

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Ex parte MICHAEL DEFRANK, DAVID MARCHETTI and DAVID L. TEEGARDIN

Appeal No. 2005-0785
Application No. 10/192,959

ON BRIEF

Before MCQUADE, NASE 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 1-4 and 6-8, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellants' invention relates to a method for making drip irrigation hose having single slit outlets. Claim 1 is representative of the invention and is reproduced in the opinion section of this decision.

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

Lambert et al. (Lambert)	3,952,637	Apr. 27, 1976
Inoue et al. (Inoue)	4,139,159	Feb. 13, 1979
Santanna	4,167,884	Sep. 18, 1979
Gilead	4,195,784	Apr. 1, 1980
Slaughterbeck	4,204,447	May 27, 1980
Townsend	5,076,498	Dec. 31, 1991
Garrett	5,144,874	Sep. 8, 1992

Appellants' admitted prior art (AAPA) on pages 1-2 of the present specification.

The following rejection is before us for review.

Claims 1-4 and 6-8 stand rejected under 35 U.S.C. § 103 as being unpatentable over the AAPA in view of Inoue, Slaughterbeck, Gilead and Townsend and further in view of any one of Lambert, Garrett and Santanna.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejection, we make reference to the answer (mailed September 21, 2004) for the examiner's complete reasoning in support of the rejection and to the brief (filed August 9, 2004) and reply brief (filed October 12, 2004) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. For the reasons which follow, we cannot sustain the examiner's rejection.

Claim 1, the only independent claim before us for review, reads as follows:

1. A method for making drip irrigation hose comprising:
 - rotating an outlet forming wheel having a knife blade on its periphery;
 - positioning a backing wheel to engage the outlet forming wheel and establish a nip, the backing wheel having a circumferential slot¹ into which the knife blade fits as the outlet forming wheel rotates;
 - moving a strip of plastic film through the nip to form single outlet slit outlets repeatedly along the strip as the knife blade rotates;
 - forming on the strip an elongated flow regulating passage; and
 - forming inlets to the flow regulating passage that are spaced from the outlets to form a substantial path length from each inlet to a corresponding outlet, wherein the outlets couple the flow regulating passage to the exterior of the hose.

The paragraph bridging pages 1 and 2 of appellants' specification, which constitutes the AAPA relied upon by the examiner as the jumping off point of the obviousness rejection, reads as follows:

U.S. Patent 4,247,051 discloses a drip irrigation hose formed by bending a strip plastic film along its length to form an overlapping longitudinal seam between opposing

¹ In light of appellants' underlying disclosure and the positions of appellants and the examiner in this appeal, we interpret "circumferential slot" as a slot extending around the entire periphery of the backing wheel.

longitudinal margins of the film. First and second longitudinally extending, laterally spaced, transverse ribs interconnect the opposing margins along their length to seal the overlapping longitudinal seam. The ribs are formed by one or more molten plastic beads extruded onto the film. As a result, a flow regulating passage is defined by the ribs and the opposing margins and a supply passage is defined by the remainder of the film. Water flows from the supply passage to the flow regulating passage through a plurality of longitudinally spaced inlets. Water flows from the flow regulating passage to the exterior of the hose through a plurality of longitudinally spaced outlets longitudinally spaced from the respective inlets to provide a substantial path length from each inlet to a respective outlet. In one embodiment, the outlets each comprise two parallel slits that form between them a flexible flap. The flap serves as an outlet valve, opening and closing as the hose is pressurized and depressurized. However, unless the plastic film is very thick and rigid, the flaps do not close consistently when the hose is depressurized and therefore, the outlets can become clogged by soil drawn into the slits.

On page 3 of the answer, the examiner concedes that the AAPA “does not disclose forming longitudinal outlets slits nor how such slits are made.” In characterizing the examiner’s position, appellants state on page 3 of their brief that:

The examiner asserts that the admitted prior art, Inoue, Slaughterbeck, [Gilead], and Townsend disclose the claimed invention except for the quoted step of “positioning a backing wheel ... having a circumferential slot.” For purposes of this appeal, [appellants do] not challenge the examiner’s assertion.

Appellants do, however, challenge the examiner’s further assertion that it would have been obvious, in view of the additional teachings of any of Lambert, Garrett and Santanna, to use a backing wheel with a circumferential groove in the drip irrigation hose-making process of the AAPA as modified in view of Inoue, Slaughterbeck, Gilead

and Townsend (the modified AAPA). Thus, we shall focus our attention on the teachings of Lambert, Garrett and Santanna taken in combination with the modified AAPA.

Lambert, Garrett and Santanna are all directed to circumferentially adjustable rotary cutting knives for use in cutting slots in paperboard blanks used to make cartons or boxes. The slotter devices used to cut the slots in the paperboard blanks comprise a wheel or upper slotter member (such as upper slotter member 14 of Lambert) on which are mounted two cutting blades, at least one of which is mounted on the wheel or slotter member in a circumferentially adjustable manner so that the spacing between a leading edge slot (such as slot 212 of Lambert) and a trailing edge slot (such as slot 216 of Lambert) can be adjusted to accommodate different sized blanks to form different sized cartons or boxes. The cutting blades are received in a circumferentially extending slot (such as slot 200 of Lambert) in a backing wheel (such as lower slotter member 198 of Lambert).

While Lambert, Garrett and Santanna are silent as to the reason for using a circumferential slot in the backing wheel (lower slotter member) of their slotter device, rather than, for example, a circumferentially short recess aligned with the cutting blade², an artisan reading their disclosures would infer that a circumferential slot is used so as to accommodate the circumferentially adjustable cutting blade on the upper slotter

² Such would be akin to the recesses 35 in roller 34 aligned with punches 33 on drum 32 in Townsend's irrigation tape foil punching means.

member. Inasmuch as there is no recognition in the modified AAPA of a similar incentive to provide a circumferentially adjustable slitting blade and thus a circumferential slot in the backing wheel to accommodate such adjustable blade, we find no suggestion in Lambert, Garrett or Santanna for the further modification of the modified AAPA to provide a backing wheel having a circumferential slot into which the knife blade fits as proposed by the examiner. From our perspective, the only suggestion to further modify the modified AAPA in the manner proposed by the examiner to arrive at appellants' claimed invention is found in the luxury of hindsight accorded one who first viewed the appellants' disclosure. This, of course, is not a proper basis for a rejection. See In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992). It follows that we cannot sustain the examiner's rejection of independent claim 1 or claims 2-4 and 6-8 which depend therefrom.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1-4 and 6-8 under 35 U.S.C. § 103 is reversed.

REVERSED

JOHN P. MCQUADE
Administrative Patent Judge

JEFFREY V. NASE
Administrative Patent Judge

JENNIFER D. BAHR
Administrative Patent Judge

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