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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* JASON HAWKES

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Appeal 2013-007378  
Application 12/183,357  
Technology Center 3700

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Before ANNETTE R. REIMERS, WILLIAM A. CAPP, and  
JAMES J. MAYBERRY, *Administrative Patent Judges*.

MAYBERRY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Jason Hawkes (Appellant) seeks review under 35 U.S.C. § 134 of the Examiner's rejections of claims 1–13 and 16–20.<sup>1</sup> We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

CLAIMED SUBJECT MATTER

The claims are directed to a medical instrument sterilization container. Spec. 1. Claim 1, reproduced below, is illustrative of the claimed subject matter:

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<sup>1</sup> Claims 14 and 15 were withdrawn. Appeal Br. 31, Claims App.

1. A container comprising:
  - a plurality of sides, each side having a plurality of fluid permeable openings, wherein the plurality of sides form a partially enclosed unit;
  - at least one lid;
  - at least one latch unit movably attached to a first side of the plurality of sides at a proximate end of the latch unit;
  - a lid restraint formed at a distal end of the latch unit whereby the lid restraint restrains the lid when engaged with the lid, wherein the lid restraint projects inwardly of an inside surface of the at least one latch unit to engage the lid; and
  - at least one locking element formed along the latch unit for engagement with the first side, wherein engagement of the locking element with the first side limits the mobility of the latch unit.

#### REJECTIONS

I. Claim 6 stands rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement.

II. Claims 1–6, 8–12, and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Foy (US 4,923,079, issued May 8, 1990), Sweet (US 2003/0198581 A1, published Oct. 23, 2003), and Uitz (US 5,246,128, issued Sept. 21, 1993).

III. Claims 7 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Foy, Sweet, and Uitz, and Ogden (US 6,293,418 B1, issued Sept. 25, 2001).

IV. Claims 17 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Foy, Sweet, and Uitz, and Galer (US 5,683,008, issued Nov. 4, 1997).

V. Claims 19 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Foy, Sweet, and Uitz, and Dane (US 6,164,738, issued Dec. 26, 2000).

## ANALYSIS

### *Rejection I*

Claim 6 depends from claim 1 and recites “wherein the proximate end of the at least one latch unit is pivotably attached to the first side, wherein the lid restraint formed at the distal end of the latch unit rotates to pivotally engage with the lid.” Appeal Br. 29, Claims App. The Examiner finds that the Specification fails to support a lid restraint that rotates. Final Act. 3.

Appellant argues that the subject matter of claim 6 is adequately supported by the Specification. Appeal Br. 12. Appellant explains that, as illustrated in the Specification’s Figure 2, “latch unit 18 can be ‘rotated about its proximate end 24 on hinge 22.’” Appeal Br. 13 (quoting Spec. 8, ll. 9–10). Appellant further explains that the lid restraint 26 is formed at the distal end of the latch unit. *Id.* As such, the lid restraint moves with the latch unit—that is, the lid restraint rotates about the proximate end of the latch unit on its hinge with the distal end of the latch unit. In this way, the lid restraint formed at the distal end of the latch unit rotates to pivotally engage with the lid when the latch unit is closed and the lid is in place. *Id.* at 14.

In response, the Examiner explains that “[t]here is no disclosure of *just* the lid restraint rotating to pivotally engage with the lid.” Answer 4 (emphasis added).

We agree with Appellant that the subject matter of claim 6 is adequately supported by the Specification. The Examiner improperly limits claim 6 to require the lid restraint, and the lid restraint alone, to rotate to engage the lid. Such a construction is contrary to the plain language of claim 6.

Accordingly, we do not sustain the Examiner's rejection of claim 6 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement.

*Rejection II*

Claim 1 recites, in relevant part, “at least one latch unit movably attached to a first side of the plurality of sides at a proximate end of the latch unit; [and] a lid restraint formed at a distal end of the latch unit whereby the lid restraint restrains the lid when engaged with the lid.” Appeal Br. 28, Claims App. The Examiner finds that Foy discloses a container with the recited latch unit. Final Act. 4 (referencing Foy's door 62, which is movably attached to a side of Foy's container at hinge 64). As Foy explains, the door 62 is disposed within opening 60, which allows access to the inside of the container through at least one of the sides. *See* Foy, 4:43–61; *see also id.*, Figs. 1 and 2 (depicting door 62 in the closed and open positions, respectively).

The Examiner recognizes that Foy fails to disclose a lid for its container or a lid restraint formed at a distal end of the latch unit (door 62) as recited in claim 1. Final Act. 4. The Examiner finds that Uitz discloses a container with a lid, and a lid restraint that engages the lid to restrain it. *Id.* at 5. The Examiner references Uitz's resilient channel 50 and lid 28' as the recited lid restraint and lid. *Id.* As disclosed in Uitz, the resilient channel 50 is located along the upper edge of the container walls and mates with lip 51 to secure the lid 28' to the container. Uitz, 7:2–5. The Examiner explains that “[w]hen combining Foy with Uitz, one skilled in the art would provide the entire top edge of the side 14, including the top edge of the latch unit 62,

with the lid restraint, in order to engage the lid along the entire length of the sidewall.” Answer 6 (emphasis added).

Appellant argues that the Examiner’s proposed combination is the product of hindsight, as “[n]either Foy nor Uitz, nor Sweet, could provide the teachings to support the Examiner’s rejection.” Appeal Br. 19.

Appellant explains that Foy’s container is collapsible or stackable and does not use a lid. *Id.* Appellant continues that Foy’s door 62 “has no structure that could retain a cover, and as Foy does [not] provide any teachings of the need or use of a cover, one having skill in the art would find nothing in Foy to suggest that the door 62 should be used to retain a cover.” *Id.* at 20.

Appellant further explains that “Uitz provides no teachings of any latch unit or any structure that is ‘movably attached to’ a sidewall, as is require by claim 1.” Appeal Br. 20. Instead, Uitz teaches the concept of using resilient channels that snap fit on the lips of other panels and “this engagement of resilient channels *does not lend itself to a hinged latch* as suggested by the Examiner’s combination with Foy.” *Id.* at 22 (emphasis added). Appellant urges that “[t]here is nothing within Uitz to suggest that this tongue and groove connection would allow hinged movement of the wall 18, as the Examiner suggests can be combined with Foy.” Reply Br. 8.

Appellant summarizes his argument by stating that “combining the resilient channel mating of Uitz with the structure of Foy would prevent the hinged door of Foy from mating with the sidewall.” *Id.* The Examiner’s rejection fails to provide “objective reasoning as to why the references would be combined” to arrive at such a configuration. Reply Br. 5.

We find Appellant’s argument directed to the Examiner’s reasoning persuasive of Examiner error. “[T]here must be some articulated reasoning with some rational underpinning to support the legal conclusion of

obviousness.” *KSR Int’l Co.*, 550 U.S. 398, 418 (2007). The Examiner provides a reason for modifying Foy with Uitz’s lid and resilient channel 50—“in order to cover and protect any contents of the container as well as restrain movement of the lid.” Final Act. 5. However, this reasoning fails to support why, as the Examiner contends, one of ordinary skill in the art would include Uitz’s resilient channel 50 along *the entire length* of Foy’s side 14, *including door 62*. As Appellant explains, the hinged door 62 would not properly operate with the snap-fit connection of channel 50 and lip 51. *See* Appeal Br. 22; Reply Br. 8. Indeed, it appears that adding the resilient channel 50 along the length of Foy’s side walls, *except* for the door 62, would secure the lid as reasoned by the Examiner and still allow the door 62 to operate. Such a modification, however, would not arrive at the claimed latch unit. Accordingly, we find that the Examiner’s reasoning for adding the channel 50 to the distal end of door 62 to form the recited latch unit and lid restraint lacks rational underpinning.

For the reasons above, we do not sustain the Examiner’s rejection of independent claim 1 under 35 U.S.C. § 103(a) as being unpatentable over Foy, Sweet, and Uitz. We also do not sustain the rejection of claims 2–6, 8–12, and 16, which depend directly from claim 1, under 35 U.S.C. § 103(a) as being unpatentable over Foy, Sweet, and Uitz.

*Rejections III-V*

The Examiner rejects claims 7 and 13 (Rejection III), claims 17 and 18 (Rejection IV), and claims 19 and 20 (Rejection V), all which depend directly or indirectly from claim 1, as unpatentable over Foy, Sweet, and Uitz as applied to claim 1 and additional prior art (Ogden, Galer, and Dane). *See* Final Act. 7, 9, 10. As discussed above in connection with our analysis of Rejection II, we do not sustain the Examiner's rejection of claim 1 as unpatentable over Foy, Sweet, and Uitz. The Examiner's reliance on Ogden, Galer, and Dane fails to remedy the deficiency in the rejection of claim 1.

Accordingly, we do not sustain the Examiner's rejection of claims 7 and 13 (Rejection III), claims 17 and 18 (Rejection IV), and claims 19 and 20 (Rejection V).

DECISION

We reverse the Examiner's rejection of claim 6 under 35 U.S.C. § 112 first paragraph as failing to comply with the written description requirement.

We reverse the Examiner's rejection of claims 1–6, 8–12, and 16 under 35 U.S.C. § 103(a) as being unpatentable over Foy, Sweet, and Uitz.

We reverse the Examiner's rejection of claims 7 and 13 under 35 U.S.C. § 103(a) as being unpatentable over Foy, Sweet, and Uitz, and Ogden.

We reverse the Examiner's rejection of claims 17 and 18 under 35 U.S.C. § 103(a) as being unpatentable over Foy, Sweet, and Uitz, and Galer.

We reverse the Examiner's rejection of claims 19 and 20 under 35 U.S.C. § 103(a) as being unpatentable over Foy, Sweet, and Uitz, and Dane.

REVERSED

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