

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANTHONY WEBB and LARRY CHALLIS

Appeal No. 2002-1086
Application 09/297,065

HEARD: October 8, 2002

Before COHEN, ABRAMS, and McQUADE, Administrative Patent Judges.
McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Anthony Webb et al. appeal from the final rejection of claims 7 through 10, all of the claims pending in the application.

THE INVENTION

The invention relates to a method of forming a product sack having block ends which expedite stacking the sack on a pallet.¹

¹The appellants' specification (see page 1) indicates that a block end is flat and rectangular.

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Representative claim 7 reads as follows:

7. A method of forming a closed multi-wall sack having an inner bag and an outer bag which encloses the inner bag and has block ends, the method comprising the following steps at the completion of filling a product into the sack through an open end of the sack:

i) sealing the product in the inner bag;

ii) opening out the sides of the outer bag at the open end of the sack to form outturned side flaps and inturned triangular wings;

iii) folding inwardly an outer section of one of the flaps onto the inner section of the flap;

iv) folding inwardly an outer section of the other flap onto the inner section of the flap and to overlap partially the folded flap so that outer bag forms a block end; and

v) adhering or otherwise holding together the block end.

THE PRIOR ART

The references relied on by the examiner to support the final rejection are:

| | | |
|--------------------------|-----------|--------------|
| Silver | 3,577,699 | May 4, 1971 |
| Hansson et al. (Hansson) | 5,417,039 | May 23, 1995 |

THE REJECTION

Claims 7 through 10 stand rejected under 35 U.S.C. § 103 as being unpatentable over Hansson in view of Silver.

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Attention is directed to the appellants' main and reply briefs (Paper Nos. 14 and 17) and to the examiner's answer (Paper No. 15) for the respective positions of the appellants and the examiner with regard to the merits of this rejection.²

DISCUSSION

Hansson, the examiner's primary reference, discloses a method of filling a sack composed of an outer paper bag 12 and an inner plastic bag 7. To facilitate recycling, the plastic bag lies loosely within the paper bag without being joined thereto by adhesives (see column 1, lines 16 through 36). Hansson describes the method as follows:

A method for filling packaging including an outer paper packaging member and an inner plastic film bag member with a filling material that is contained in a filling material container arranged above the packaging. The method includes, in the vicinity of the filling material container, forming the plastic film bag member from a tubular film by providing a welded seam along a lower edge. The bag is spread apart at an open upper edge. The plastic film bag member is separated from

²Although U.S. Patent No. 6,042,526 to Baumer is cited to support the examiner's position (see page 4 in the answer), it has not been included in the statement of the appealed rejection. Where a reference is relied on to support a rejection, whether or not in a minor capacity, there is no excuse for not positively including the reference in the statement of the rejection. See In re Hoch, 428 F.2d 1341, 1342 n.3, 166 USPQ 406, 407 n.3 (CCPA 1970) and MPEP § 706.02(j). Accordingly, we have not considered the teachings of Baumer in reviewing the merits of the appealed rejection.

the tubular film. The plastic film bag member is inserted over the filling material container. The filling material container is lowered together with the plastic film bag member into the outer packaging member. The filling material container is emptied into the plastic film bag member. The material filling container is moved back to a starting position above the packaging [Abstract].

As implicitly conceded by the examiner (see page 3 in the answer), Hansson does not respond to steps ii-v in claim 7 relating to the manipulation of the open end of the sack to form a closed block end. Although Hansson does not describe how the open end of the sack disclosed therein is closed, Figures 1 through 3 indicate that such closure is effected so as to achieve a wedge-shaped end. To cure these deficiencies in Hansson, the examiner turns to Silver.

Silver discloses a packaging method wherein "the contents are hermetically sealed in an inner lining of moisture resistant flexible [plastic] sheeting material . . . wholly contained in a closed and sealed container of . . . boxboard, and yet the flexible sheeting initially constituted a layer sealed over the entire area of the board by means . . . wax" (Abstract). Figure 1 illustrates a packaging blank used in the method with the blank scored to delineate face, back, side and end panels. Figure 2 shows the laminated board-wax-sheet structure of the blank. The

packaging method consists of a rather complicated and extended series of steps schematically illustrated in Figures 3-5B. Of particular interest are the end panel manipulations which are summarized by Silver as follows:

the end of the carton is first temporarily closed by folding in the form of the laminated board as uncut scored panels including web-gussets and having a fin extension composed entirely of the laminated board, then by applying heat to the end panels the inner sheeting is heat-sealed and released from the board support which is thereby unfolded whereafter the stripped portions of the board support are refolded. Preferably the stripped portions of the board support are severed before being refolded to form flaps which may be adhered to each other in the conventional manner. As is well known in the art, a web-gusset is formed by folding triangular-shaped flaps which are usually jointed to each other.

Preferably, the first temporary closing is done by outfolding, then by applying the heat the wax is melted on the outer folds while the inner sheeting is being heat-sealed, and then the board support which is thereby stripped from at least a portion of each of the web-gussets is opened away from the stripped and sealed inner sheeting. The stripped board support is then preferably cut to form rectangular flaps which are then folded down again in the conventional manner and stuck together.

Preferably, the heat applied to the first temporarily closed end of the carton should be insufficient to strip the inner sheeting of the undermost part of the web-gussets because this has the advantage that when the end is finally closed the inner sheeting will be better held in position [column 1, lines 17 through 42].

In proposing to combine Hansson and Silver to reject claim 7, the examiner submits that

Silver teaches the concept of folding the bottom and top of an outer container to form outer triangular wings as shown in figure 5a to form block ends as shown by x. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide Hansson et al with folding means as taught by Silver to fold the outer wall in a known manner to form a block end [answer, page 3].

The examiner's position here is unsound for at least two reasons.

To begin with, although both Hansson and Silver pertain to multi-wall packages, these packages differ rather markedly from one another. For example, the laminated relationship between Silver's inner and outer packaging components runs directly counter to the unattached inner and outer packaging component relationship desired by Hansson. The differences in package construction necessitate the vastly dissimilar production techniques described in the references. The only suggestion for combining these disparate techniques in the manner advanced by the examiner stems from hindsight knowledge impermissibly derived from the appellants' own teachings.

Furthermore, even if the Hansson and Silver methods were combined as proposed by the examiner, the result would still not meet steps ii-v in claim 7. The end panel folding steps shown in

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Silver's Figure 5A at point x involve the formation of inturned side flaps and outturned triangular wings, rather than outturned side flaps and inturned triangular wings, and do not embody any folding inwardly of outer sections of the side flaps onto inner sections of the flaps. Moreover, these folding steps only temporarily close Silver's package and do not form block ends. Silver's block ends actually are formed by the cutting and folding procedure shown in Figure 5B, which procedure does not teach or suggest the claim 7 steps at issue.

Hence, the combined teachings of Hansson and Silver do not justify the examiner's conclusion that the subject matter recited in claim 7 would have been obvious at the time the invention was made to a person having ordinary skill in the art. Therefore, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of claim 7, and dependent claims 8 through 10, as being unpatentable over Hansson in view of Silver.

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SUMMARY

The decision of the examiner to reject claims 7 through 10
is reversed.

REVERSED

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| IRWIN CHARLES COHEN |) | |
| Administrative Patent Judge |) | |
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| |) | BOARD OF PATENT |
| NEAL E. ABRAMS |) | |
| Administrative Patent Judge |) | APPEALS AND |
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| |) | |
| JOHN P. McQUADE |) | |
| Administrative Patent Judge |) | |

JPM:pgg

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