

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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 MATTHEW P. SAWHILL and KENNETH L. LEBSACK

Appeal No. 2005-2752
Application No. 10/443,245

ON BRIEF

Before KIMLIN, WARREN and PAWLIKOWSKI, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 2, 4-6 and 8-22. Claims 2 and 9 are illustrative:

2. A casing hopper for sausage encasing machines, comprising,

a hopper having a downwardly sloping bottom terminating in a downwardly extending fence wall,

a chute wall substantially vertically disposed and being in lateral spaced relation to the fence wall to form a substantially vertical passageway,

the chute wall terminating in an inclined flange that extends upwardly and inwardly below the passageway to form a cradle portion to receive only a single hollow casing,

the passageway being only of sufficient width to receive a plurality of vertically stacked elongated hollow casings,

the flange terminating in an inward elongated edge spaced from a lower end of the fence wall to permit only the single casing in the cradle to be moved relative to the hopper laterally outwardly from the flange beneath the fence wall, when it is on the stuffing tube and the hopper moves away from the stuffing tube position,

wherein the chute wall and the fence wall can be adjusted for different sized casings; and

wherein the chute wall and the fence wall can be adjusted by a single control for different casings.

9. A casing hopper for sausage encasing machines for use with casings and a stuffing tube, comprising:

an adjustable hopper adapted to change size to accommodate casings of various sizes and dispense a bottom casing from an outlet of the hopper; and

a single control operatively associated with the hopper, the single control adapted to:

adjust the size of the hopper to accommodate casings of various sizes,

adjust the size of the hopper outlet to accommodate casings of various sizes, and

simultaneously maintaining alignment of a center axis of the casing with a center axis of the stuffing tube while the size of the hopper and hopper outlet are adjusted to accommodate casings of various sizes.

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As explained by the examiner, the original specification provides no disclosure that the fence and chute walls move such equivalent distances when the hopper accommodates a larger casing. Also, "[a]pplicants' figure 10 shows that the dimension A of the fence wall - 32 is larger than the dimension A of the chute wall - 34 in that the slope of movement of the fence wall disclosed in figure 10 is steeper than the slope of movement of the chute wall" (page 7 of answer, penultimate paragraph). Manifestly, the two distances designated 'A' depicted in figure 10 are not equal. Hence, we cannot subscribe to appellants' statement that "the dimension lines A" illustrate how the fence wall 32 and chute wall 34 move in equivalent distances away from the axis of the stuffing tube 16 as larger casings are used" (page 6 of the principal brief, third paragraph).

We now turn to the examiner's Section 102 rejection. We fully concur with appellants that Kasai fails to describe the presently claimed "hopper having a downwardly sloping bottom terminating in a downwardly extending fence wall [with] a chute wall substantially vertically disposed and being in lateral spaced relation to the fence wall to form a substantially vertical passageway" (claim 2). While the examiner states that a wall 14 of Kasai terminates in the fence wall 19, walls 14 and

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19 of the reference cannot be fairly said to constitute the bottom of the hopper. We agree with appellants that "the damper member 14 is not disposed on the 'bottom' of the hopper 12 [and that] it can be seen that the hopper 12 of Kasai does have a bottom, however this bottom is explicitly disclosed as inclining 'downwardly from its upstream portion to its downstream portion towards the flapper 13' so as to explicitly teach away from the Examiner's interpretation that the damper member 14 can be considered the 'bottom'." (Paragraph bridging pages 3 and 4 of reply brief).

As for independent claim 9, the examiner has not demonstrated that Kasai describes a single control that is operatively associated with the hopper which is adapted to adjust both the size of the hopper and the size of the hopper outlet in order to accommodate casings of various size. The reference description of wall 19 being movable to adjust the distance L between the edge of flapper 13 does not meet the claim requirement (see Kasai at column 6, lines 22-60).

In conclusion, based on the foregoing, the examiner's rejection under 35 U.S.C. § 102 is reversed, whereas the rejection under 35 U.S.C. § 112, first paragraph, is sustained.

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Consequently, the examiner's decision rejecting the appealed claims is affirmed-in-part.

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

AFFIRMED-IN-PART

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
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CHARLES F. WARREN)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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)	
BEVERLY A. PAWLIKOWSKI)	
Administrative Patent Judge)	

ECK/hh

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