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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* CHRISTOPHER C. BENEVIDES,  
ROBERT COLLAMATI, and DENNIS DELLAROVERE

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Appeal 2010-009837  
Application 11/211,066  
Technology Center 1700

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Before BRADLEY R. GARRIS, LINDA M. GAUDETTE, and  
MICHAEL P. COLAIANNI, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1, 8-10, 15-20, 45, and 47. We have jurisdiction under 35 U.S.C. § 6.

We AFFIRM.

Appellants claim a device for transporting liquids comprising a first cylinder 10 and a second cylinder 24, wherein the first ends of the first and second cylinders terminate at the same point, and a third cylinder 36 projecting outward from the second end of the first cylinder for receiving a transport tube (claim 1; Fig. 1A).

Representative claim 1, the sole independent claim on appeal, reads as follows:

1. A device for transporting liquids comprising:

a first cylinder having a wall, having an interior surface and an exterior surface, and a first end and second end, said interior surface defining a chamber for receiving a liquid sample;

a second cylinder having a wall, having an interior surface and an exterior surface, and a first end and a second end, said interior surface of said second end of said second cylinder secured to said exterior surface of said first end of said first cylinder, said wall of said second cylinder having a thickness, [and ]said second cylinder occupying a position on said first cylinder such that a portion of said first cylinder is uncovered by said second cylinder, said second cylinder being positioned on said first cylinder such that the respective said first ends of said first cylinder and said second cylinder terminate at the same point, and said exterior surface of said wall of said second cylinder being for receiving a fitting assembly;

a third cylinder having a wall having an interior surface and an exterior surface, and a first end and a second end, said interior surface of said first end of said third cylinder secured to said exterior surface of said first cylinder about said second end of said first cylinder, said third cylinder wall having a thickness, and said third cylinder occupying a position on said first cylinder such that a portion of said first cylinder is uncovered by said second cylinder, said third cylinder projecting outward from said second end of said first cylinder to expose the interior surface wall of said second end of said third cylinder for receiving a transport tube; and,

a fourth cylinder having a wall having an interior surface and an exterior surface, and a first end and a second end, said interior surface of said fourth cylinder secured to said exterior surface of said second cylinder and said exterior surface of said third cylinder to stabilize and support said first, second and third cylinders by maintaining a relationship among said cylinders and providing thickness to support connections to fluid transport means.

The references listed below are relied upon by the Examiner as evidence of obviousness:

McDonald et al.	US 4,211,658	July 8, 1980
Bente, III et al.	US 4,293,415	Oct. 6, 1981
Fuchs et al.	US 5,348,658	Sept. 20, 1994
Garguilo et al.	US 6,068,767	May 30, 2000
Nyudo et al.	US 2005/0077218 A1	Apr. 14, 2005
Mukaiyama et al.	JP 56150352	Nov. 20, 1981
Hoffmann	DE 19607865 A1	Feb. 6, 1997 <sup>1</sup>
Hoffmann	JP 9119924	May 5, 1997 <sup>1</sup>

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<sup>1</sup> Like Appellants (Br. 12), we consider the Hoffman references applied by the Examiner to contain corresponding disclosures. For this reason and for ease of exposition, we will refer to these references collectively as the Hoffman references.

The Examiner rejects claims 1, 8-10, 15-18, and 47 under 35 U.S.C. § 112, 2nd paragraph, for failing to particularly point out and distinctly claim the subject matter which Appellants regard as their invention.

Under 35 U.S.C. § 103(a), the Examiner rejects claims 1, 8-10, 15-18, and 47 as unpatentable over the Hoffman references in view of Fuchs alone or further in view of either Nyudo or Mukaiyama, claims 9, 10, 19, and 20 as unpatentable over the references applied against claim 1 and further in view of Garguilo and McDonald, and claim 45 as unpatentable over the references applied against claim 1 and further in view of Bente.

Appellants state that dependent claims 8-10, 15-20, 45, and 47 stand or fall with independent claim 1 (Br. 11). Therefore, our disposition of this appeal will focus on claim 1 only.

The § 112, 2nd paragraph, Rejection

The Examiner's rationale for this rejection follows:

Having the second cylinder and the third cylinder for receiving elements in the same claim [i.e., claim 1] renders the claim indefinite. Since one is a male end and the other is a female end, it would appear that one should be a receiving end and one should be for being received by. If the interior surface wall of the second end of the third cylinder is for receiving a transport tube as a female end, then it would make more sense for the exterior surface of the wall of the second cylinder "to be received by" a fitting as opposed to "receiving" a fitting, thus making it a male as opposed to another female end. As the claims are written, both ends would appear to be female ends. However, this does not appear to be what appellants intend. As such, the claims are considered to be indefinite.

(Ans. para. bridging 3-4).

We agree with Appellants that the claim 1 phrase "for receiving" does not render the rejected claims indefinite (Br. 11). For the reasons detailed by Appellants, the requirements of § 112, 2nd paragraph, are not violated by use of this phrase in referring to the second cylinder male end (*id.*).

We reverse the § 112, 2nd paragraph, rejection.

### The § 103 Rejections

We affirm the § 103 rejections for the reasons given by the Examiner in the Answer. The comments below are added for emphasis.

Appellants disagree with the Examiner's finding that the first ends of the first and second cylinders of the Hoffman references (i.e., the left ends of cylinders 1 and 3 in Fig. 1a of the Hoffman references) terminate at the same point as required by claim 1 (Br. para. bridging 15-16). This disagreement is based on Appellants' unembellished assertion that "[t]here is no comparison between the adapter member [i.e., cylinder 3] of Hoffman patents and the second cylinder of the claimed invention" (*id.*). On this record, Appellants have failed to identify any error in the Examiner's finding because they have failed to identify any structural distinction between the second cylinder of claim 1 and cylinder 3 of the Hoffman references.

Appellants do not contest with any reasonable specificity the Examiner's conclusion that it would have been obvious to combine the applied references as proposed in the rejections of claim 1. Instead, Appellants describe the purposes served by the cylinder features of claim 1 and then state without explanation that "[t]his configuration and the functions [or features] resulted therefrom in no way can be achieved by [the

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reference combinations proposed by the Examiner]" (*id.* at 17; *see also id.* at 19). However, this statement does not identify any structural limitation of claim 1 which remains unsatisfied by the Examiner's proposed combination of references.

For the reasons stated above and in the Answer, the expositions presented by Appellants in their Appeal Brief do not reveal any error in the findings of fact or conclusions of law made by the Examiner in rejecting claim 1.

### Conclusion

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 C.F.R. § 1.136(a)(1).

AFFIRMED

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