The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board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. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte JOHN D. MISTYURIK, and JAMES A. MAKLEY

Appeal No. 2003-1685
Application 09/444,809

HEARD: DECEMBER 10, 2003

Before KRATZ, JEFFREY T. SMITH, and PAWLIKOWSKI, Administrative Patent Judges.

PAWLIKOWSKI, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 103 from the examiner's final rejection of claims 31-38. We note that on page 2 of the answer, the examiner has indicated that claims 22-30 have been allowed. A copy of claims 31-38 are set forth in the attached appendix.

The examiner relies upon the following references of evidence of unpatentability:

Koput et al. (Koput)	4,013,500	Mar. 22, 1977
Hamisch Jr.('392)	4,199,392	Apr. 22, 1980
Kapitanov	4,316,469	Feb. 23, 1982
Holland-Letz	4,419,930	Dec. 13, 1983
Godin	4,432,307	Feb. 21, 1984
Hamisch Jr.('389)	4,498,389	Feb. 12, 1985
Huggins	5,044,276	Sept. 3, 1991
Ng	5,283,921	Feb. 8, 1994
Goodwin et al. (Goodwin)	5.486,259	Jan. 23, 1996

Claims 31 and 35 stand rejected under 35 U.S.C. § 103 as being unpatentable over Hamisch '392 in view of Holland-Letz, Koput and Ng.

Claim 32 stands rejected under 35 U.S.C. §103 as being unpatentable over Hamisch '392, Holland-Letz, Koput, Ng, and Hamisch '389, and further in view of Goodwin and Huggins.

Claims, 33, 34, 37, and 38 stand rejected under 35 U.S.C. § 103 as being unpatentable over Hamisch '392, Holland-Letz, Koput, Ng, Hamisch '389, further in view of Godin and Kapitanov.

Claim 36 stands rejected under 35 U.S.C. § 103 as being unpatentable over Hamisch '392, Holland-Letz, Koput, Ng, and Hamisch '389, and and further in view of Goodwin and Huggins.

Claims 31-38 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent 5,988,249 in view of Hamisch '392, Koput, Ng, Goodwin, Huggins, Godin, and Kapitanov.

OPINION

For the reasons set forth below, we reverse each of the rejections.

Each of independent claims 31 and 35 requires that the first housing section has a manually graspable handle and a latch movably mounted on the section housing section. Each of these claims also requires that the latch includes a single depressible button accessible from outside the housing.

Missing in each of the §103 rejections is an explanation by the examiner of how one of ordinary skill in the art would have incorporated the depressible button of Koput or Ng into the labeler of Hamisch '392. Furthermore, the combination of references does not meet the requirement of these claims with regard to a labeler having a first housing section with a manually graspable handle and a latch on a second housing section.

We therefore conclude that the examiner has not set forth a prima facie case of obviousness.

With regard to the obviousness-type double patenting rejection of claims 31-38 over claim 1 of U.S. Patent 5,988,249 in view of Hamisch '392, Koput, Ng, Goodwin, Huggins, Godin, Kapitanov, we reverse this rejection also, for the same reasons as discussed above.

CONCLUSION

We reverse each of these rejections.

REVERSED

PETER F. KRATZ Administrative Patent Judge	)	
JEFFREY T. SMITH Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
BEVERLY A. PAWLIKOWSKI Administrative Patent Judge	)	

BAP/cam

Appeal No. 2003-1685
Application No. 09/444,809

Monarch Marking Systems, Inc.
P.O. Box 608
Dayton, OH 45401

APPENDIX

31. A hand-held labeler, comprising: a housing having a first housing section and a second housing section pivotally connected to the first housing section, the first housing section having a manually graspable handle, a latch movably mounted on the second housing section and engageable with the first housing section, the latch including at least one leaf spring for urging the latch to its latched position and a single depressible button accessible from outside the housing for deflecting the leaf spring and releasing the latch, a print head and a cooperable platen, and an actuator disposed at handle for operating the print head.

32. A hand-held labeler as defined in claim 31, wherein the leaf spring or springs for urging the latch is or are an integrally molded part of the latch.

33. A hand held labeler as defined in claim 31, wherein the latch includes a pair of lead springs.

34. A hand-held labeler as defined in claim 33, wherein the leaf springs of the pair extend in opposite directions.

35. A hand-held labeler, comprising: a housing having a first housing section and a second housing section pivotally connected to the first housing section, the first housing section having a manually graspable handle, a latch movably mounted on the second housing section and engageable with the first housing section, the latch including at least one spring for urging the latch to its latched position and a single depressible button accessible from outside the housing for deflecting the spring and releasing the latch, a print head and a cooperable platen, and an actuator disposed at the handle for operating the print head.

36. A hand-held labeler as defined in claim 35, wherein the spring or springs for urging the latch is or are an integral part of the latch.

37. A hand-held labeler as defined in claim 35, wherein the latch includes a pair of springs for urging the latch to its latched position.

38. A hand-held labeler as defined in claim 37, wherein the springs of the pair extend in opposite directions.