

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. 44

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HARVEY FINKELSTEIN, WALTER BURGASS,
VICTOR FLORES and ANATOLY VERDEL

Appeal No. 2001-1387
Application No. 08/715,210

ON BRIEF

Before COHEN, McQUADE and NASE, Administrative Patent Judges.

McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Harvey Finkelstein et al. appeal from the final rejection (Paper No. 31) of claims 1 through 19, all of the claims pending in the application.

THE INVENTION

The invention relates to a closure liner which is defined in representative claim 1 as follows:

1. In a separating closure liner comprising:

Appeal No. 2001-1387
Application No. 08/715,210

- a) a reusable liner portion;
- b) an inner seal portion;

wherein the reusable liner portion is sized to fit within a closure for a container and the inner seal acts as a seal on an opening of the container, the improvement comprising

- i) a pressure sensitive light tack shearable adhesive joining one face of the reusable liner to an opposing face of the inner seal, said adhesive more readily failing in shear than said reusable liner portion so as to enable separation of the reusable liner from the inner seal; and
- ii) a polyolefin layer as part of the reusable liner.¹

THE EVIDENCE

The items relied on by the examiner as evidence of obviousness are:

Helms et al. (Helms)	4,418,834	Dec. 6, 1983
Peeters	5,381,913	Jan. 17, 1995
Finkelstein et al. (Finkelstein)	5,598,940	Feb. 4, 1997

Unipac, "Induction Seal - ISPE/PP-WD" June 21, 1991

¹ The references to the "inner seal" and/or "reusable liner" in claims 1, 3 and 13 through 15, and to "the polyolefin foamed layer" in claim 12 lack a proper antecedent basis. Also, the language in claim 9 is inconsistent as to whether the heat resistant polymeric layer is a part of or separate from the polyolefin layer. These informalities are deserving of correction in the event of further prosecution before the examiner.

Appeal No. 2001-1387
Application No. 08/715,210

The items relied on by the appellants as evidence of non-obviousness are:

The 37 CFR § 1.132 Declaration of Anatoly Verdel filed July 15, 1999 (Paper No. 17).

The Supplemental 37 CFR § 1.132 Declaration of Anatoly Verdel filed December 13, 1999 (Paper No. 30).

THE REJECTIONS

Claims 1 through 5, 14 and 16 through 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Unipac in view of Helms.

Claims 9 through 12 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Unipac in view of Helms and Finkelstein.

Claims 1 through 8, 13, 16, 17 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Peeters in view of Helms.

Attention is directed to the appellants' main and reply briefs (Paper Nos. 36 and 38) and to the examiner's final rejection and answer (Paper Nos. 31 and 37) for the respective

Appeal No. 2001-1387
Application No. 08/715,210

positions of the appellants and the examiner with regard to the merits of these rejections.²

DISCUSSION

The Unipac reference discloses an induction-sealing liner composed of the following layers from top to bottom: polyolefin foam, polyolefin layer, wax adhesive, aluminum foil, polyester film and heat sealable layer. As described in the reference,

ISPE/PP-WD is a special induction-sealing liner developed specifically for end uses where the traditional pulpboard secondary liners cannot be used. During induction sealing ISPE/PP-WD separates into two parts. The foil-containing layer produces a moisture and gas-proof seal to the tops of polyethylene and polypropylene containers and the

² In the final rejection, claims 1 through 19 also stood rejected under 35 U.S.C. § 112, first paragraph. Upon reconsideration, the examiner has withdrawn this rejection (see pages 2 and 3 in the answer). The examiner also has refused to enter a third 37 CFR § 1.132 Declaration filed with the appellants' reply brief (see the advisory letter mailed March 2, 2001, Paper No. 39). Due to its non-entry, we have not considered this additional declaration in evaluating the merits of the examiner's rejections.

Appeal No. 2001-1387
Application No. 08/715,210

portion remaining in the cap provides a moisture-proof secondary liner. This liner is particularly advantageous where wash-down operations are used.

Peeters discloses an induction seal closure 19 composed of the following layers from top to bottom (see Figure 3): polyethylene foam 20, wax 21, paper 22, aluminum foil 23, paper 24, wax 25, polyethylene terephthalate 26 and LDPE 27.

In Peeters' words,

[t]he adhesive power of the two wax layers 21 and 25 is sufficiently high to maintain good bonding contact between adjacent layers. Thus, the seal closure can be manufactured in a usual way by bringing the different constituent layers in bonding contact with each other, and then punching from a roll of such material discs 19 as shown that can be mounted in the caps.

The adhesive power of the two wax layers is greatly reduced as the layers become heated by the inductive heating of the aluminium [sic] foil. As a matter of fact, the change-over from the solid to the molten state causes the wax to become absorbed by the paper layers, whereby said two wax layers will allow easy separation of the layers kept together by them.

The operation of closure 19 is as follows.

A screw cap as illustrated in Fig. 1 being tightly screwed on a filled plastic container, the aluminium [sic] foil 22 is inductively heated as known in the art to heat layer 27 by heat-conduction to a degree such that said layer melts and becomes united with the annular top surface 9 of neck 15 of the container. Heating of the aluminium [sic] foil

Appeal No. 2001-1387
Application No. 08/715,210

causes absorption of the wax layers as described hereinbefore, it being understood that the releasing power of wax layer 21 is larger than that of wax 1 layer 25.

If the screw cap is removed for the first time, a seal closure formed by layers 21 to 27 remains on the neck of the container, whereas foam layer 20 remains in the cap.

The operator then peels off the laminate comprising layers 21 to 25 from the container, and then opens the container . . . [by removing] the remaining seal formed by layers 26 and 27.

If the container is not completely emptied and must be reclosed, foam layer 20 forms a liquid-tight seal between cap 10 and surface 9 of neck 15 of the container [column 3, lines 34 through 68].

As conceded by the examiner (see pages 2 and 4 in the final rejection), neither Unipac nor Peeters responds to the limitation in claim 1 requiring "a pressure sensitive adhesive light tack shearable adhesive joining one face of the reusable liner to an opposing face of the inner seal, said adhesive more readily failing in shear than said reusable liner portion so as to enable separation of the reusable liner from the inner seal." The corresponding elements in the prior art liners are Unipac's wax adhesive and Peeters' wax 21.

Appeal No. 2001-1387
Application No. 08/715,210

Helms discloses a container closure 10 comprising an overcap ring R and a peelable laminated structure 12. The laminated structure consists of the following layers from top to bottom: paperboard 16, a bond coating 22, an inductively-heatable metal foil 20, and a heat-sealable coating 24. Of particular interest is bond coating 22. Depending on whether the foil 20 is to remain on or be removed from the container when the overcap ring is taken off, the bond coating 22 may be a tacky wax film, a weak adhesive, or a non-peelable adhesive (see column 2, lines 24 and 25; and column 3, lines 27 through 57).

In proposing to combine Unipac or Peeters with Helms to reject claim 1, the examiner concludes (see pages 2 and 4 in the final rejection and page 4 in the answer) that it would have been obvious in view of Helms to replace Unipac's wax adhesive or Peeters' wax 21 with a pressure sensitive light tack shearable adhesive of the sort required by claim 1. The problem, however, is that Helms' disclosure, and particularly the portion thereof dealing with bond coating 22, does not provide any factual support for this conclusion. In short, Helms gives no indication that bond coating 22 might be a

Appeal No. 2001-1387
Application No. 08/715,210

pressure sensitive light tack adhesive, let alone a pressure sensitive light tack adhesive having the particular shear characteristics called for in claim 1. Hence, the proposed Unipac/Helms and Peeters/Helms reference combinations fail to establish a prima facie case of obviousness with respect to the subject matter recited in claim 1.³ These respective reference combinations are similarly lacking with respect to the subject matter recited in independent claims 14 and/or 17 which also require a pressure sensitive adhesive which more readily fails in shear than the reusable liner portion associated therewith. Moreover, Finkelstein, applied along with Unipac and Helms to support the rejections of dependent claims 9 through 12 and 15, offers no cure for the shortcomings of the basic Unipac/Helms combination.

Accordingly, we shall not sustain:

a) the standing 35 U.S.C. § 103(a) rejection of independent claims 1, 14 and 17, and dependent claims 2 through 5, 16, 18 and 19, as being unpatentable over Unipac in view of Helms;

³ This being so, there is no need to delve into the merits of the appellants' declaration evidence of non-obviousness.

Appeal No. 2001-1387
Application No. 08/715,210

b) the standing 35 U.S.C. § 103(a) rejection of dependent claims 9 through 12 and 15 as being unpatentable over Unipac in view of Helms and Finkelstein; or

c) the standing 35 U.S.C. § 103(a) rejection of independent claims 1 and 17, and dependent claims 2 through 8, 13, 16 and 19, as being unpatentable over Peeters in view of Helms.

SUMMARY

The decision of the examiner to reject claims 1 through 19 is reversed.

REVERSED

Appeal No. 2001-1387
Application No. 08/715,210

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
JOHN P. McQUADE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
JEFFREY V. NASE)	
Administrative Patent Judge)	

JPM/gjh

Appeal No. 2001-1387
Application No. 08/715,210

LUDOMIR A. BUDZYN, ESQ.
HOFFMANN & BRON, LLP
6900 JERICHO TURNPIKE
SYOSSET, NY 11791

GJH

Appeal No. 2001-1387
Application No. 08/715,210

APJ McQUADE

APJ NASE

APJ COHEN

REVERSED

June 14, 2002