

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DONALD A. CAMPBELL

Appeal No. 2001-1404
Application No. 09/145,399

HEARD: NOVEMBER 27, 2001

Before COHEN, ABRAMS, and STAAB, Administrative Patent Judges.

COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This appeal involves claims 1, 2, 4, 6 through 8, 13 through 15, 19, 20, and 25.¹ Claims 3, 5, 9 through 12, 17, 18, and 22 through 24 stand allowed. Claim 16 stands objected to because of its dependency from a rejected claim but is

¹ To correct an omission regarding claim 8 in the Office action dated June 9, 2000 (Paper No. 12) from which the appeal was taken, the examiner sent a further Office action dated November 3, 2000 (Paper No. 16), responded to by appellant in the "SUPPLEMENT TO APPLICANT'S APPEAL BRIEF" (Paper No. 17).

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otherwise considered by the examiner to be allowable. Claim 21 has been canceled. These claims constitute all of the claims in the application.

Appellant's invention pertains to a method of making a looped label and to an apparatus for making a looped label. A basic understanding of the invention can be derived from a reading of exemplary claim 1 and 13, copies of which appear in the APPENDIX to the brief (Paper No. 15).

As evidence of obviousness, the examiner has applied the documents listed below:

Gilchrist 13, 1958	2,834,595	May
Coast 1975	3,918,698	Nov. 11,
Parker 1976	3,947,310	Mar. 30,

PAXAR 8500 Loop Fold Arrangement, Operation/Maintenance and Parts list, PAXAR Systems Group, Edition 2, February 1995 (PAXAR 8500).

The following rejections are before us for review.

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Claims 1, 2, 6, 7, and 14 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

Claims 1, 8, 13, 14, and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Gilchrist in view of PAXAR 8500 and Parker.

Claim 6 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Gilchrist in view of PAXAR 8500.

Claims 4, 7, 19, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Gilchrist in view of PAXAR 8500 and Coast.

Claims 2 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Gilchrist in view of PAXAR 8500 and Parker, as applied to claims 1 and 13, further in view of Coast.

The full text of the examiner's rejections and response to the argument presented by appellant appears in the answer

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(Paper No. 18), while the complete statement of appellants' argument can be found in the main, supplemental, and reply briefs (Paper Nos. 15, 17, and 19).

OPINION

In reaching our conclusion on the issues raised in this appeal, this panel of the Board has carefully considered appellant's specification and claims,² the applied teachings,³ and the respective viewpoints of appellant and the examiner.

² We note that appellant's copy of claim 6 in the APPENDIX is as amended pursuant to the AMENDMENT AFTER APPEAL (Paper No. 14), which amendment was entered by the examiner, as acknowledged on page 5 of Paper No. 16.

³ In our evaluation of the applied prior art, we have considered all of the disclosure of each document for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the Board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

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As a consequence of our review, we make the determinations which follow.

The indefiniteness rejection

We do not sustain this rejection of claims 1, 2, 6, 7, and 14.

Independent method claims 1, 6, and 7 are indefinite, according to the examiner, since there is uncertainty as to whether inferential language therein is intended as positive method steps or not. In our opinion, the subject matter of claims 1, 6, and 7, each claim being considered as a whole, is clearly definite in meaning. In other words, the metes and bounds of these method claims would readily be ascertainable by one skilled in the art. Focusing upon the content of claim 1, it is quite apparent to us that the practice of the method, according to the claim language, would require rotating rolls and pressing of the looped label using heat and pressure, irrespective of the fact that separate step recitations are

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not set forth. The same reasoning applies to the language of concern to the examiner in respective method claims 6 and 7.

Claim 14, a dependent apparatus claim, is viewed as indefinite by the examiner for failure to recite means to support the functional limitation "being stationary". As we see it, the language of the claim is understandable and, as such, the claim is definite in meaning. It must be kept in mind that there is nothing intrinsically wrong in defining something by what it does rather than by what it is. See In re Hallman, 655 F.2d 212, 210 USPQ 609, 611 (CCPA 1981).

The obviousness rejections

We do not sustain the rejection of claims 1, 8, 13, 14, and 25 based upon the combination of Gilchrist in view of PAXAR 8500 and Parker.

Each of claims 1, 8, and 25 is drawn to a method of making a looped label, while claims 13 and 14 set forth an apparatus for making a looped label.

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The Gilchrist patent teaches an apparatus for controlling article folding machines, such as used for folding bed sheets or the like. As disclosed, the folding apparatus 10 (Fig. 1) is adapted to receive a series of sheets 11, 12, 13, and 14, of varying lengths (over 120 inches down to 25 inches, more or less), fed through a conventional ironer. The sheet 11 is carried upon parallel tapes 15 driven by rolls 16, 17. Sheet 13 has passed through rolls 21, while sheet 14 has passed through rolls 24 and is carried by tapes 25 to delivery chute 26 for delivery to receiving table 27. The folding function is preformed by a half fold folding means 30 and quarter fold folding means 31. The folding means or blades 30 and 31 are suitably pivotally supported. For example, folding blade 30 advances to move the sheet 12 between the rollers 12, and then returns to its starting position. The folding blades 30 and 31 at the proper time operate to cause folds into halves and quarters.

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The PAXAR 8500 document⁴ teaches a loop fold attachment that folds and presses a label. The looper clamps and folds the label in the center of the set length. The folded label is then mechanically transported into heater jaws which iron down the folded crease. The folded label receives a total of three heated presses before being delivered to a stacker.⁵

The patent to Parker addresses non-woven sheets of thermoplastic synthetic polymer that are folded into layers with heat-insulating fabric therebetween, followed by heating and pressing to effect heat sealing.

Simply stated, the patent to Gilchrist does not address a method or apparatus for making a looped label. Instead, this

⁴ This document was acknowledged as prior art by appellant in the specification (page 1). Additionally, appellant also referred to U.S. Patent Nos. 3,106,809 and 3,776,441. The former patent relates to an apparatus and method for feeding a continuous strip of label material, cutting labels into individual lengths, folding the labels using a cam, heating (heater block) and pressing (presser plates) the labels in their folded position to insure a permanent crease, and pushing the labels into cartons.

⁵ We note appellant's description of this reference on page 9 of the main brief.

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document is focused, in particular, upon folding ironed bed sheets into halves and quarters. Clearly, it is known to fold labels using a clamping and jaw apparatus as revealed by PAXAR 8500, and to apply heat subsequent to a folding operation, as per each of PAXAR 8500 and Parker. Nevertheless, it is readily apparent to us that only by relying upon impermissible hindsight would there have been a basis for combining the teachings as proposed by the examiner to rework the Gilchrist teaching and thereby yield the now claimed respective method and apparatus of claims 1, 8, 13, and 14, and 25 for making a looped label. As a final point, we observe that there would have been no need to provide a heater to the Gilchrist arrangement since the bed sheets are ironed before the folding process commences.

We also do not sustain the rejection of claim 6 based upon the combination of Gilchrist in view of PAXAR 8500.

As articulated above, we have determined that the collective teachings of Gilchrist and PAXAR 8500, absent hindsight, would not have been suggestive of their combination

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to yield a method of making a looped label. Thus, the rejection of method claim 6 is not well founded.

We additionally do not sustain the rejection of claims 4, 7, 19, and 20 based upon the combined teachings of Gilchrist, PAXAR 8500 and Coast.

Based upon the applied teachings, as explained above, only inappropriate hindsight would have been the basis for reworking the Gilchrist teaching in view of the PAXAR 8500 disclosure to achieve the method of making a looped label as set forth in claims 4, 7, 19, and 20. The knowledge in the art of stacking as revealed by Coast does not overcome the deficiency of the Gilchrist and PAXAR 8500 combination, as discussed above. Further, as to apparatus claims 19 and 20, we do not discern in the teachings of the applied prior art any suggestion for means interrupting driving means to enable pressing rolls to press a label for a predetermined period of time (claim 19) or for heating means and means for interrupting driving of pressing rolls to enable the pressing rolls to press a label at its fold line (claim 20).

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We also do not sustain the rejection of claims 2 and 15 based upon the combined teachings of Gilchrist, PAXAR 8500, Parker, and Coast.

As set forth above, the basic combination of Gilchrist and PAXAR 8500, in particular, has not been determined to be sound relative to independent claims 1 and 13, from which claims 2 and 15 respectively depend. Accordingly, the rejection of claims 2 and 15 is likewise unsound.

In summary, this panel of the board has not sustained any of the rejections on appeal.

The decision of the examiner is reversed.

REVERSED

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