

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte GUNTER G. FUSS  
and VLADIMIR YAMPOLSKY

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Appeal No. 2002-1803  
Application 09/288,775

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ON BRIEF

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Before STAAB, MCQUADE, and NASE, Administrative Patent Judges.  
MCQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Gunter G. Fuss et al. appeal from the final rejection of claims 1 through 25. Claims 26 through 28, the only other claims pending in the application, stand withdrawn from consideration pursuant to 37 CFR § 1.142(b).

THE INVENTION

The subject matter on appeal relates to "the packaging of loose fill packing materials in bags for use as cushions in

shipping cartons and the like" (specification, page 1).

Representative claims 1 and 8 read as follows:

1. In a machine for manufacturing packing cushions for use in shipping cartons and the like: a chute, means for supporting an elongated length of flexible plastic tubing coaxially about the chute, means for drawing successive sections of the tubing from the chute, means for introducing loose fill packing material through the chute into a section of the tubing which has been drawn from the chute, means for sealing the walls of the tubing together along a transversely extending seal line above the loose fill packing material to close the section and form a cushion, and means for perforating the tubing along a transversely extending tear line between the section in which the cushion is formed and the next successive section.

8. In a method of manufacturing packing cushions for use in shipping cartons and the like, the steps of: positioning an elongated length of flexible plastic tubing about a chute, drawing a section of the tubing from the chute, introducing loose fill packing material through the chute into the section of the tubing which has been drawn from the chute, sealing the walls of the tubing together along a transversely extending seal line above the loose fill packing material to close the section and form a cushion, perforating the tubing along a transversely extending tear line above the cushion, and repeating the process to form a string of cushions separated by tear lines.

THE PRIOR ART

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

Sperry	4,938,007	Jul. 3, 1990
Hoover et al. (Hoover)	5,693,163	Dec. 2, 1997

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#### THE REJECTION

Claims 1 through 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sperry in view of Hoover.

Attention is directed to the appellants' main and reply briefs (Paper Nos. 18 and 20) and to the examiner's answer (Paper No. 19) for the respective positions of the appellants and the examiner with regard to the merits of this rejection.<sup>1</sup>

#### DISCUSSION

Sperry, the examiner's primary reference, discloses a method and apparatus for forming foam bags/cushions for use in shipping containers. The apparatus 10 comprises, inter alia, a pair of plastic web supply rolls 13, drive roll means 15 for convergingly advancing the webs into opposing face-to-face contact at a nip defined by the drive roll means, first heat sealing means 28, 28' immediately adjacent the nip for sealing together the opposing longitudinal edges of the webs, second heat sealing means 35 for sealing the top edge of a formed bag 38 and the bottom edge of the next bag while severing the formed bag from the next bag, a nozzle 44 for introducing a foamable composition between the webs

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<sup>1</sup> In the final rejection (Paper No. 11), claims 1 through 25 also stood rejected on a number of additional grounds which have since been withdrawn by the examiner.

upstream of the nip, and a program controller 20 for regulating the operation of the apparatus. The program controller operates to cause (1) the drive roll means to periodically advance the webs from the supply rolls through the nip while the first heat sealing means seals together the longitudinal edges of the webs, (2) the nozzle to periodically introduce a foamable composition between the webs upstream of the nip, and (3) the second heat sealing means to periodically seal the top edge of a formed bag and the bottom edge of the next bag while severing the formed bag from the next bag.

Sperry's bag forming apparatus and method are specifically designed for use in a packaging production line (see column 2, lines 14 through 18; and column 6, line 8 et seq.). In general, a severed cushion is dropped from the apparatus into a shipping container, the articles being packaged are disposed on top of the cushion, and an additional severed cushion is dropped onto the articles. Both cushions are severed and dropped into the container before the composition therein has completely foamed. This allows the cushions to deform into a surrounding and conforming relationship with the articles when the container is closed and sealed, and to further expand about the articles and

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harden into a relatively rigid protective array (see Sperry at column 6, line 27 et seq.).

As conceded by the examiner (see page 3 in the answer), Sperry does not respond to the limitations in independent claims 1 and 8, and the corresponding limitations in independent claims 16 and 21, pertaining to the perforation of the tubing along a transversely extending tear line between the formed cushion section and the next successive section. The examiner's reliance on Hoover to overcome this deficiency is not well founded.

Hoover discloses a method and apparatus for producing dunnage in the form of inflated plastic pillows. The embodiment shown in Figure 4 involves a roll 70 of plastic stock material 52 sealed along its longitudinal edges 52 and 56, feed rolls 72 and 74 for drawing the stock material from the roll 70, a retractable inflation needle 80 for inflating the material, a seal head 76 and backup 78 for laterally sealing the inflated material to form pillows, a perforation head 90 for forming perforations between the pillows, and a cutting station 92 for cutting across the lateral seals to form pillow units which can be placed in cartons.

In proposing to combine Sperry and Hoover to reject the appealed claims, the examiner submits that "[i]t would have been

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obvious to one skilled in the art to substitute a sealing and perforating means such as shown by Hoover for the cutting means of Sperry to form a strip of [a] plurality of connected and separable cushions" (answer, page 3). There is nothing in the combined teachings of Sperry and Hoover, however, which would have suggested this proposed combination. The heat sealing and severing device 35 disclosed by Sperry functions in accordance with the intended use of the overall apparatus in a packaging production line. The proposed modification in view of Hoover to allow the formation of strips of connected and separable cushions seemingly would render the Sperry apparatus unsuitable for this intended use. In this light, it is evident that the only suggestion to combine Sperry and Hoover in the manner proposed by the examiner stems from hindsight knowledge impermissibly derived from the appellants' disclosure.

Accordingly, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of independent claims 1, 8, 16 and 21, and dependent claims 2 through 7, 9 through 15, 17 through 20 and 22 through 25, as being unpatentable over Sperry in view of Hoover.

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SUMMARY

The decision of the examiner to reject claims 1 through 25  
is reversed.

REVERSED

LAWRENCE J. STAAB	)	
Administrative Patent Judge	)	
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	)	BOARD OF PATENT
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	)	APPEALS AND
JOHN P. MCQUADE	)	
Administrative Patent Judge	)	INTERFERENCES
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	)	
JEFFREY V. NASE	)	
Administrative Patent Judge	)	

JPM/kis

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