

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte STEVEN T. COOK, BRIAN W. CLARK,  
STEFFEN W. KRACS, DENNIS F. MOORE, JR.,  
WILLIAM E. SCHNEBERGER,  
and TIMOTHY A. WHITEHEAD

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Appeal No. 2004-0410  
Application No. 09/509,415

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ON BRIEF

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Before GARRIS, WALTZ, and TIMM, Administrative Patent Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claims 3-16 which are all of the claims remaining in the application.

The subject matter on appeal relates to a palletizing apparatus and method for loading a pallet with successive rows of cylindrically shaped container end sticks. The apparatus

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comprises a pick and place means for grasping a predetermined quantity of the sticks to form a layer of a pallet, one at a time in succession, and maintaining each stick in a predetermined orientation and a moving support for a racking supply roll including control means for shifting the roll back and forth to lay the wrapping across the top of each row of sticks added to the assembling pallet. Similarly, the method comprises receiving a succession of individual cylindrically shaped sticks each in a predetermined orientation, placing the sticks sequentially into rows of each predetermined number of sticks, and passing wrapping material from a roll over the last placed row following a back and forth motion over the successively loaded rows of sticks until a desired number of rows is automatically built up into a complete pallet. Further details of this appealed subject matter are set forth in representative independent claims 3 and 11, a copy of which is appended to this decision.

The references set forth below are relied upon by the examiner as evidence of obviousness:

Mojden et al. (Mojden '010)	4,537,010	Aug. 27, 1985
Yourgalite et al. (Yourgalite)	5,005,335	Apr. 9, 1991
Mojden et al. (Mojden '278)	5,607,278	Mar 4, 1997
Rahman	5,794,416	Aug. 18, 1998

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Claims 3-5 and 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Mojden '278 in view of Mojden '010; Claims 6 and 7 stand correspondingly rejected over these references and further in view of Yourgalite; and claims 9 and 10 stand correspondingly rejected over the Mojden references and further in view of Rahman.

Claims 11-16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Mojden '278 in view of Yourgalite and Mojden '010.

We refer to the brief and to the answer for a complete exposition of the contrary viewpoints expressed by the appellants and by the examiner concerning the above noted rejections.

#### OPINION

We cannot sustain any of the above noted rejections.

In her rejections of appealed independent claims 3 and 11, the examiner correctly points out that the primary reference to Mojden '278 contains no disclosure concerning the use of wrapping material in the here claimed palletizing apparatus and method. Nevertheless, with respect to apparatus claim 3, the examiner concludes that "[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the palletizing apparatus of Mojden ['278] to include the

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wrapping roll and roll transfer means of Mojden ['010] for the purpose of having means to secure the pallet in an upright position" (answer, page 5). Correspondingly, with respect to method claim 11, the examiner concludes that "[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the palletizing method of Mojden ['278] to include the steps of wrapping a pallet as taught by Mojden ['010] for the purpose or [sic, of] further securing the stacked rows of sticks . . . ." (answer, page 9). The examiner's aforequoted obviousness position is erroneous for at least two reasons.

First, the apparatus and method of Mojden '278 do not experience the problem solved by the pallet wrapping technique of Mojden '010. In this regard, we observe that "the strips **52** [of the wrapping material or tape used by Mojden '010] serve to support the respective layers in position, and prevent inadvertent depalletizing of the filled bag members **34**" (column 4, lines 33-35). This inadvertent depalletizing problem cannot exist in the Mojden '278 system because this system employs nested trays **55** which contain individual pockets or channels **139** each for accommodating a stick **75** (e.g., see figures 5, 5A and 6 as well as the written disclosure relating thereto). That is,

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the tray design of Mojden '278 is such that the sticks contained therein would not exhibit the inadvertent depalletizing problem which is solved by the pallet wrapping technique of Mojden '010.

Second, the objectives of Mojden '278 would be frustrated by the pallet wrapping technique of Mojden '010. For example, an objective of Mojden '278 is "to provide an automatic tray loading and unloading system for accommodating and balancing operations among multiple stations in a multiple station can end processing and handling facility" (column 2, lines 62-65). Toward this end, the invention of Mojden '278 comprises "an automatic loading and unloading system for loading articles [i.e., sticks] supplied from a first location at a rate commensurate with the rate at which articles are supplied from said first location, into trays and for unloading said articles from said trays for transport to a second location at a rate commensurate with the demand for said articles at said second location, and for balancing a supply of articles loaded onto said trays with variations in both the rate of supply thereof and the rate of demand therefor" (column 2, line 67, through column 3, line 8). Thus, an artisan would have been disinclined to provide the invention of Mojden '278 with the pallet wrapping technique of Mojden '010 as proposed by the examiner because the presence of the pallet wrapping material

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would militate against the stick or article loading, unloading and balancing desideratum of Mojden '278.

In short, the examiner's proposed combination of the above discussed prior art would solve no problem and serve no purpose relevant to Mojden '278 and indeed would be counterproductive to the objectives of Mojden '278. This flaw in the examiner's obviousness rationale fatally taints each of the rejections before us. It follows that we cannot sustain any of the Section 103 rejections advanced by the examiner on this appeal.

#### OTHER ISSUES

In reviewing the application file record, we observe numerous informalities in the specification and claims that are deserving of correction.

For example, the characterizations of drawing figures 1 through 22B on specification pages 4 and 5 do not uniformly correspond to the actual drawing figures (i.e., figures 1 through 21B-2). Additionally, line 18 on specification page 6 refers to a figure but does not reveal the number of the figure in question (i.e., a blank space appears where the figure number should be). On line 4 of specification page 7, reference is made to figure

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2.22 whereas the drawing contains no such figure. Similarly, "Area 6, Fig. 2" is referred to on line 12 of specification page 7, but no such area 6 is labeled in figure 2 of the drawing. The claims portion of the specification also contains informalities. As an example, the claim 11, step (b), recitation "placing the sticks sequentially into a rows of each predetermined number of sticks" lacks syntax.

The appeal process is not an appropriate vehicle by which to raise and resolve all application informalities. It follows that the informalities listed above are presented here for purposes of exemplification only. Upon return of this application to the jurisdiction of the Examining Corps, the appellants and the examiner should not only rectify these informalities but also should carefully study the application file in order to identify and ultimately correct any other informalities which may exist.

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SUMMARY

The decision of the examiner is reversed.

REVERSED

BRADLEY R. GARRIS	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
THOMAS A. WALTZ	)	APPEALS AND
Administrative Patent Judge	)	INTERFERENCES
	)	
	)	
CATHERINE TIMM	)	
Administrative Patent Judge	)	

BRG:hh

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APPENDIX

3. A palletizing apparatus for loading a pallet with successive rows of cylindrically shaped container end sticks, comprising

pick and place means for grasping a predetermined quantity of the sticks to form a layer of a pallet, one at a time in succession, and maintaining each stick in a predetermined orientation,

a pallet loading station including a lift receiving a skid on which a pallet is to be built,

said lift including a vertically adjustable lift platform for supporting a skid to form the base of a pallet,

control means for moving said platform to and from a lower skid receiving location and through a range of upper loading locations, said control means including means for adjusting the upper surface location of a pallet being built upon the skid to a predetermined elevation at which assembled rows of sticks are added to the top of the pallet,

a main table and means for moving said main table between a receiving and assembly station and a loading station over the top of the assembling pallet,

said pick and place means having control means for placing the oriented sticks sequentially onto said main table in a side by side row of the predetermined number of oriented sticks,

a wrapping supply roll,

a moving support for said roll including control means for shifting said roll back and forth to lay the wrapping across the top of each row of sticks added to the assembling pallet,

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means for attaching a free end of the wrapping supply roll to an empty skid on said lift platform,

means for transferring each row of sticks placed on said main table onto the top of a layer of wrapping,

means for passing the wrapping over the last placed row, and

means for discharging completed pallets from said pallet loading station.

11. A method for assembling a pallet with successive rows of container end sticks, comprising

a) receiving a succession of individual cylindrically shaped sticks each in a predetermined orientation,

b) placing the sticks sequentially into a rows of each predetermined number of sticks,

c) locating a skid at a pallet loading station to form the base of a pallet of container end sticks to be built at the loading station,

d) attaching the end of a roll of wrapping material to the skid,

e) moving the wrapping material across the skid

f) loading successive rows of sticks onto the top of a layer of wrapping, the first row being supported on the empty pallet,

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g) passing the wrapping over the last placed row following a back and forth motion over the successively loaded rows of sticks until a desired number of rows is automatically built up into a complete pallet,

h) severing the uppermost layer of wrapping from the supply roll, and

I [sic, i]) removing the completed pallet from the loading station.