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EXAMINER	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TAHUA YANG, KEITH ALAN HAAPALA,
MARK ALLEN DEWART, and
JOSEPH HERBERT NOGOSEK

Appeal 2011-005188
Application 11/402,537
Technology Center 1700

Before TERRY J. OWENS, PETER F. KRATZ, and
LINDA M. GAUDETTE, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-12, 14-16 and 18-22. Claims 23-26, which are all of the other pending claims, stand withdrawn from consideration by the Examiner. We have jurisdiction under 35 U.S.C. § 6(b).

The Invention

The Appellants claim a closure for a bottle. Claim 1 is illustrative:

> 1. A closure for a bottle for liquids, said bottle having a mouth, a rim, and a neck, said neck having an interior surface, said closure and said mouth having substantially the same shape, said closure being of such a size that it fits into the mouth of the bottle and is held snugly in the mouth of the bottle, said closure having a wall and a flange projecting from the wall of the closure, said closure having an exterior surface, said flange abutting said rim of said bottle, said closure comprising a molded polymeric material, said molded polymeric material comprising at least one ultra low-density ethylene copolymer, wherein said closure has at least one slit formed therein, said slit capable of allowing the access of an aspirating device to aspirate the contents of the bottle and removal of the aspirating device from the bottle a plurality of times, said closure capable of controlling evaporation at an average rate of no greater than about 2% of 7 to 7.5 mL deionized water loss over 30 days, assuming evenly distributed usage when exposed to 12 °C, 12% relative humidity and 600 feet per minute air flow, wherein frictional force between said exterior surface of said closure and said interior surface of said neck is sufficient to prevent dislodgement of said closure from said bottle when said aspirating device is removed from said bottle.

The References

Bucheli	US 5,297,599	Mar. 29, 1994
Yang	US 6,372,848 B1	Apr. 16, 2002
Ling	US 2002/0090476 A1	Jul. 11, 2002

The Rejections

The claims stand rejected under 35 U.S.C. § 103 as follows: claims 1-12, 14, 19 and 20 over Bucheli in view of Ling, and claims 15, 16, 18, 21 and 22 over Bucheli in view of Yang.

OPINION

We reverse the rejections. We need to address only the independent claims, i.e., claims 1 and 15.

The Examiner has the initial burden of establishing a prima facie case of obviousness. *See In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984); *In re Rinehart*, 531 F.2d 1048, 1051 (CCPA 1976).

Claims 1 and 15 require a closure that fits into the mouth of a bottle.

The Examiner relies upon Bucheli's closure device, i.e., the combination of a closure (11) and a plug (21) (col. 4, ll. 46-50), as corresponding to the Appellants' closure (Ans. 4). The Examiner argues that the plug (21)'s central orifice (22) and the closure (11)'s conical wall (15) have matching shapes and abut against each other so as to form a tight seal (col. 4, ll. 54-59; Fig. 4) and that, therefore, "the closure is the size of the mouth of the bottle and the closure is held snugly in the mouth of the bottle." *Id*.

The tight seal referred to by the Examiner is between the plug (21)'s central orifice (22) and the closure (11)'s conical wall (15), not between the closure device and the bottle. The closure device's plug (21)'s outer wall and flange seal, respectively, with the bottle mouth's inner wall and lip, and the closure (11)'s internal thread (29) seals with the bottle mouth's outer wall (Fig. 4). Hence, the combination of the closure (11) and plug (21),

relied upon by the Examiner as corresponding to the Appellants' closure (Ans. 4), does not fit into the mouth of the bottle.

Claims 1 and 15 require that frictional force between the exterior surface of the closure and the interior surface of the bottle's neck is sufficient to prevent dislodgement of the closure from the bottle when an aspirating device is removed from the bottle.

The Examiner argues that "[t]he outer surface of the conical wall **15** abuts against the inner wall of the orifice **22** through the plug **21** forming a tight seal (col. 4, lines 57-60). Thus, there is frictional force between the exterior surface of the closure and the interior surface of the neck" (Ans. 10).

That frictional force is between two parts of the closure device (closure (11) and a plug (21)), not between the closure device and the bottle's neck (Fig. 4).

The Examiner argues that "it would be obvious that the frictional force between said exterior surface of said plug and said interior surface of said neck is sufficient to prevent dislodgement of said closure from said bottle when said aspirating device is removed from said bottle, because the plug is insertable into the container and allows for multiple insertions of the pipetting needle without being unplugged" (Ans. 5).

Bucheli's closure device is held in place by the closure's internal thread (29) and the bottle's neck's matching outer thread (col. 4, ll. 28-31). The plug (21)'s outer surface and flange seal, respectively, with the bottle mouth's inner surface and lip (Fig. 4), but Bucheli does not indicate that the seal provides sufficient frictional force to prevent dislodgement of the closure device from the bottle when an aspirating device is removed from the bottle.

The Examiner argues that "[a] screw type closure reads on the claim language, because there is frictional force between the internal thread **29** of the closure and the outer thread in the neck of the reagent container" (Ans. 11).

The Appellants' claims do not require frictional force between the internal surface of the closure and the outer surface or the neck but, rather, require the opposite.

Thus, the Examiner has not carried the burden of establishing a prima facie case of obviousness of the Appellants' claimed closure.

DECISION/ORDER

The rejections of claims 1-12, 14, 19 and 20 over Bucheli in view of Ling, and claims 15, 16, 18, 21 and 22 over Bucheli in view of Yang are reversed.

It is ordered that the Examiner's decision is reversed.

REVERSED

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