

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today  
(1) was not written for publication in a law journal and  
(2) is not binding precedent of the Board.

Paper No. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JACK WEINSTEIN

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Appeal No. 95-1747  
Application 08/047,994<sup>1</sup>

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ON BRIEF

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Before COHEN, MEISTER and FRANKFORT, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

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<sup>1</sup> Application for patent filed April 19, 1993. According to appellant, the application is a continuation-in-part of Application 08/006,528, filed January 21, 1993, now U.S. Patent 5,356,010, issued October 18, 1994.

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DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 9 through 18, which are all of the claims remaining in this application. Claims 1 through 8 have been canceled.

Appellant's invention relates to an opening device for assisting a user in more easily opening a soft pack (e.g., a blister package) of individually segregated unit dosages of medications. A representative "soft pack" of medications is seen in Figure 4 of appellant's drawings and is designated by reference character (23) therein. As explained on pages 9-10 of the specification,

[t]he opener or soft pack puncturing mechanism has a base segment and a top segment which are hingedly connected to one another. The base segment has an orifice located thereon which is of sufficient size to receive a unit dosage section of a soft pack commonly referred to as a "blister" and the top segment has a protrusion adapted to nest within the orifice of the bottom segment. The protrusion of the top segment has sufficient height so as to puncture a dosage unit section of a soft pack medication. When a dosage unit or "blister" is placed within the orifice of the bottom segment and the top segment is hingedly



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Claims 9 through 18 stand additionally rejected under 35 U.S.C. § 102(b) as being anticipated by Gibilisco.

Rather than reiterate the examiner's full statement of the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellant regarding those rejections, we make reference to the answer (Paper No. 9, mailed August 5, 1994) for the examiner's reasoning in support of the rejections and to the appeal brief (Paper No. 7, filed June 9, 1994) for appellant's arguments thereagainst.

#### OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art Gibilisco reference, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we have made the determinations which follow.

Looking first to the examiner's rejection of the appealed claims under 35 U.S.C. § 112, second paragraph, we note that it is well settled that claims in an application must define

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the metes and bounds of the claimed invention with a reasonable degree of precision and particularity. See In re Venezia, 530 F.2d 956, 958, 189 USPQ 149, 151 (CCPA 1976); In re Hammack,

427 F.2d 1378, 1382, 166 USPQ 204, 208 (CCPA 1970). However, it is equally well settled that, during examination, "claims in an application are to be given their broadest reasonable interpretation consistent with the specification" and, in addition, that the "claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art." In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983)(emphasis added). Our Court of review has also informed us that the drawings included in the application may aid in the interpretation of claim limitations, in that the "drawings alone may be sufficient to provide the 'written description of the invention' required by § 112." Vas-Cath Inc. v. Mahurkar, 935 F.2d 1555, 1564, 19 USPQ2d 1111, 1117 (Fed. Cir. 1991).

Thus, in those instances where a visual representation can flesh out words, as in the present application, drawings can and should be used like the written specification to provide evidence relevant to claim interpretation and used to interpret what the inventor intended by the claim terms.

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Applying these precepts to the present application, we find that, when the claim language questioned by the examiner is read in light of the present application disclosure as such would be interpreted by the hypothetical person possessing an ordinary level of skill in the art, and particularly when this language is viewed in light of the invention as seen, for example, in Figure 4 of the application drawings, the claim language is reasonably clear and precise, and the subject matter of the appealed claims is not indefinite.

From our perspective, one of ordinary skill in the art would readily understand that the recitations in appealed claims 9 and 10 relating to (1) the sizing of the orifice in the base segment, (2) the sizing of the puncture mechanism protrusion, and (3) the strength of the puncture mechanism protrusion, define these elements in terms of their function and capabilities with regard to a range of soft packs with which the opener may be used. In particular, the claim recitations require the orifice to be sized so as to "receive a corresponding dosage unit section of a soft pack" and the puncture mechanism protrusion to have a size and strength so that it will puncture

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the backing or base (e.g., 29) of the soft pack (23) and maintain a space between the puncture mechanism protrusion and the dosage unit (e.g., the tablet, capsule or gel tab 26) so that the dosage unit (e.g., capsule or gel tab) is not damaged in any way when the puncture mechanism protrusion is nested within the orifice and the backing of the soft pack has been punctured.

Thus, in light of the foregoing considerations, we conclude that the recitations questioned by the examiner in the present application's claims would have been seen by the person of ordinary skill in the art to merely allow for a reasonable variation in the types of soft pack with which the opener may be used and not as introducing a level of ambiguity that would obscure the metes and bounds of the claimed subject matter. Since we do not consider that an artisan possessing the ordinary level of skill in this art would fail to comprehend the scope and content of the claims on appeal when the questioned claim recitations are given a reasonable definition or interpretation that is consistent with appellant's specification, the examiner's rejection of claims 9 through 18 under 35 U.S.C. § 112, second paragraph, must be reversed.

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Next for our consideration is the examiner's rejection of claims 9 through 18 under 35 U.S.C. § 102(b) as being anticipated by Gibilisco. The patent to Gibilisco is directed to "apparatus for breaking tablets such as medicinal tablets into smaller parts" (col. 1, lines 5-6). While there is some similarity between the structure of the apparatus of Gibilisco and appellant's claimed soft pack opener, we are of the opinion that the examiner's conclusion that the structure of Gibilisco would "inherently be capable of performing the functions as claimed with respect to a soft pack" (answer, page 4) is contrary to the clear teachings of Gibilisco and is based totally on speculation and conjecture on the examiner's part. More particularly, we note that even if the hammer (40, 43) of Gibilisco may be capable of puncturing the backing of a soft pack dosage unit section placed in the opening defined by the triangular shaped cuts (32) of the slidable flanges (31), the contacting surfaces (43) of the hammer are clearly not sized in the manner defined in appellant's claims on appeal so as to maintain a space between the contacting surfaces (43) and the dosage unit (e.g., the tablet 2 of Gibilisco). In clear contrast with the requirements of appellant's claims on appeal, the

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contacting surfaces (43) of the apparatus in Gibilisco, read by the examiner as being the puncture mechanism protrusion of appellant's claim 9, are described as being constructed and sized so as to

project downward from the hammer to contact the upper surface of a tablet in at least two points on opposing sides of the rigid

ridgelet [15]. Thus a downward force may be applied and divided by the fulcrum means of the rigid ridgelet between portions of the tablet. With sufficient force on the hammer, the tablet will break across the fulcrum (col. 7, lines 15-21).

See also, column 7, lines 48-57, of Gibilisco wherein the operation of the slidable flanges (31) and the hammer (40) and contacting surfaces (43) are further described.

From our perspective, the contacting surfaces (43) of Gibilisco which are sized to apply forces to break the tablet therein into smaller pieces, are the antithesis of the puncture mechanism protrusion of appellant's claim 9 which is sized so that the dosage unit is not damaged when the protrusion is nested within the opening and the backing of the soft pack has been punctured. Thus, since the apparatus of Gibilisco does not

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include all of the elements as required and defined in appellant's claims on appeal, it follows that we will not sustain the examiner's rejection of independent claim 9 and dependent claims 10 through 18 under 35 U.S.C. § 102(b) based on Gibilisco.

In light of the foregoing, it is clear that we have not sustained either the examiner's rejection of appealed claims 9 through 18 under 35 U.S.C. § 112, second paragraph, or that of claims 9 through 18 under 35 U.S.C. § 102(b).

The decision of the examiner is accordingly reversed.

REVERSED

IRWIN CHARLES COHEN	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
JAMES M. MEISTER	)	APPEALS AND
Administrative Patent Judge	)	INTERFERENCES
	)	



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Kenneth P. Glynn  
Suite 201 (Plaza One)  
One Rt. 12 West  
Flemington, NJ 08822-1731