

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 28

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Ex parte DAVID P. GOODRICH

Appeal No. 2004-1165
Application No. 09/163,042

HEARD: JULY 14, 2004

Before FRANKFORT, MCQUADE and BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 12-14 and 19-29, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellant's invention relates to a method of producing a packaging material for use in shipping a product (claims 19-25) and a method of producing such packaging material and wrapping it around a product as a protective cushion wrap (claims 1, 12-14

and 26-29). A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

The examiner relied upon the following prior art references in rejecting the appealed claims:

Thiebaut	707,183	Aug. 19, 1902
Snyder	1,470,200	Oct. 9, 1923
George	3,235,432	Feb. 15, 1966

The following rejections are before us for review.

Claims 1, 12-14, 24 and 26-29 stand rejected under 35 U.S.C. § 103 as being unpatentable over George in view of Thiebaut and Snyder.

Claims 19-22 and 25 stand rejected under 35 U.S.C. § 103 as being unpatentable over George in view of Snyder.

Claim 23 stands rejected under 35 U.S.C. § 103 as being unpatentable over George in view of Snyder and Thiebaut.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the final rejection and examiner's answer (Paper Nos. 18 and 23) for the examiner's complete reasoning in support of the rejections and to the brief (Paper No. 22) for the appellant's arguments thereagainst.

OPINION

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

George discloses a composite corrugated board comprising a flexible web of paper or similar bendable material embossed or scored at regular spaced apart lines 21, 22 which denote fold lines about which the web is sharply folded in succession into a corrugated medium 23. The corrugated medium 23 comprises a continuous series of V-shaped flutes having planar walls extending between apexes 25. A liner or facing sheet 26, 27 may be fixedly secured to one or both sides of the corrugated medium by means of a suitable adhesive. As illustrated in Figure 10, adhesive adheres and permanently anchors the sharp, pointed apexes 25 of the corrugated medium 23 to adjacent portions of the facing sheets 26, 27. According to George (column 5, first paragraph),

[t]he adhesive 28, in addition to permanently securing the apexes 25 in position relative to each other and to the respective facing sheets 26 and 27, further serves the purpose of reinforcing and rigidifying the apexes 25 of the corrugated medium 23. It will thus be seen that the adhesive 28 serves a dual function in that it rigidifies the apexes 25 and the opposed planar walls 24 of the corrugated medium 23 and permanently anchors these apexes 25 to the facing sheets 26 and 27. Gusset or fillet like portions 29 of the adhesive 28 are disposed on each side of the apexes 25 between the planar walls 24 and the facing sheets 26 or 27 to provide a rigid determination of the angle of juncture

between each planar wall 24 and the adjacent facing sheet 26 or 27 and thus serves to further define and reinforce the included angle between the planar walls 24 of any given flute.

George points out that the sharp folds of the inventive material are an improvement over undulated corrugated material because they result in flutes which are truly flat and planar and therefore maintain their inherent strength and resist stress and deformation and discloses that “[a]n important field, yet by no means the only field for utilizing the new article of manufacture, is for all of the purposes for which the known corrugated paperboard formed with undulating or sine-like curved corrugated medium is employed” (column 6, lines 70-74) and goes on to discuss boxes and shipping containers and refers to the “novel container board of the invention” (column 7, line 12). The examiner concedes that George lacks, inter alia, the at least one facing sheet 26, 27 being tissue paper, as required in each of independent claims 1, 19 and 26.

Thiebaut discloses a packing box or case comprising cardboard a folded at acute angles, which enables it to resist pressure far better than the undulated cardboard material used in the prior art discussed by Thiebaut on page 1, in lines 11-23, with “cardboard, paper or any thin fabric” *b* pasted on one or both sides to prevent the folds from becoming flattened or widened at their bases (page 1, lines 43-46). Thiebaut thus obtains a covered and ribbed compressible or extensible sheet of cardboard applicable not only to the purposes for which similar cardboard has been used, but also for the

manufacture of bottle envelopes which are capable of fitting the shape of the bottles as shown in Figure 4.

The examiner relies on Thiebaut for a suggestion to enclose a product within George's corrugated board material and to conform the material to the shape of the product. We note, in this regard, that George gives no suggestion or indication that the packaging material disclosed therein is intended for such purpose or that such flexibility is desirable.

Snyder discloses a method of packaging fragile articles, such as incandescent lamps or light bulbs. The method includes providing an individual wrapper for each lamp consisting of a piece of corrugated¹ paper 1 secured to a cover of tissue paper 2 which is of greater width than the corrugated paper 1 so that the wrapper may be loosely wrapped about an incandescent lamp and held in position by tucking inwardly the ends 3 of the wrapper. According to Snyder (page 2, lines 35-40),

the ends of the wrapper being tucked in, in the manner contemplated by me, furnish a cushioning means for the tip and base of the lamp, while the corrugated portion protects the glass walls of the bulb.

Each of the examiner's rejections is grounded in part on the examiner's determination that it would have been obvious to modify George's composite corrugated board to include a cover sheet layer made of tissue paper, as taught by Snyder, "in

¹ The corrugations appear to be sinusoidal in shape rather than pleated as required in appellant's claims.

order to have a cushioning means for the object being protected, as suggested by Snyder at page 2, lines 31-40" (final rejection, pages 5 and 8). We agree with appellant's argument on pages 21-22 of the brief that such a modification of George would undermine the second purpose of the adhesive 28 of rigidifying and reinforcing the apexes 25 by providing a rigid determination of the angle of juncture between each planar wall 24 and the adjacent facing sheet 26 or 27 and thus serving to further define and reinforce the included angle between the planar walls 24 of any given flute, as taught by George. We share appellant's view that one skilled in the art would have recognized that tissue paper "simply lacks the structural integrity to cooperate with the corrugated material" to provide a rigid determination of the angle of junction between each planar wall and the adjacent facing sheet 26 or 27, one of the objectives of George's invention. Where the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, the proposed modification would not have been obvious. See Tec Air Inc. v. Denso Mfg. Michigan Inc., 192 F.3d 1353, 1360, 52 USPQ2d 1294, 1298 (Fed. Cir. 1999); In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). Finding no suggestion to modify George to make the facing sheet or sheets of tissue paper, it follows that we cannot sustain any of the examiner's rejections.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1, 12-14 and 19-29 under 35 U.S.C. § 103 is reversed.

REVERSED

CHARLES E. FRANKFORT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JOHN P. MCQUADE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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