

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 30

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TIMOTHY J. KING, JAMES J. BEECH and NEVILLE J. PRYKE

Appeal No. 2000-2017
Application 08/935,916

ON BRIEF

Before McCANDLISH, Senior Administrative Patent Judge, PATE, and STAAB, Administrative Patent Judges.

PATE, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 2, 4-7, 9-16 and 18-25. These are all the claims that remain in the application.

The claimed invention is directed to a refillable dispenser for dispensing flexible sheets from a stack of sheets. The refillable dispenser is composed of a relatively flat flexible base sheet devoid of dispensing slots, the base sheet being

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adapted to resiliently fold along a fold axis. A flexible cover is provided for covering the base sheet. The cover has an opening aligned parallel to the fold axis of the flexible base. The resilient material of the dispenser enable the device to be folded along the foldable axis for emplacing a stack of sheets in through the temporarily gaping opening.

The claimed subject matter may be further understood with reference to the appealed claims which are appended to the appeal brief.

The references of record relied upon by the examiner as evidence of obviousness are:

Montgomery	2,574,345	Nov. 6, 1951
Collie	3,721,360	Mar. 20, 1973
French	5,127,545	Jul. 7, 1992

THE REJECTIONS

Claims 1, 12, 19 and their respective dependent claims stand rejected under 35 U.S.C. § 112, second paragraph, as indefinite for failing to point out and distinctly claim the subject matter which appellant regards as the invention.

Claims 1, 2, 4, 5, 9-15, 18-21 and 23-25 stand rejected under 35 U.S.C. § 103 as unpatentable over Montgomery in view of Collie.

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Claims 6, 7, 16 and 22 stand rejected under 35 U.S.C. § 103 as unpatentable over Montgomery in view of Collie and French.

For the details of these rejections, reference is made to the examiner's answer pages 5 and 6 for a full explanation.

OPINION

We have carefully reviewed the rejections on appeal in light of the arguments of the appellants and the examiner. As a result of this review, we have determined that the applied prior art does not establish a *prima facie* case of obviousness with respect to the rejections on appeal, nor is any claim indefinite. Therefore the rejections of all claims on appeal are reversed. Our reason follows.

With reference to the rejection under section 112, we are not in agreement with the examiner that the "adapted to contain . . ." language renders the claim indefinite. In our view, it is readily understood that the adapted to contain phrase refers to appellants' claimed cover. While we agree that the "a stack of sheets" limitation in claims 1, 12 and 19 should be changed, it does not render the claim indefinite.

We are in agreement with the examiner's finding that Montgomery discloses a cover for a stack of sheets. However, we are in agreement with the appellant that the materials recited in

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Montgomery forms a flexible, but not necessary resilient, jacket for the pack of sheets as Montgomery recites in the title to his invention. We do not find in Montgomery any teaching or suggestion for a flexible base that would resiliently return the dispenser to its initial configuration upon removal of the folding force. Likewise, we do not find in Montgomery the teaching or suggestion for a flexible base requiring about 2 to 5 pounds of force to fold along its longitudinal fold line. These limitations from the independent claims on appeal are not taught by Montgomery, Collie or the French applied prior art.

Furthermore, with respect to obviousness, notwithstanding the examiner's findings with respect to heat sealing cycle time, we find no teaching or suggestion that would have provided motivation to manufacture the jacket of Montgomery from the material taught by the Collie reference. In our view, this combination of references is based on impermissible hindsight reconstruction of the claimed subject matter.

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For these reasons it is our conclusion that the rejection of
all claims on appeal must be reversed.

REVERSED

HARRISON E. McCANDLISH)	
Senior Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
WILLIAM F. PATE, III)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
LAWRENCE J. STAAB)	
Administrative Patent Judge)	

WFP:pgg

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