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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* CRAIG E. BROWN and ROBERT J. BROWN

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Appeal 2019-004172  
Application 14/120,758  
Technology Center 3700

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Before MICHAEL J. FITZPATRICK, WILLIAM A. CAPP, and  
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

FITZPATRICK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant<sup>1</sup> appeals under 35 U.S.C. § 134(a) from the Examiner's final decision rejecting claims 11, 16, and 17. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> Appellant is the "applicant" under 37 C.F.R. § 1.42(a).

## STATEMENT OF THE CASE

### *The Specification*

The Specification “relates to a range of proportions for a vent and a pouring aperture working in combination to fully vent a container in a fashion that is complete, continuous, non-leaking, and without aerating and contaminating the liquid.” Spec. 3:2–4.

Additionally, the vent provides a positive pressure in the container to assist in promoting release of the liquid on demand. This disclosure further describes a vent for containers to prevent contamination of liquid in the container. More particularly, this disclosure relates to a vent that prevents the creation of a vacuum inside the container, including containers for liquor, wine, sports drinks, rehydration drinks, water and cola, and other liquids. The disclosure prevents introduction of air into the liquid when poured, thus preventing oxidation and other untoward reactions with the liquid of the container, which alter the taste and quality of the liquid in the container when dispensed.

*Id.* at 3:4–12.

### *The Claims*

Claims 11, 16, and 17 are rejected. Final Act. 1. No other claims are pending. *Id.* Claim 11 is illustrative and reproduced below.

11. A container venting its interior to the atmosphere and resisting formation of a vacuum when the container is inverted to dispense a liquid therefrom, said container is a sports bottle, the container comprising:

the container having an interior and a neck for the admission of liquid into the interior of the container for usage, the container having a closure upon its neck, the closure being an external threaded closure, the closure having an upper exterior surface having a vent aperture and a spout aperture provided therethrough and a lower interior surface;

an internal venting tube integral with the lower interior surface and in communication with the vent aperture for

preventing formation of a vacuum within the inverted container having an applied liquid and preventing leakage of liquid when the container is used for dispensing its liquid, the internal venting tube being straight and having a first end and a second end;

an internal accepting flange integral with the lower interior surface of said closure and having a frusto-conical interior shape and an annular curved recess formed within said frusto-conical interior shape of said flange, the internal accepting flange being concentric with the internal venting tube;

the first end of the internal venting tube having an aperture in communication with the vent aperture and the second end of the internal venting tube having an aperture with the aperture of the first end and the aperture of the second end being collinear with each other;

said closure, said internal venting tube, and said internal accepting flange all being formed as one piece;

a venting reservoir for connection to the internal accepting flange and positioned within the container, the venting reservoir having a superior end aspect that locates proximate the closure, and an opposite inferior aspect, for locating proximate the bottom of the container, the venting reservoir having a proximal first end and an opposite second end projecting sufficiently downwardly into the container so that upon inversion of the container the second end extends above the liquid therein, the venting reservoir having a detent proximate its superior end aspect and adapted for pressure fit insertion into the curved annular recess of the internal accepting flange, the proximal first end being beveled inwardly from the detent to the superior end aspect to match the frusto-conical interior shape of the accepting flange to secure the venting reservoir within the accepting flange;

the combination of the internal venting tube and the venting reservoir provides for a double venting of the contents of the container during its usage and application;

wherein said venting reservoir is also pressure detachable from the internal accepting flange;

wherein the internal venting tube and the venting reservoir segregates air from any liquid in the container so as to minimize aeration within the container since no suction is required to dispense the liquid from the container during its usage;

a drinking spout provided upon and extending through the closure and in communication with the spout aperture, the drinking spout provided for liquid to flow out of the container when it is inverted, and the drinking spout having a liquid aperture outwardly of the spout aperture, and extending substantially about the closure of the container, and the liquid aperture being in communication with the liquid within the container such that when inverted the liquid may be dispensed; and

the drinking spout provided upon the closure and arranged lateral of the closure in its connection, and the venting aperture arranged diametrically and spaced from the spout aperture and the spout as locating through the closure for the container, such that when the container is inverted, and the liquid is dispensed from the container, the venting reservoir and its second end extending towards the bottom of the container will more quickly extend above the level of the liquid in the inverted container to accelerate the venting of air into the container during the consumption of its contained liquid.

Appeal Br. 21–22.

*The Examiner's Rejections*

The following rejections are before us:

1. claim 11, under 35 U.S.C. § 112(a), as the Specification lacks a written description therefor (Final Act. 2);
2. claim 11, under 35 U.S.C. § 103, as unpatentable over Rees,<sup>2</sup> Brown,<sup>3</sup> and Holmes<sup>4</sup> (*id.* at 3); and
3. claims 16 and 17, under 35 U.S.C. § 103, as unpatentable over Rees, Brown, Holmes, and Manganiello<sup>5</sup> (*id.* at 5).

DISCUSSION

*Rejection 1*

Claim 11 recites “wherein said venting reservoir is also pressure detachable from the internal accepting flange.” Appeal Br. 22. The Examiner rejected claim 11, pursuant to 35 U.S.C. § 112(a), because “[t]he specification is silent [as] to the term ‘pressure detachable’ nor does it describe or give an example of a reservoir that is ‘pressure detachable’ from an internal accepting flange.” Final Act. 2.

Appellant does not challenge the rejection of claim 11 under 35 U.S.C. § 112(a) (or its predecessor statute, which was cited by the Examiner). *See* Appeal Br. 13 (identifying the grounds of rejections to be reviewed on appeal and not including Rejection 1); *see also id.* at 14–19

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<sup>2</sup> US 2008/0099422 A1, published May 1, 2008 (“Rees”).

<sup>3</sup> US 5,779,071, issued July 14, 1998 (“Brown”).

<sup>4</sup> US 4,423,893, issued Jan. 3, 1984 (“Holmes”).

<sup>5</sup> US 6,607,092 B2, issued Aug. 19, 2003 (“Manganiello”).

(“Argument” section of Appeal Brief presenting arguments only in relation to Rejections 2 and 3).<sup>6</sup>

Accordingly, we summarily affirm Rejection 1.

### *Rejection 2*

The Examiner found that Rees discloses substantially the subject matter of claim 1 except for: (1) a venting reservoir connected to an accepting flange; and (2) an internal accepting flange having a frusto-conical interior shape or the proximal first end of the venting reservoir being beveled inwardly from a detent to a superior end to match the frusto-conical interior shape of the accepting flange. Final Act. 3–5 (citing Rees Figs. 5A–5B). The Examiner relies on Brown and Holmes, respectively, for teaching these additional limitations. *Id.* at 4–5 (citing Brown Figs. 10–11; citing Holmes 3:65–4:3).

The Examiner made the following conclusions:

It would have been obvious to one with ordinary skill in the art at the time of the invention to modify the Rees [container] as taught by Brown to include an accepting flange and a large cross-sectional area reservoir concentric with Rees’ vent tube to more easily accommodate liquid trapped in the lower portion of the reservoir (col. 5, lines 35–37) to prevent liquid [being] trapped in the reservoir when the container is inverted (col. 5, lines 45–

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<sup>6</sup> In the “Summary of Claimed Subject Matter,” the Appeal Brief asserts that “prior patents of the inventors, such as patent No. 5,779,071,” i.e., Brown, explain that “the venting reservoir is also pressure detachable from its internal accepting flange 7, through disengagement of the detent 19b, from within the circumferential groove 77.” Appeal Br. 11. However, Appellant does not show that any such patent has been incorporated by reference into the Specification. *Id.* Nor does Appellant provide a citation to the alleged explanation of the “pressure detachable” feature. *Id.*

49) and therefore providing a double venting of the contents during its usage.

It would also have been obvious to one with ordinary skill in the art to make the closure, venting tube and flange as one piece since it has been held that forming in one piece an article which has formerly been formed in multiple pieces and put together involves only routine skill in the art. *In re Larson*, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965).

In regards to the closure's threads being "internal" or "external", Rees discloses that the closure is threaded onto the neck of the container and it would have been obvious to one with ordinary skill in the art to reverse the threads since it has been held that a mere reversal of parts is well within the ambit of one skilled in the art.

. . . It would have been obvious to one with ordinary skill in the art at the time of the invention to modify the combination as taught by Holmes to taper the mating surfaces to produce a reliable, fluid tight seal between the male and female members (col. 3, line 65–col. 4, line 3).

*Id.*

Appellant's arguments are presented under a single heading and bounce around between concepts. Appeal Br. 14–19. Accordingly, it would not make sense to address them as sequentially presented. We instead group and address Appellant's arguments below by type.

Appellant devotes much of its Appeal Brief to establishing a general superiority of its claimed invention. For example, Appellant argues:

[T]he invention is directed towards a structure that provides for very quick and facile removal of its venting structure, so that the bottle, its collar, and the venting structure, can be easily cleaned out, and then simply reassembled through the pressure fitting of its various components together, to form the venting structure.

*Id.* at 14.

[T]he further uniqueness of the structure of this invention, as claimed, is that the entire type of double venting structure is

actually a single piece vent structure, that is used in combination with an integral collar, and applied to a sports bottle, primarily through the use of its uniquely formed closure 5.

*Id.* at 14–15.

[A]ll one needs to do is to pressure fit the reservoir 6 into the flange 7, so that its detent engages, and the sports bottle is ready for application and usage. Likewise, when the container is depleted of its liquid, all one needs to do when cleaning the assembly is simply to remove the collar, and then use pressure to detach the reservoir 6 from its flange, and the entire assembly can be immediately cleaned.

*Id.* at 15. None of those arguments is relevant to the legal conclusion of obviousness, which is based on underlying facts, including: (i) the scope and content of the prior art, (ii) the differences between the prior art and the claimed invention, (iii) the level of ordinary skill in the field of the invention, and (iv) any relevant objective considerations of nonobviousness that are presented. *Graham v. John Deere*, 383 U.S. 1, 17–18 (1966)); *see also MobileMedia Ideas LLC v. Apple Inc.*, 780 F.3d 1159, 1167 (Fed. Cir. 2015), *cert. denied*, 136 S. Ct. 270 (2015) (An additional underlying fact is whether there was a reason to combine prior art teachings.).

Appellant also devotes a good portion of its arguments to highlighting differences between individual prior art references and the claimed invention. For example, Appellant argues:

[The Brown] nursing bottle [is] not a sports bottle, required six components to provide for assembling of its nursing bottle, including the bottle, its reservoir tube, its vent tube, a vent insert, a threaded collar, and a nipple, all of which had to be assembled together to complete the shown nursing bottle. And, trying to clean the shown nursing bottle required the disassembly of all of these six components, for individual cleansing, and then reassembled through threaded engagement, for usage.

. . . [T]he structure of this current invention is entirely different from what is shown and described in the earlier Brown patent, as relied upon so heavily by the examiner.

Appeal Br. 14.

The uniqueness of [Applicant's] device is that the closure 5 has all of these structures integrally formed within its molded assembly, such as its flange, the vent tube, which are all molded into place within the structure.

*Id.* at 15.

The current invention is really just a three part assembly, the collar, and its reservoir tube, and its bottle, and nothing more. This is quite a different structure from what is shown or described in the previous [Brown] patent.

*Id.* at 16. None of those arguments is relevant to the Examiner's rejection, which concedes differences exist between individual references and the claimed invention. *See* Final Act. 3–5 (rejecting claim 11 as obvious over Rees as modified in view of Brown and Holmes); *see also In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (“Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references.”).

Appellant also argues that the prior art includes additional unclaimed features. *See, e.g.*, Appeal Br. 16 (“[Rees] has far more structure set forth in its disclosure, as can be seen in its FIG. 1, and also its FIG. 5a, many of which are just not required in Applicants' invention.”), 17 (“Rees . . . requires a check valve, to make it work.”), 18 (“The previous Brown patent, had to use a separate insert 714, just like Rees requires with his flanged insert 28, while none of these components are required for the current invention.”). These arguments are not commensurate with the scope of the Examiner's rejection, in which the Examiner concluded, among other things:

“It would also have been obvious to one with ordinary skill in the art to make the closure, venting tube and flange as one piece since it has been held that forming in one piece an article which has formerly been formed in multiple pieces and put together involves only routine skill in the art.” Final Act. 4 (citing *In re Larson*, 340 F.2d 965, 968 (CCPA 1965)). Further, the argument about Rees requiring a check valve is not commensurate with the scope of claim 11, which does not prohibit the same. Indeed, dependent claims 16 and 17 explicitly require “a check valve.”

Appellant also argues that claim 11 is nonobvious because “throughout all that time[, since Brown issued in 1998,] nobody gave any thought to the reduction of components, making it far more simple for its assembly and disassembly during usage, and for use in the sports field.” Appeal Br. 17. Appellant goes so far as to describe this fact as its “best evidence” of non-obviousness. *Id.* at 18 (“As stated, the best evidence as to how this current invention is not obvious to one skilled in the art is to recognize that the inventors of the [Brown] patent took an additional fifteen years to come up with this new assembly.”). There is no legal authority to support the notion, implicit in Appellant’s argument, that a lack of anticipation proves non-obviousness, no matter how long the claimed invention went unanticipated.

Appellant also argues that the Final Action does “not explain how a person of ordinary skill in the art would have been motivated to combine a tapered thread form of Holmes” to further modify Rees/Brown. Appeal Br. 18. However, the Final Action explains that the skilled person would have done this “to produce a reliable, fluid tight seal between the male and female members.” Final Act. 5 (citing Holmes 3:64–4:3). And the cited

portion of Holmes explicitly teaches the skilled person that its tapered thread form “is well adapted for use in many other applications where it is desirable to produce a reliable, fluid tight seal between the tapered threads of a male and female member.” Holmes 3:66–4:3.

Appellant also argues that “Rees requires sucking by the child in order to obtain any entrance of air into its container 16, which is not required from the current invention, since the container of the current invention is double vented.” Appeal Br. 16. This argument is not commensurate with the scope of claim 11. Although claim 11 does not require sucking as argued by Appellant, claim does not prohibit sucking. Claim 11 recites that “the internal venting tube and the venting reservoir segregates air from any liquid in the container so as to minimize aeration within the container since no suction is required to dispense the liquid from the container during its usage.” Appeal Br. 22. With respect to this argument, the Examiner responded that “Rees discloses in ¶ [0006] that his invention is novel because it functions at **very low negative pressures**, which would result when pouring the contents by inverting the container and not only by sucking the contents out by the user.” Ans. 4; *see also* Final Act. 7 (“Rees discloses in ¶ [0006] that his invention . . . functions at very low negative pressures.”). Appellant did not file a Reply Brief and, thus, has not rebutted the Examiner’s finding, which is supported by the cited evidence.

For the foregoing reasons, we affirm Rejection 2.

### *Rejection 3*

Appellant addresses the separate rejection of claims 16 and 17 (i.e., Rejection 3) but not under a separate heading as required. *See* Appeal Br. 18–19; 37 C.F.R. § 41.37(c)(1)(iv) (“Each ground of rejection contested by

Appeal 2019-004172  
Application 14/120,758

appellant must be argued under a separate heading.”). Accordingly, we need not consider those arguments, which in any event are not persuasive.

We affirm Rejection 3.

SUMMARY

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>References/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
11	112(a)	Written Description	11	
11	103	Rees, Brown, Holmes	11	
16, 17	103	Rees, Brown, Holmes, Manganiello	16, 17	
<b>Overall Outcome</b>			11, 16, 17	

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED