

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

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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**Ex parte** DAVID M. PAYNE and C. TROY JENSEN

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Appeal No. 2005-1957  
Application No. 10/000,976

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ON BRIEF

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Before WALTZ, KRATZ and JEFFREY T. SMITH, **Administrative Patent Judges**.

WALTZ, **Administrative Patent Judge**.

**DECISION ON APPEAL**

This is a decision on an appeal from the primary examiner's refusal to allow claims 1, 6, 10 and 15 as amended subsequent to the final rejection (see the amendment dated May 7, 2004, entered as per the Advisory Action dated July 1, 2004). Claims 1, 6, 10 and 15 are the only claims pending in this application. We have jurisdiction pursuant to 35 U.S.C. § 134.

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According to appellants, the invention is directed to an apparatus and method for opening sealed container packaging such that a container located within the sealed container packaging may be at least partially removed without commencing removal of a container sealing strip (Brief, page 2). Representative independent claim 1 is reproduced below:

1. In a container with removable a [sic] seal, an apparatus for removing the seal, the apparatus comprising:
  - a) container packaging, with a removal end and a closed end, conformed to receive and removably retain said container;
  - b) said seal having a front end and a rear end;
  - c) a connector connecting said seal and said container packaging; and
  - d) a connector extension attached to said connector and to said seal wherein said connector is connected to said container packaging and said connector extension is connected to said front end of said seal wherein said connector extension is of a length such that said container may be partially removed from said removal end of said container packaging without removing said seal.

Claims 1, 6, 10 and 15 stand rejected under 35 U.S.C. § 102(b) as anticipated by Uchida et al. (Uchida), U.S. Patent No. 5,239,805, issued Aug. 31, 1993, the sole evidence of unpatentability relied upon by the examiner (Answer, page 3,

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referring to the Office action dated Mar. 10, 2004).<sup>1</sup> We reverse the rejection on appeal essentially for the reasons stated in the Brief and those reasons set forth below.

#### OPINION

The examiner finds that Uchida discloses placing a cartridge 1 inside a created packaging container 2, with sealing member 5 placed on opening 1a, where the sealing member has an extension integrally attached and a second end 5a attached to the container by heat seal 3, with means for partially removing the cartridge from the package or container 2, with the integrally attached extension of sealing member 5a being of enough length so that the cartridge may be partially removed without removing the seal (Answer, pages 3-4, citing Figures 1-4 and col. 2, l. 66-col. 3, l. 32, of Uchida).

Appellants argue that Uchida ensures the removal of the seal 5 as soon as the cartridge 1 is begun to be removed from the bag 2 (Brief, pages 4 and 6).

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<sup>1</sup>The Office action dated Mar. 10, 2004, also includes the rejection of claims 1, 6, 10 and 15 under 35 U.S.C. § 112, paragraph 2, and 35 U.S.C. § 103(a). These rejections have not been repeated in the Answer.

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Under section 102(b), anticipation requires that the prior art reference disclose, either expressly or under the principles of inherency, every limitation of the claim. See *In re King*, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986).

Implicit in our review of the examiner's anticipation analysis is that the claim must first have been correctly construed to define the scope and meaning of each contested limitation. See *Gechter v. Davidson*, 116 F.3d 1454, 1457, 43 USPQ2d 1030, 1032 (Fed. Cir. 1997). During *ex parte* prosecution, the examiner applies the broadest reasonable meaning to the words of the claim in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account any enlightenment afforded by the written description contained in the specification. See *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).

The contested limitation is that the connector extension is of a length such that "said container may be partially removed" from the removal end of the container packaging "without removing said seal" (Answer, page 4; see claim 1 on appeal). Taking into account the ordinary meaning of "partially removed," as well as the enlightenment in the specification that the connector

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extension enables a user to "partially remove" the container 12 from the packaging "*prior to the beginning*" of the removal" of removable seal 14 (specification, sentence bridging pages 5-6, italics added), we construe the contested limitation as including any movement of the container from the packaging prior to the beginning of the removal of the sealing member (see appellants' argument in the Brief, page 6, first paragraph).

In view of our claim construction, we determine that the examiner has not met the initial burden of establishing that Uchida discloses, either expressly or inherently, every limitation of the claims on appeal. The examiner fails to establish that the cartridge disclosed by Uchida can be partially removed without beginning the removal of the seal (see the Answer in its entirety). Although the examiner presents the argument in the final Office action that Uchida does not disclose at what point in removal does the sealing member begin to separate from the cartridge (page 4), the reference clearly suggests that the step of drawing out the cartridge begins stripping of the sealing member (see col. 3, ll. 48-51; see also Figure 4 and col. 3, ll. 30-31). Therefore we cannot sustain the examiner's rejection of the claims on appeal under section 102(b) over Uchida.

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The decision of the examiner is reversed.

**REVERSED**

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

TAW:hh

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