

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. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEAN-LOUIS GUERET

Appeal No. 1999-1911
Application No. 08/659,308

ON BRIEF

Before ABRAMS, STAAB, and CRAWFORD, *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 33-39, all the claims currently pending in the application.

Appellant's invention pertains to a container and applicator assembly for a liquid or viscous product such as nail polish. An understanding of the invention can be derived

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from a reading of exemplary claim 33, which appears in an appendix to appellant's brief.

The references relied upon by the examiner in support of a rejection under 35 U.S.C. § 103 are:

Gibson 1907	869,431	Oct. 29,
Nardone 1951	2,550,586	Apr. 24,
Flynn 1957	2,803,028	Aug. 20,
Lerner 1965	3,185,291	May 25,
Reinhard 1975	3,870,186	Mar. 11,
Gontard, et al. (Gontard) ¹ 1969 (Published French Patent Application)	1,566,737	May 9,

Claims 33-39 stand rejected under 35 U.S.C. § 103 as being unpatentable over Nardone in view of Gontard, Gibson, Lerner, Reinhard and Flynn.

Reference is made to appellant's brief (Paper No. 14) and to the examiner's answer (Paper No. 15) for the respective positions of appellant and the examiner regarding the merits

¹Our understanding of this French language document is derived, in part, from a partial translation thereof provided by counsel for appellant as an attachment to appellant's brief.

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of this rejection.

At the outset, we observe that appellant states on page 2 of the brief that the claims stand or fall together. Therefore, we need only consider representative claim 33, the sole independent claim on appeal.

The central issue in this appeal is whether it would have been obvious to one of ordinary skill in the art at the time of appellant's invention to have modified the bottle of Nardone such that it includes "[a] neck terminating upwardly in a sharp edge adapted to deform said circular flat (26), so as to create a sealing arrangement," as called for by claim 33. No other limitation is argued by appellant as distinguishing over Nardone.

Nardone seals the bottle opening 1 by providing a deformable sealing disk 4 mounted in the closure cap 6, and by providing the neck 2 of the bottle with an upper surface having a plane, circular configuration 12 bordered by an outer beveled or frusto conical surface 13 (column 3, lines 62-67). When the cap is screwed down onto the bottle neck, the sealing disk is deformed into tight sealing engagement with the surface portions 12 and

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13 of the neck (column 3, line 74 through column 4, line 13;
Figure 2a). Because the neck of Nardone terminates in a
surface portion 12 having a *plane*, circular configuration
(column 3, line 64), it cannot be considered to meet the
requirement of claim
33 calling for a neck that terminates in a "sharp edge."

We note, however, that the Reinhard reference applied by
the examiner against the claims is directed to a container for
liquid cosmetics or the like substances (column 1, lines 4-5)
and

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includes a neck that terminates in an opening having a beveled edge. Reinhard describes the shape and function of the opening as follows:

The mouth 33 of passage 32 is outwardly flared, to facilitate insertion of applicator 14-15, and the upwardly projecting end has both concave and convex chamfers *to define a circumferentially extensive "line" or edge for axially driven sealing contact against a flat annular bottom 34* (FIG. 2) of the opening in which the threaded neck body 31 is received in cap 11. [Column 2, lines 37-45; emphasis added.]

The Lerner reference applied by the examiner against the claims is directed to a container and applicator for use in connection with nail polish and the like (column 1, lines 12-14). The upper portion of the neck of Lerner's container includes a bead portion 36 adjacent the neck opening that is designed to engage with a flat lower surface of flange 48 of applicator 40, which flange has a certain degree of resiliency (column 2, lines 13-16). Lerner explains the sealing action between the bead

36 and flange 48 as follows:

The annular bead 36 on the upper portion of the neck of the bottle provides a sealing ring *or an annular point contact* with the

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flange 48 of the applicator. Any surplus liquid which might drip from the brush and which might normally deposit on the shelf 30 would not be deposited and remain on the annular bead 36. This leaves the bead 36 clean at all times for sealing contact with the flange 48. [Column 3, lines 26-33; emphasis added.]

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. *In re Young*, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). It is our view, from a collective assessment of the above noted reference teachings, that it would have been obvious to one of ordinary skill in the art to incorporate into the container of Nardone a neck that has a bottle opening that includes a sharp edge adapted to engage and deform Nardone's sealing disk 4 to improve the sealing action thereof, following the teachings of Reinhard and Lerner. In our opinion, the incentive on the part of one having ordinary skill in the art for making this modification would have simply been to gain the art recognized benefits of increased sealing pressure and enhanced self-cleaning that flow from utilization of such a sealing interface, as readily

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discerned from a review of the teachings of Reinhard and Lerner. In this regard, Reinhard explicitly teaches that the concave and convex chamfers at the mouth of the container define a circumferentially extensive "line" or edge for axially driven sealing contact against the flat annular surface 34 of the applicator cap (column 2, lines 37-45), and Lerner explicitly teaches that the bead 34 may be configured to provide an annular point contact (as by providing the bead with a sharp edge) to remove any surplus liquid that may remain on the bead, thereby leaving the bead clear at all times for sealing contact with the flange 48 (column 3, lines 26-33).

The arguments advanced by appellant have been carefully considered, however, they do not persuade us that the standing rejection is improper. Our position with respect to most of these arguments should be apparent from our discussion *supra*. Concerning the individual deficiencies of Reinhard noted by appellant on page 3 of the brief, we observe that nonobviousness cannot be established by attacking the references individually when, as here, the rejection is predicated upon a combination of prior art disclosures. *In re*

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Merck & Co. Inc., 800 F.2d 1091, 1097, 231 USPQ 375, 380 (Fed. Cir. 1986). As to the case law cited by appellant on pages 4-6 of the brief, we do not disagree with any of the principles recounted therein, however, it is our opinion that our conclusion of obviousness in the present application is in accordance therewith.

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In light of the foregoing, we will sustain the standing rejection of claim 33 under 35 U.S.C. § 103. We will also sustain the § 103 rejection of dependent claims 34-39 since, as noted above, appellant states that the appealed claims stand or fall together.

The decision of the examiner is affirmed

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

AFFIRMED

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NEAL E. ABRAMS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
LAWRENCE J. STAAB)	
Administrative Patent Judge)	APPEALS AND
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MURRIEL E. CRAWFORD)	
Administrative Patent Judge)	

LJS:hh

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