

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ANHEUSER-BUSCH INBEV S.A. AND ANHEUSER-BUSCH, LLC,
Petitioner,

v.

HEINEKEN SUPPLY CHAIN B.V. (F.K.A. HEINEKEN TECHNICAL
SERVICES B.V.)
Patent Owner.

IPR2019-01151
Patent 7,188,751 B2

Before ZHENYU YANG, SCOTT C. MOORE, and
JOHN E. SCHNEIDER, *Administrative Patent Judges*.

SCHNEIDER, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314

I. INTRODUCTION

Anheuser-Busch Inbev S.A. and Anheuser-Busch, LLC (“Petitioner”) filed a Petition requesting *inter partes* review of claims 1, 3, 7, and 10 of U.S. Patent No. 7,188,751 B2 (Ex. 1001, “the ’751 patent”). Paper 2 (“Pet.”). Heineken Supply Chain B.V. (“Patent Owner”) filed a Preliminary Response to the Petition. Paper 7 (“Prelim. Resp.”). Petitioner filed an authorized Reply to Patent Owner’s Preliminary Response. Paper 10 (“Reply”).

We have authority, acting on the designation of the Director, to determine whether to institute an *inter partes* review under 35 U.S.C. § 314 and 37 C.F.R. § 42.4(a). The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted “unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” Upon considering the Petition and the Preliminary Response, we determine that Petitioner has not shown a reasonable likelihood that it would prevail in showing the unpatentability of at least one challenged claim. Accordingly, we deny the Petition and decline to institute an *inter partes* review for that reason.

A. *Real Parties in Interest*

Petitioner identifies the real parties-in-interest as Anheuser-Busch Inbev S.A. and Anheuser-Busch, LLC. Pet. 1.

B. *Related Proceedings*

Petitioner identifies the following matter involving the ’751 patent: *In re Certain Beverage Dispensing Systems and Components Thereof*, Inv. No. 337-TA-1139 (USITC, filed Aug. 2, 2018). Pet. 1.

C. The '751 Patent

The '751 patent, titled "Drink Dispenser Assembly and Container for Drink and Drink Dispensing Line," issued on March 13, 2007. Ex. 1001 codes (45), (54).

The '751 patent relates to dispenser assemblies used to dispense beverages such as draught beer. Ex. 1001, Abstr.; col. 2, ll. 24–35. The beverage dispenser described in the '751 patent comprises a dispensing line which, in turn, comprises a flexible tube with a normally-closed shut-off valve. *Id.* at col. 5, ll. 50–55. The shut-off valve is located at or near the outlet end of the dispensing tube and is made of a rigid material. *Id.*, and claim 1. The integration of the dispensing line and the shut-off valve eliminates the need to clean beer lines and valves as the entire unit is disposable. *Id.* at col. 2, ll. 50–52 and 60–67.

D. Illustrative Claims

Claim 1 is illustrative of the claims at issue and reads as follows:

1. Drink dispenser assembly (1,25) comprising: a dispenser device (2,37) provided with a dispensing head (18, 29) comprising an at least partially flexible dispensing line (17,28), and a container (7,27) containing carbonated drink, connected during use to the dispensing line (17,28) which has a coupling element at an outlet end for connection to the dispensing head (18,29), characterised in that the coupling element comprises a shut-off valve (19,32) made of rigid material that is selectively openable and closable after placing the outlet end of the dispensing line (17,28) into the dispensing head (18,29), the dispensing head (18,29) comprising a knob or handle and an operating element (45,98) connected to said knob or handle by means of which the shut-off valve (19,32) is detachably connectable for opening and closing of the shut off valve by moving the knob or handle, wherein the shut-off valve is freely movable with the flexible tube upon placement and removal of the valve into and from the dispensing head and is fixed in

position by being releasably attached to the dispensing head, and wherein the shut-off valve is fixedly attached to an outflow end of the flexible tube and is removable from the dispensing device upon replacement of the container.

Ex. 1001, col. 11, ll. 5–26.

E. Evidence

Petitioner relies upon the following references:

Timmermans et al., WO 99/11563, published March 11, 1999. (Ex. 1003) (“Timmermans”).

Van Der Meer, et al., WO 99/11561, published March 11, 1999. (Ex. 1004) (“Van Der Meer”).

Jeans, E., EP 246,052 A1, published November 11, 1987. (Ex. 1005) (“Jeans”).

deCler et al., US 5,639,064, issued June 17, 1997. (Ex. 1006) (“deCler”).

Erb, R., US 5,775,364, issued July 7, 1998. (Ex. 1025) (“Erb”).

F. Prior Art and Asserted Grounds

Petitioner asserts that claims 1, 3, 7, and 10 would have been unpatentable on the following grounds:

Claims Challenged	35 U.S.C. §	References
1, 3, 7, 10	103(a) ¹	Timmermans, Jeans
1, 3, 7, 10	103(a)	Van Der Meer, Jeans
1, 3, 7, 10	103(a)	Timmermans, deCler
1, 3, 7, 10	103(a)	Van Der Meer, deCler
1, 3, 7, 10	103(a)	Timmermans, Erb
1, 3, 7, 10	103(a)	Van Der Meer, Erb

Petitioner also relies on the declaration of Alexander J. Slocum (Ex. 1002) to support its contentions. Patent Owner relies on the Testimony of Mr. Wolski before the International Trade Commission (Ex. 2010).

II. ANALYSIS

A. Obviousness

The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). If the differences between the claimed subject matter and the prior art are such that the subject matter, as a whole, would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains, the claim is unpatentable under 35 U.S.C. § 103(a). *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007).

¹ 35 U.S.C. § 103 was amended by the Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284, 287–88 (2011). Because the [XXX] patent was filed before the effective date of the relevant amendment, the pre-AIA version of § 103 applies.

A proper § 103 analysis requires “a searching comparison of the claimed invention—including all its limitations—with the teaching of the prior art.” *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995).

“Obviousness requires more than a mere showing that the prior art includes separate references covering each separate limitation in a claim under examination.” *Unigene Labs., Inc. v. Apotex, Inc.*, 655 F.3d 1352, 1360 (Fed. Cir. 2011). “Rather, obviousness requires the additional showing that a person of ordinary skill at the time of the invention would have selected and combined those prior art elements in the normal course of research and development to yield the claimed invention.” *Id.*

B. Level of Ordinary Skill in the Art

The level of ordinary skill in the art is a factual determination that provides a primary guarantee of objectivity in an obviousness analysis. *Al-Site Corp. v. VSI Int’l Inc.*, 174 F.3d 1308, 1324 (Fed. Cir. 1999) (citing *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966); *Ryko Mfg. Co. v. Nu-Star, Inc.*, 950 F.2d 714, 718 (Fed. Cir. 1991)).

Petitioner contends that a person of ordinary skill in the art would have at least a Master’s degree in mechanical engineering or product design and/or four years of relevant experience designing fluid dispensing systems. Pet. 14. Patent Owner disputes this definition of the level or ordinary skill in the art but does not offer its own definition. Prelim Resp. 22 n.4.

For purposes of this decision, we adopt Petitioner’s description of the level of ordinary skill in the art.

We also note that the applied prior art reflects the appropriate level of skill at the time of the claimed invention. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001).

C. Claim Construction

We interpret a claim “using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. 282(b).” 37 C.F.R. § 42.100(b) (2018) (as amended); *see* Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board, 83 Fed. Reg. 51,340, 51,340, 51,358 (Oct. 11, 2018) (amending 37 C.F.R. § 42.100(b) effective November 13, 2018) (now codified at 37 C.F.R. § 42.100(b) (2019)). Under this standard, we construe the claim “in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent.” *Id.* Furthermore, at this stage in the proceeding, we need only construe the claims to the extent necessary to determine whether to institute inter partes review. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (“[W]e need only construe terms ‘that are in controversy, and only to the extent necessary to resolve the controversy’” (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

Both Petitioner and Patent Owner agree that all terms should be given their plain and ordinary meaning. Pet. 14; Prelim Resp. 9–10. We agree that it is not necessary to adopt specific constructions of any claim terms in order to resolve the issues presently in controversy. Therefore, for purposes of this decision, we decline to adopt specific constructions of any claim terms.

D. Obviousness Based in Timmermans (Grounds 1, 3, and 5)

Petitioner contends that each of the challenged claims are obvious over Timmermans combined with Jeans, deCler, or Erb. Pet. 3.

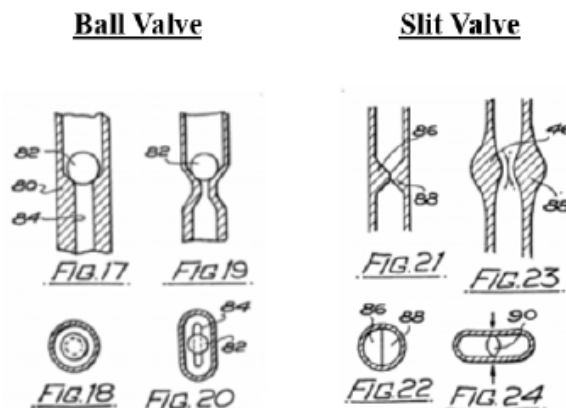
1. *Timmermans*

Timmermans discloses an assembly for dispensing beer or soft drinks. Ex. 1003, Abstr. The assembly comprises a “partially flexible, hose shaped dispensing means [which] offers the advantage that for closing the dispensing channel, it can easily be pressed shut.” *Id.* at 5. The dispensing means is open and closed by pinching and unpinching the dispensing means using an eccentric element connected to a handle. *Id.* at 24.

2. *Jeans*

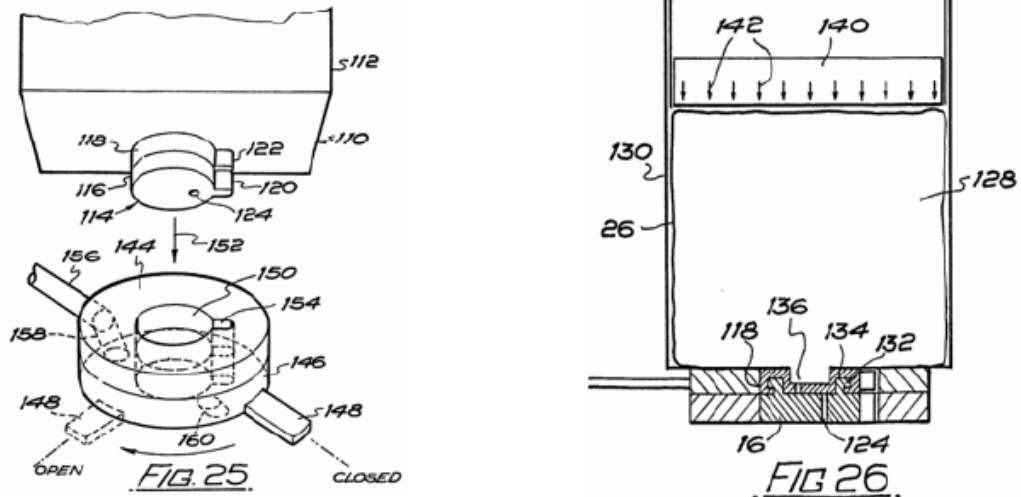
Jeans discloses a beverage dispensing system wherein concentrated syrup and a diluent are dispensed into a cup to provide a beverage. Ex. 1005, Abstr. The system of Jeans comprises a flexible tube which may act as a valve “which is opened or closed between pinched and unpinched conditions or vice versa.” *Id.* at 18. As shown below in Figures 17–24, Jeans discloses various valve arrangements that can be used in the dispenser of Jeans including a ball valve and a slit valve. *Id.* at 18–19, Figures 17–24.

Figures 17 to 24 of Jeans illustrate various valves for a beverage dispenser and are reproduced below.



Pet. 17. Figures 17–24 of Jeans as annotated by Petitioner show various valve configurations.

Jeans also discloses a rotational valve configuration as shown in Figures 25 and 26 below. Ex. 1005, 24.



Figures 25 and 26 of Jeans shows a rotational valve arrangement.

3. *deCler*

deCler discloses a dispensing valve for a fluid dispensing system. Ex. 1006, col. 1, ll. 8–10. The valve in deCler comprises a receptor valve assembly and an insert valve assembly which are connected to form a fluid passage. *Id.* at col. 1, ll. 38–40. deCler teaches that the two separate assemblies have closed fluid passages and that an open passage is not formed until the two assemblies are connected. *Id.* at col. 1, ll. 44–51.

4. *Erb*

Erb relates to a connector for a guarantee tap for a fluid container. Ex. 1025, col. 1, ll. 7–11. The connector is used to hold and activate a tap. *Id.* at col. 1, ll. 59–64.

5. *Analysis of Timmermans combined with Jeans*

Petitioner contends that Timmermans teaches all of the elements of the challenged claims with the exception of a valve comprising a rigid

material. Pet. 54. Petitioner contends that Jeans teaches several valves which comprise rigid material. Pet. 54. In support of its contention, Petitioner relies on the testimony of Dr. Slocum. *Id.*; Ex. 1002 ¶¶130–136, 166–167. Petitioner contends that one skilled in the art would have been motivated to combine the teachings of the references as it involves a simple substitution of one type of valve for another in related applications. Pet. 54. Petitioner also contends that one skilled in the art would have been motivated to combine the teachings of the references to improve hygiene and prevent leakage. *Id.*

Patent Owner contends that Timmermans does not teach the elements of

“the coupling element comprises a shut-off valve”

“a shut-off valve made of rigid material”

“the dispensing head comprising a knob or handle and an operating element connected to said knob or handle by means of which the shut-off valve is detachably connectable for opening and closing of the shut off valve by moving the knob or handle”

“the shut-off valve is freely movable with the flexible tube upon placement and removal of the valve into and from the dispensing head and is fixed in position by being releasably attached to the dispensing head”

“wherein the shut-off valve is fixedly attached to an outflow end of the flexible tube and is removable from the dispensing device upon replacement of the container.”

Prelim Resp. 29.

Patent Owner also contends that Jeans does not make up for the deficiencies of Timmermans. Prelim. Resp. 29–36. Patent Owner contends that the embodiments shown in Figures 17–24 are pinch valves which are not complete valves without a pinching mechanism. *Id.* at 33. Patent Owner

contends that the pinching mechanism in Jeans is not connected to the tube such that it does not move with the flexible tube. *Id.*

Patent Owner further contends that the valves in Figures 17–24 of Jeans are not made of a rigid material. *Id.* at 34. In support of this contention, Patent Owner points to the teaching in Jean that the valves are opened and closed by pinching the tube which indicates that the valves comprise a flexible material. *Id.*; Ex. 1005, 19; Ex. 2010, 1180.

With respect to the valve disclosed in Figures 25 and 26 of Jeans, Patent Owner contends that the valve does not use a dispensing line but is connected directly to the storage pouch. Prelim Resp. 35–36. Patent Owner contends that since this embodiment lacks a flexible tube it does not teach a valve connected to a dispensing line at the outlet end as well as other limitations. *Id.*

Patent Owner also contends that one skilled in the art would not have been motivated to combine the teachings of Timmermans and Jeans. *Id.* at 45. Patent Owner contends that the valves disclosed in Jeans are used to dispense syrup and not a carbonated beverage such as beer. Pet. 46; Ex. 2010, 1162. Patent Owner argues that one skilled in the art would not have been motivated to use a syrup valve for beer as “it would cause frothing, undesired dispense, and leakage of carbonation creating an unhygienic environment—all problems that the ’751 Patent expressly addressed.” Prelim. Resp. 46; Ex. 2010, 1182–1185.

Patent Owner contends that one skilled in the art would not have been motivated to use the ball valve arrangement of Jeans. Prelim. Resp. 49–50. Patent Owner contends that if the ball valve of Jeans were used in the horizontal position suggested by Petitioner, the valve would not properly seal. *Id.*; Ex. 2010, 1182–1183.

Patent Owner also contends that there is sufficient evidence of secondary indicia of non-obviousness to show that the challenged claims are not obvious. Prelim Resp. 60.

We have considered the arguments advanced by the parties as well as the evidence of record and conclude that Petitioner has not demonstrated a reasonable likelihood that the challenged claims are unpatentable over Timmermans combined with Jeans.

Both the ball valve and slit valve configurations shown in Figures 17–24 of Jeans operate by pinching the valve to open it. Ex. 1005, 18–20; Ex. 1002 ¶¶ 132–135; Ex. 2020, 1180. As discussed above, Patent Owner argues that the ability to be opened by a pinching indicates that the valves disclosed in Figures 17–24 of Jeans are made of a flexible material and do not meet the limitation of being composed on a rigid material. Prelim. Resp. 34–35. We note that this assertion is consistent with the position of Petitioner and its declarant, Dr. Slocum, that pinch valves like those shown in Timmermans and Van Der Meer are not rigid. See Pet. 26–27, 33; Ex. 1002 ¶¶ 99, 120.

Jeans explicitly states that Figures 17–20 and 21–24 depict two different embodiments in which “the *flexible* tube of the container” is “designed to act as a valve which is open and closed between pinched and unpinched conditions, or vice versa.” Ex. 1005, 18 (emphasis added).

In the embodiment depicted in Figures 17–20, “the flexible tube of the container” is “provided with an internal shoulder 80 on which rests a ball 82 which seats on the shoulder 80 in the normal unpinched position.” *Id.* “When the tube is pinched as shown in Fig. 19, the bore 84 as shown clearly in Fig. 20 takes up an elongated form,” causing the valve to open. *Id.* at 19. It is apparent from Figure 20 that, when this occurs, internal shoulder 80 also

is compressed into an elongated form. *See id.*, Fig. 20. Moreover, it appears from the cross-hatching depicted in Figures 17 and 19 that internal shoulder 80 is integral with, and formed from the same material as, the flexible tube.

In the second embodiment depicted in Figures 21–24, the flexible tube “is formed with a pair of internal shoulders 86 and 88 which make line contact across the diameter of the tube.” Ex. 1005, 19. When the tube is pinched, “the edges of the shoulders 86 and 88 which previously were straight and in contact, take up curved form creating an aperture 90 therebetween.” *Id.* Thus, in this second embodiment, the shoulders also deform when the flexible tube is compressed. It also appears from the cross-hatching depicted in Figures 21 and 23 that shoulders 86 and 88 are integral with, and formed of the same material as, the flexible tube.

Though Dr. Slocum contends that the shoulders of the valves depicted in Figures 17–20 and 21–24 are rigid because they are strong enough to resist fluid flow (*see* Ex. 1002 ¶¶ 134 and 132, respectively), Dr. Slocum does not provide adequate reasoning or evidence to support this opinion that one of ordinary skill in the art would consider shoulders that deform in the same manner as a flexible tube, and that are depicted as being integral with and made of the same material as the flexible tube, to nevertheless be rigid. For example, Dr. Slocum does not cite any extrinsic or intrinsic evidence that one of skill in the art would equate the ability to resist fluid flow with rigidity. Nor does Dr. Slocum or Petitioner propose any construction of the claim term “rigid” that would adequately distinguish the admittedly flexible

pinch valves of Timmermans and Van Der Meer from the allegedly rigid pinch valves of Jeans.²

On the current record, and for the reasons discussed above, we find that Dr. Slocum's testimony that the valve depicted in Jeans's Figures 17–24 is made of a rigid material is not adequately supported. Accordingly, and based on the entire record presently before us, we determine that Petitioner has failed to demonstrate a reasonable likelihood of prevailing on its obviousness challenge based on the combination of Timmermans and Figures 17–24 of Jeans.

With respect to the rotational valve disclosed in Figures 25 and 26 of Jeans, while this embodiment appears to disclose a valve made of a rigid material, this embodiment, combined with Timmermans does not render the challenged claims obvious. Figure 25 of Jeans teaches that the rotational valve is directly connected to the storage container and that a flexible tube is not used in this embodiment.

Figure 25 of Jeans illustrates a rotational valve and is reproduced below:

² We further note that International Trade Commission Administrative Law Judge McNamara recently issued a decision in a co-pending proceeding that rejects Dr. Slocum's opinion that Figures 17–24 of Jeans teach rigid valves. *See Ex. 2002, 115–16.*

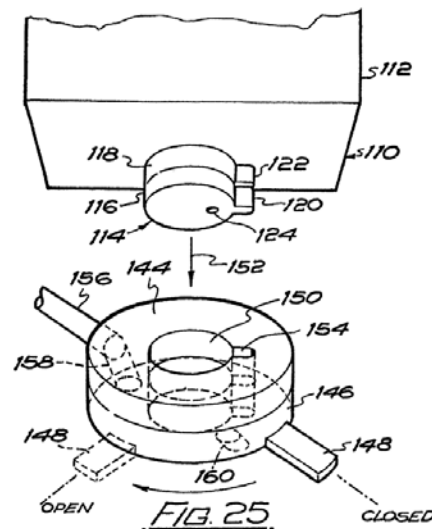


Figure 25 of Jeans shows an exploded perspective elevation of a rotational valve system.

This interpretation is confirmed by the specification of Jeans, which teaches that the rotational valve is “integrally connected” to the flexible bag or pouch where the liquid is stored. Ex. 1005, 24. Petitioner has not pointed to any teaching in Jeans or Timmermans which would lead one skilled in the art to locate the rotational valve of Jean at the end of the flexible tube of Timmermans as required by the claims. While Dr. Slocum shows that such an arrangement is possible, Dr. Slocum does not explain why one skilled in the art would make such a change given that Jeans teaches that the rotational valve is used in direct connection with the storage container. Ex. 1002 ¶ 136.

Petitioner contends that the use of the valves of Jeans in lieu of the pinch valve of Timmermans is merely the substitution of one type of valve for another. Pet. 54. While this may be true for the ball and slit valves of Jeans where the valve is incorporated into the dispensing line, the rotational valve of Jeans is not incorporated into a dispensing line but operates independent of any dispensing line. See Ex. 1005, 26 (fluid flow directly

from the package to the cup). We are not persuaded that one skilled in the art would use a rotational valve that is directly connected to a storage container to control the flow in a dispensing line and locate the valve near the dispensing end of the tube.

We conclude that, based on the evidence before us, Petitioner has not demonstrated a reasonable likelihood that any of the challenged claims would have been obvious over Timmermans combined with Jeans.

6. *Timmermans combined with deCler*

Petitioner repeats its contention that Timmermans teaches all of the elements of the challenged claims except for a valve comprising a rigid material. Pet. 64. Petitioner contends that deCler teaches this element. *Id.* Petitioner contends that deCler teaches “normally-closed shut-off valves made of rigid material that are disposable and fixedly attached to replaceable drink containers.” Pet. 16; Ex. 1002 ¶¶ 138–143. Petitioner contends that the valve disclosed in deCler could be readily modified to use a linear motion to open and close the valve. Pet. 65; Ex. 1002 ¶ 173. Petitioner contends that one skilled in the art would have been motivated to adapt the valve of deCler for use in the dispenser of Timmermans to avoid spillage of the fluid, to provide an inexpensive and easily disposable valve, and because both Timmermans and deCler teach the use of a storage bag. Pet. 66–67.

Patent Owner responds that deCler teaches a two part dispensing valve as shown in Figure 1B of deCler reproduced below. Prelim. Resp. 37.

Figure 1B of deCler illustrates a valve system for dispensing liquids and is reproduced below:

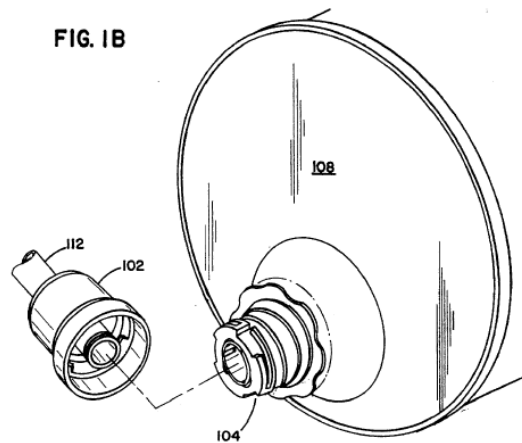


Figure 1B of deCler shows a perspective view of the dispensing valve being used with a rigid container, the insert valve assembly and the receptor valve assembly being uncoupled.

Patent Owner contends that no valve exists until the two portions are joined together. Prelim. Resp. 38. Given that the valve comprises two separate pieces, Patent Owner asserts that deCler does not teach a valve that is freely moveable with a flexible tube. *Id.* Patent Owner also contends that deCler does not teach releasable attachment of the valve to the dispensing head and the use of a knob or handle to open and close the valve. *Id.*

We have considered the arguments of the parties and the evidence of record and conclude that Petitioner has not demonstrated a reasonable likelihood that Timmermans combined with deCler renders the challenged unpatentable.

deCler teaches that the dispensing valve comprises an insert valve assembly and a receptor valve assembly. Ex. 1006, col. 4, ll. 24–25. As shown in Figure 1B of deCler reproduced above, the insert valve assembly 102, and the receptor valve assembly are two separate pieces which, when

engaged, form the dispensing valve. Ex. 1006, col. 4, ll. 27–37, Figure 1B. Figure 1B also shows that the receptor valve assembly is attached to the liquid storage container such that when the insert valve assembly is detached, the receptor valve assembly remains with the container. Ex. 1006, Figure 1B; see Ex. 2010, 1194–1195. Since both the insert valve assembly and the receptor valve assembly must be joined to form a dispensing valve, no valve exists when the insert valve is detached from the receptor valve assembly. We agree with Patent Owner that deCler does not teach a valve that is releaseably attached to the dispensing head. Prelim. Resp. 38; Ex. 2010, 1194–1195; Ex. 2002, 116–17.

7. *Timmermans combined with Erb*

Petitioner contends that Timmermans discloses all of the limitations of the challenged claims with the exception of a requirement that the valve be made of a rigid material. Pet. 70–71. Petitioner contends that Erb teaches this limitation. *Id.* at 71. Petitioner contends that Erb discloses “a normally-closed shutoff valve made of rigid material and a fixedly attached flexible tube, which can be coupled and uncoupled into a dispensing head to dispense ‘alcoholic liquids.’” Pet. 50; Ex. 1025, col. 1, ll. 7–12. Petitioner contends that the use of the valve of Erb in the dispenser of Timmermans is nothing more than a straight forward replacement of one valve with another and that one skilled in the art would know how to modify the valve of Erb to work with the dispenser of Timmermans. Pet. 71–72. Petitioner contends that one skilled in the art would have been motivated to combine the teachings of Timmermans with those of Erb improve the hygiene of the beverage dispensers. Pet. 72–73.

Patent Owner contends that neither Timmermans nor Erb discloses a flexible line with a shut-off valve that is freely moveable with the flexible tube, or teaches that the valve should be placed at or near the end of the dispensing line. *Id.* at 42–43.

We have considered the argument presented by the parties and the evidence of record and conclude that Petitioner has failed to demonstrate a reasonable likelihood that the challenged claims are unpatentable over Timmermans combined with Erb.

While Timmermans discloses the use of a pinch valve associated with a flexible tube, Petitioner has not pointed to, nor have we discerned, any teaching in Timmermans that the valve is located at or near the outflow end of the dispensing line. *See* Pet. 31; Ex. 1002 ¶¶ 108–109. As shown in Figure 1 of Timmermans, as annotated by Petitioner, the pinch is caused by an eccentric 133, which is located well upstream of the dispensing opening 113. Ex. 1003, 23–24.

Annotated Figure 1 of Timmermans illustrates a beverage dispensing system and is reproduced below.

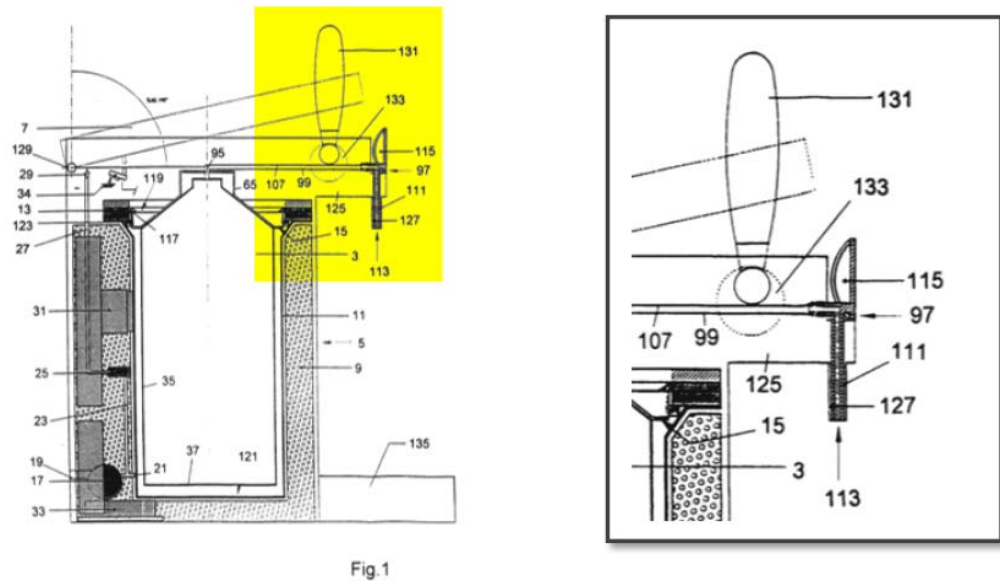
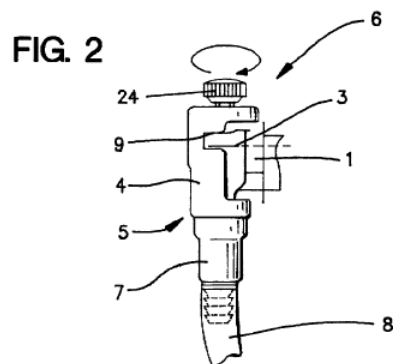
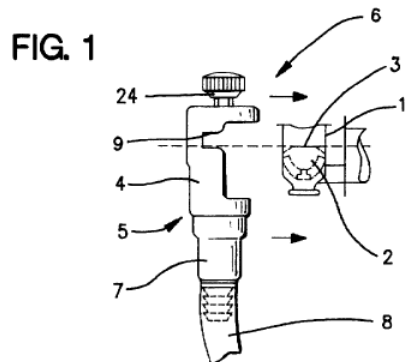


Figure 1 of Timmermans as annotated by Petitioner showing a diagrammatic, sectional side elevation of a beverage dispensing assembly

Erb also fails to teach locating the valve at or near the outflow end of the dispensing line. As shown in Figures 1 and 2 of Erb, valve 2 is separate from the dispensing line 8 and is located upstream of the dispensing line, not the end of the dispensing line.

Figure 1 and 2 of Erb illustrate a guarantee tap and is reproduced below:



Figures 1 and 2 of Erb show a side elevation view of a connector before emplacing a tap and in the service position.

Petitioner has not pointed to any teaching in Erb or Timmermans which would lead one skilled in the art to locate the valve of Erb at the outflow end of the dispensing tube of Timmermans as required by the claims. While Dr. Slocum testifies that such an arrangement is possible, Dr. Slocum does not explain why one skilled in the art would make such a change given that Erb teaches that the valve is separate from and is located upstream from the dispensing line. See Ex. 1002 ¶180–184.

Based on the foregoing, we conclude that Petitioner has not demonstrated a reasonable likelihood that Timmermans combined with Erb renders the challenged claims unpatentable.

E. Obviousness Based on Van Der Meer (Grounds 2, 4, and 6)

Petitioner contends that the challenged claims are unpatentable as obvious over van Der Meer combined with Jeans, deCler or Erb. Petitioner's arguments essentially mirror those advanced for the grounds based on Timmermans. See Pet. 62–64, 68–70, and 73–74.

For the reasons stated above, we find that Petitioner has not demonstrated a reasonable likelihood of prevailing on the grounds based on Van Der Mer.

III. CONCLUSION

For the foregoing reasons, we conclude that the information presented in the Petition does not establish a reasonable likelihood that Petitioner would prevail in showing the unpatentability of at least one of the challenged claims of the '751 patent based upon the grounds presented.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that, Petitioner's request for an *inter partes* review of claims 1, 3, 7, and 10 of the '751 patent is denied.

IPR2019-01151
Patent 7,188,751 B2

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