

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS N. SPINA

Appeal No. 2003-0059
Application 09/238,553

ON BRIEF

Before GARRIS, OWENS and TIMM, *Administrative Patent Judges*.
OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from the final rejection of claims 1-12. Claim 13, which is the only other claim in the application, stands withdrawn from consideration by the examiner as being directed toward a nonelected invention.

THE INVENTION

The appellant's claimed invention relates to "a label assembly having multiple layers, one such layer susceptible to receiving printed information by direct thermal transfer, that

layer being removable from the label assembly after attachment to a substrate, leaving no tacky surface and a substantially transparent surface to enable one to read printing on the underlying substrate" (specification, page 1, lines 10-15).

Claim 1 is illustrative:

1. A continuous roll of labels comprising:

a length of backing web;

a sheet of paper stock material reactive to a heat source for the development of an indicia in said paper stock material, said paper stock material having coating layers applied thereto comprising:

a first coating layer comprising a sealant layer applied to the underside of said paper stock material, said sealant layer formed by drying an adhesive to said underside of said paper stock materials;

a second coating layer overlaying said sealant layer, said second coating layer being cured silicone;

a third coating layer overlaid said cured silicone layer, said third layer being a cured layer of varnish;

a pressure sensitive adhesive layer overlaid said varnish layer, said pressure sensitive adhesive layer adjacent said backing web;

said first coating layer comprising a sealant being non-reactive with said paper stock material and said second coating layer so as to permit said paper stock material to develop said indicia from said heat source, said second coating layer and said third coating layer being substantially incompatible such that said second and third coating layer separate from one another when said labels, applied to a surface, are pulled therefrom but have shear and tensile strength therebetween greater than the tensile strength between said pressure sensitive adhesive layer

Appeal No. 2003-0059
Application 09/238,553

whereby said label can be first separate from said backing web and then applied to articles, and thereafter removed from said articles leaving said adhesive layer and said third coating layer on said articles.

THE REFERENCES

Eckberg et al. (Eckberg)	5,369,205	Nov. 29, 1994
Freedman (Freedman '165)	5,914,165	Jun. 22, 1999
		(filed Jul. 29, 1996)

THE REJECTION

Claims 1-12 stand rejected under 35 U.S.C. § 103 as being unpatentable over Freedman '165 in view of Eckberg.

OPINION

We reverse the aforementioned rejection.

Freedman '165 discloses a peelable label comprising, in order, an optional release liner (the appellant's backing web), a pressure sensitive adhesive (14), a first polymeric layer (11) (preferably polyethylene) and a second polymeric layer (12) (preferably polypropylene) which is dissimilar to the first polymeric layer (col. 3, lines 1-3, 13-14, 41-42, 47-48 and 53-54). "The films [layers 11 and 12] adhere to each other to a sufficiently high degree to withstand the maximum separation forces imposed as the labels are processed. However, the films adhere to each other to a sufficiently low degree to allow them to cleanly and readily separate from each other under the

imposition of stripping or separation forces greater than the maximum separation forces to which they have been exposed during label preparation" (col. 2, lines 26-34). At least the second layer has a tear propagation axis, such as a perforation, so that a part of the layer containing information such as price can be torn off, leaving a removable second portion of the layer containing other information such as a product bar code (col. 1, lines 61-65; col. 2, lines 46-57). An edge or portion of the second layer can be coated with a UV curable material such as an ink or varnish which shrinks upon exposure to UV radiation, thereby breaking the bond at the interface between the first and second layers such that these layers can be more easily pulled apart (col. 5, lines 27-34).

Freedman '165 incorporates by reference (col. 2, lines 34-36) U.S. Pat. No. 4,925,714 to Freedman (Freedman '714) which discloses peelable labels which include two polymeric films (11 and 12) (col. 2, lines 15-20; col. 5, lines 48-50) that are comparable to those of Freedman '165. The second polymeric film of Freedman '714 has thereon a layer of pressure sensitive adhesive (22) having permanently laminated thereto a layer of indicia-containing face stock (30) which can be any suitable conventional face stock material from any source, the disclosed

materials being paper and polymer (col. 3, line 53 - col. 4, line 3).

As argued by the appellant (brief, page 7), each of the appellant's independent claims requires that the paper stock material is reactive to a heat source for developing indicia in the paper stock material. The examiner argues that this requirement relates to a method of production and, therefore, cannot serve to patentably distinguish the claimed product (answer, page 5). The reactivity to a heat source for the development of indicia, however, is a characteristic of the paper stock material which is part of the claimed product. Thus, the examiner's argument is not well taken. The lack of an explanation as to why the applied prior art would have fairly suggested, to one of ordinary skill in the art, a paper stock material which is reactive to a heat source for the development of indicia is a fatal deficiency in the examiner's rejection.

Moreover, the examiner argues (answer, page 4) that it would have been obvious to one of ordinary skill in the art to make the Freedman '165 second layer out of Eckberg's UV curable epoxysilicone polymer because Freedman '165 discloses using UV curable material to break the bond at the interface between the first and second polymer layers (col. 5, lines 27-34) and

Appeal No. 2003-0059
Application 09/238,553

Eckberg teaches that the epoxysilicone polymer has release properties (col. 1, lines 38-42). Freedman '165, however, requires that the first and second polymer layers have a sufficiently high degree of adherence to each other to withstand the maximum separation forces imposed as the labels are processed (col. 2, lines 26-29). The disclosed polymers for obtaining that adherence are polyolefins (col. 3, lines 13-44). The UV curable material is applied to only a portion or edge of the second layer to facilitate peeling (col. 5, lines 27-34). The examiner has not established that a second layer made of epoxysilicone polymer would provide the required degree of adherence to the first polymer layer.

Also, Freedman '165 discloses that the UV curable material, which is applied to the second layer, shrinks upon exposure to UV radiation, thereby pulling up the edge of the label and breaking the bond between the first and second polymer layers (col. 5, lines 27-34). The appellant's independent claims require that the silicone layer and the varnish layer are separable from each other when labels containing these layers are pulled from a surface. Thus, to establish a *prima facie* case of obviousness of the appellant's claimed invention over Freedman '165 and Eckberg, the examiner has the burden of

Appeal No. 2003-0059
Application 09/238,553

establishing both of the following: 1) that one of ordinary skill in the art would have expected the Freedman '165 UV curable varnish, when applied to a second layer made of Eckberg's epoxysilicone, to function as required by Freedman '165, i.e., to adhere to the second layer and, when exposed to UV radiation, bend up the edge of the label, and 2) that the UV curable varnish and epoxysilicone polymer layer would be separable from each other when a label containing these layers is pulled from a surface as required by the appellants' claims. The examiner has not carried this burden.

Appeal No. 2003-0059
Application 09/238,553

DECISION

The rejection of claims 1-12 under 35 U.S.C. § 103 over
Freedman '165 in view of Eckberg is reversed.

REVERSED

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BRADLEY R. GARRIS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
TERRY J. OWENS)	
Administrative Patent Judge)	APPEALS AND
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)	INTERFERENCES
)	
CATHERINE TIMM)	
Administrative Patent Judge)	

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Appeal No. 2003-0059
Application 09/238,553

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