elastic flexure. [Column 3, line 68 to column 4, line 12.]

While both Murphy and Laauwe pertain to dispensing caps that act as applicators, the manner in which they operate to cut off the flow of product is markedly different. The applicator of Murphy functions like the present invention in that, when product application has been completed, the applicator is removed from the coated surface of the skin, thereby relieving pressure from the cap and allowing the thin, resilient inner section 28 to spring back to its original shape. This leaves an air space 34 between the orifice 29 and the inner section of the liquid, which acts as a reservoir to receive liquid material caused to expand from the interior of the container by changes of temperature and pressure, thereby avoiding undesired extrusion of such material through orifice 29 (Murphy, paragraph spanning pages 4 and 5). In Laauwe, the central opening 8 of the diaphragm and the wafer 4 act as a valve to close off the flow of viscous product when the contents of the container is relieved of pressure by ceasing

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to squeeze the container. Based on the disparate manners in which the applicators of Murphy and Laauwe operate in both dispensing and cutting off the flow of product, there is no apparent reason, or need, for incorporating the weakened portion of Laauwe into Murphy, as proposed by the examiner. We therefore will not support the examiner's alternative theory of obviousness.

The additional references cited by the examiner against the claims have been considered but do not make up for the deficiencies of Murphy and Laauwe discussed above. Bihler is directed to a valve type closure, operates in a manner similar to Laauwe, and is no more pertinent than Laauwe. Jakubowski and Clark disclose slot-like dispensing openings and slit-like dispensing openings, respectively, but are not otherwise pertinent to the obviousness issue at hand. The relevance of Lathrop is not understood.

In light of the foregoing, we will not sustain the standing rejection of claim 1, or claims 2-13 that depend therefrom, as being unpatentable over the applied references.

The decision of the examiner is reversed.

REVERSED

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	Administrative Patent Judge)	
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