

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 30

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte THOMAS WILLIAM BAILEY,
ANDREW JOHN CLEALL, and BRIAN HILL

Appeal No. 2004-0065
Application No. 09/642,585

HEARD: February 17, 2004

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

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 11, 24 and 25. Claims 12 through 23, the only other claims pending in the application, stand allowed.

Appellants' invention relates to an apparatus and method for use in processing packaging blanks and particularly, but not exclusively, to an apparatus and method for processing carton blanks in the manufacture of cigarette cartons. As indicated on page

1 of the specification, the apparatus and method involves a first conveyor (e.g., 26 of Fig. 1) arranged to convey packaging blanks at a first conveying velocity through an application region in which an adhesive or at least one adhering element is applied to each blank by an applying means (40) and a second conveyor (50) arranged to receive said blanks from the first conveyor and convey said blanks at a second velocity which is greater than said first velocity. Independent claims 1 and 11 are representative of the subject matter on appeal, and a copy of those claims may be found in the Appendix to appellants' brief.

The prior art references of record relied upon by the examiner in rejecting the claims on appeal are:

Focke et al. (Focke)	5,762,175	Jun. 9, 1998
Jeffrey et al. (Jeffrey)	5,853,360	Dec. 29, 1998

Claims 1 through 11, 24 and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Jeffrey in view of Focke. This rejection is set forth on pages 4-6 of the examiner's answer.

Claims 1 through 11, 24 and 25 also stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Focke in view of Jeffrey. This rejection is set forth on pages 6-7 of the examiner's answer.

Rather than reiterate the conflicting viewpoints advanced by appellants and the examiner regarding the above-noted rejections, we refer to the examiner's answer (Paper No. 23, mailed February 19, 2003) and to appellants' brief (Paper No. 22, filed

December 30, 2002) and reply brief (Paper No. 25, filed April 21, 2003) for a full exposition thereof.

OPINION

Having carefully reviewed the obviousness issues raised in this appeal in light of the record before us, we have made the determinations which follow.

Looking first to the examiner's rejection of claims 1 through 11, 24 and 25 under 35 U.S.C. § 103(a) as being unpatentable over Jeffrey in view of Focke, the examiner contends (answer, pages 4-5) that

Jeffrey discloses an apparatus and method for use in processing packaging blanks; the apparatus including an applying means; a first conveyor (via conveyor 8 in station 2) arranged to convey packaging blanks (5) at a first conveying velocity and at a first even pitch through an application region in which an adhesive (via glue manifolds 13) or at least an adhering element is applied to each blank by the applying means, see for example (Figs. 1-3); and a second conveyor (via conveyor 8 in station 3). Jeffrey does not disclose a second conveyor arranged to receive the blanks from the first conveyor and convey them at a second velocity and at a second even pitch which is greater than the first velocity. However, Focke discloses a similar apparatus has a first conveyor (via 29) and a second conveyor (via 20) arranged to receive the blanks from the first conveyor (Figs. 1 and 2) and convey them at a second velocity and at a second even pitch (via 50 and 57) which is different than the first pitch (via 40 and 33) which is greater than the first velocity (column 4, lines 10-22) for ensuring that the blanks and/or packs have precisely defined spacing between them in the region of a removal conveyor (column 1, lines 29 and 30).

Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to have modified Jeffrey's apparatus for use in processing packaging blanks by having a second conveyor arranged to receive the blanks from the first conveyor and convey them at a second velocity which is greater than the first velocity and at a second even pitch which is different than the first even pitch, as suggested by Focke, in order to ensure that the blanks and/or packs have precisely defined spacing between them in the region of a removal conveyor.

For the reasons aptly set forth by appellants in their brief and reply brief, we will not sustain the examiner's above-noted rejection of claims 1 through 11, 24 and 25 under 35 U.S.C. § 103(a) as being unpatentable over Jeffrey in view of Focke. Like appellants, we are of the view that it would be antithetical to the teachings in Jeffrey to make the modification therein urged by the examiner. In that regard, it is clear to us that the method and apparatus for producing a gusseted container in Jeffrey expressly teaches that the respective drive/feed belts (7, 8) in each of the folder/gluer modules (2, 3, 4) therein are driven "at a preselected common belt speed" (col. 7, line 56) so as to facilitate advancement of the respective blanks (5) sequentially from the prefold module (2) into the fold module (3) and subsequently into the final fold module (4). Simply stated, absent hindsight derived from appellants' own disclosure and claims, there is no teaching or suggestion in the container or pack conveying arrangement seen in Focke which would have made it obvious to one of ordinary skill in the art at the time of appellants' invention to modify the apparatus and method of Jeffrey so as to result in appellants' presently claimed subject matter. As our court of review indicated in In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992), it is impermissible to use the claimed invention as an instruction manual or "template" in

attempting to piece together isolated disclosures and teachings of the prior art so that the claimed invention is rendered obvious.

In the alternative obviousness rejection of claims 1 through 11, 24 and 25 based on Focke in view of Jeffrey, the examiner's urges that it would have been obvious to one of ordinary skill in the art to modify Focke's package processing apparatus by having an applying means, apparently located at the downstream end of what the examiner characterizes as the first conveyor (29), for applying adhesive to the packages/blanks therein, as suggested by Jeffrey, in order to provide a new and improved method for producing a container/package.

The only argument we find in appellants' brief and reply brief that appears to be specifically directed to this rejection is found on pages 10-11 of the brief, wherein appellants contend that "[i]t would not be possible to apply accurately adhesive to blanks within an accumulator conveyor," like that seen at (29) of Focke. Appellants also point to the fact that the accumulator belts (30, 31) of the accumulator conveyor (29) in Focke converge in the direction of transport to exert a restraining force on the packages therein (Fig. 2), and subsequently contend that Focke would not work without such an accumulator conveyor. We fail to perceive the significance of the second point noted above, since the examiner in the rejection based on Focke in view of Jeffrey under 35 U.S.C. § 103(a) does not suggest elimination of the accumulator conveyor therein, but merely urges that it would have been obvious to one ordinary skill in the art to modify Focke's package processing apparatus by having an adhesive applying means located

at the downstream end of accumulator conveyor (29), for applying adhesive to the packages/blanks therein.

With respect to appellants' first contention, we fail to find any explanation of exactly why appellants believe it would not be possible to apply accurately adhesive to blanks within an accumulator conveyor like that seen at (29) of Focke. Looking at the top view of the conveying apparatus as seen in Figure 1 of Focke, it appears eminently reasonable that an adhesive applying means located at the downstream end of the accumulator conveyor (29) would accurately apply adhesive to the top surface of each of the packs (10) exiting the accumulator conveyor and thereby facilitate application of a label, like that mentioned at column 1, lines 21-27 of Focke, to the top surface of each package/blank at a later processing station associated with the higher speed removal conveyor (15).

In light of the foregoing, we will sustain the examiner's rejection of claims 1 through 11, 24 and 25 under 35 U.S.C. § 103(a) as being unpatentable over Focke in view of Jeffrey. While appellants' brief at page 5 indicates that the claims on appeal "do not stand or fall together" and urges that we should consider each claim individually and separately, we observe that appellants have not presented separate arguments in their brief or reply brief for the individual claims on appeal. Thus, finding no arguments as to why the individual claims are considered to be separately patentable, we conclude that they will fall with the independent claims from which they depend.

In summary: the examiner's rejection of claims 1 through 11, 24 and 25 under 35 U.S.C. § 103(a) based on Jeffrey in view of Focke has not been sustained, while that of claims 1 through 11, 24 and 25 under 35 U.S.C. § 103(a) as being unpatentable over Focke in view of Jeffrey has been sustained. Since one rejection of all of the claims before us on appeal has been sustained, it follows that the decision of the examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

Neal E. Abrams
Administrative Patent Judge

Charles E. Frankfort
Administrative Patent Judge

Lawrence J. Staab
Administrative Patent Judge

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