

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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

Appeal No. 2006-0466
Application 10/175,787¹

ON BRIEF

Before PAK, TIMM, and FRANKLIN, Administrative Patent Judges.

PAK, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1 through 12, 24 and 25, which are all of the claims pending in the above-identified application.

¹ Application for patent filed June 20, 2002.

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APPEALED SUBJECT MATTER

Claim 1 is representative of the subject matter on appeal and reads as follows:

1. An envelope comprising:
 - a) a front wall having two lateral edges, a top edge, and a bottom edge; and
 - b) a rear wall having two lateral edges, a top edge, and a bottom edge, the front and rear walls joined along their respective lateral and bottom edges; the front and rear wall each comprising
 - i) an outer film web comprising
 - (a) an outer layer comprising a polymer selected from the group consisting of propylene polymer or copolymer, polyamide or copolyamide and polyester or copolyester; and
 - (b) an inner layer comprising ethylene homopolymer or copolymer,wherein the outer film web has an outer surface and an inner surface; and
 - ii) an inner ply having an inner surface and an outer surface, comprising an air cellular or foamed material; the inner surface of the outer film web being adhered to the outer surface of the inner ply.

REFERENCE

The prior art references relied upon by the examiner in support of the § 103 rejections before us are:

Strzelewicz	4,868,025	Sep. 19, 1989
Chang et al. (Chang)	4,894,265	Jan. 16, 1990
Andrusko	5,182,162	Jan. 26, 1993
Jillson	5,273,361	Dec. 28, 1993

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Andersen et al. (Andersen)	5,506,046	Apr. 09, 1996
Jones et al. (Jones)	5,763,336	Jun. 09, 1998
Cliff	6,109,440	Aug. 29, 2000

REJECTIONS

The appealed claims stand rejected as follows:

- 1) Claims 1 through 7, 9 and 25 under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Strzelewicz and Jones;
- 2) Claim 8 under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Strzelewicz, Jones and Andersen;
- 3) Claim 10 under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Strzelewicz, Jones and Chang;
- 4) Claim 11 under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Strzelewicz, Jones and Jillson;
- 5) Claim 12 under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Strzelewicz, Jones and Cliff; and
- 6) Claim 24 under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Strzelewicz, Jones and Andrusko.

OPINION

We have carefully reviewed the claims, specification and prior art, including all of the arguments advanced by both the examiner and the appellants in support of their respective positions. This review has led us to conclude that the examiner's § 103(a) rejections are well founded. Accordingly, we affirm the examiner's § 103(a) rejections for essentially the factual findings in the Answer. We add the following for emphasis and completeness.

The examiner correctly finds that Stzelewicz teaches an envelope having front and rear walls each comprising (1) a tear resistant outer layer 10 made of TYVEK® (a synthetic, fibrous, non-woven thermoplastic sheet) or other thermoplastic flexible sheet material corresponding substantially to the outer layer of the claimed outer film web, (2) a middle layer 14 made of polyolefin film, for example, linear low density polyethylene film corresponding to the inner layer² of the claimed outer film web and (3) an inner layer 12 made of suitable cushioning material, for example, polyolefin foam or polyolefin film

² According page 6 of the specification, "[e]thylene homopolymer or copolymer" herein refers to ethylene homopolymer such as low density polyethylene..."

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laminate having a plurality of air-filled cavities between layers of film corresponding to the claimed inner ply. See column 2, lines 28-44. Indeed, the appellants acknowledge that Stzelewicz teaches an envelope corresponding to the claimed envelope, except for the outer layer polymer (e.g., propylene polymer) recited in claim 1. See the Brief, pages 10-12.

The appellants' sole argument is that the applied prior art references, especially Stzelewicz and Jones, would not have suggested employing the claimed polymer, e.g., propylene polymer, as at least part of an outer layer of the envelope taught by Stzelewicz. See the Brief, pages 10-12. We do not agree.

As indicated supra, Stzelewicz teaches that its outer layer 10 may be made of TYVEKk® (a synthetic, fibrous, non-woven thermoplastic sheet) or other thermoplastic flexible sheet. See also column 1, lines 35-41 and column 2, lines 37-41. Although Strzelewicz does not specifically mention the claimed polymeric material, e.g., propylene polymer, it does teach employing various synthetic, fibrous, non-woven thermoplastic sheet or other thermoplastic flexible sheet, including TYVEK® as its outer layer 10. Moreover, Jones not only teaches that TYVEK® is spundbound **polyolefin** inclusive of the claimed propylene polymer, but also in reference to a nonwoven flexible fibrous cover sheet

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for packaging materials inclusive of the envelope of the type discussed in Strzelewicz, teaches (column 2, lines 46-66):

Particularly well suited for outer layers 12 and 16 of composite sheet 10 are sheets of spunbonded nonwoven polyolefin film-fibrils of the type disclosed in U.S. Pat. No. 3,169,899 or vapor-permeable fabric sheets of the type disclosed in U.S. Pat. 4,684,568, the contents of which are both incorporated by reference herein. **Polyethylene and polypropylene are the polyolefins of choice.** A commercial spunbonded nonwoven polyethylene film-fibril sheet product that is particularly suitable to the composite sheet of the invention is TYVEK® spunbonded polyolefin sheet sold by E. L du Pont de Nemours and Company of Wilmington, Del. TYVEK® is a registered trademark of DuPont. **TYVEK® spunbonded polyolefin sheets are flexible, lightweight, strong and vapor permeable.** TYVEK® sheets also have a very low abrasiveness and they are inert to most painted surfaces. Another vapor permeable sheet material suitable for outer layers 12 and 16 of the composite sheet of the invention is a spunbonded/meltblown/meltblown/spunbonded ("SMMS") **polypropylene** sheet material, as for example Evolution sheet material sold by Kimerly-Clark Corporation of Neenah, Wis. (Emphasis added.)

Given the above teachings, we concur with the examiner that one of ordinary skill in the art would have been led to employ either polyethylene or polypropylene as part of the outer layer of the envelope of the type discussed in Strzelewicz, with a reasonable expectation of successfully making the useful cushion shipping bag or envelope taught by Strzelewicz.

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In reaching this determination, we note the appellants' argument that "it is more likely that one having ordinary skill in the art would stay with an ethylene based non-woven than a propylene based non woven for the outer layer of a composite" See the Brief, page 12. However, as indicated supra, Strzelewicz clearly contemplates employing TYVEK® (polyolefin inclusive of both polyethylene and polypropylene) or other thermoplastic flexible sheet materials as the outer layer of its envelope. Moreover, Jones is not limited to employing preferred TYVEK 1461 (high density polyethylene); it contemplates employing both polyethylene and polypropylene as the outer layer of the packaging means. See Merck & Co. v. Biocraft Labs., Inc., 874 F.2d 804, 807, 10 USPQ2d 1843, 1846 (Fed. Cir. 1989)("the fact that a specific [embodiment] is taught to be preferred is not controlling, since all disclosures of the prior art, including unpreferred embodiments, must be considered"); In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966)(all of the disclosures in a reference, including non-preferred embodiments, "must be evaluated for what they fairly teach one of ordinary skill in the art").

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CONCLUSION

Thus, based on the totality of record, including due consideration of the appellants' arguments, we determine that the preponderance of evidence weighs most heavily in favor of obviousness within the meaning of 35 U.S.C. § 103(a). Accordingly, we affirm the examiner's decision rejecting the claims on appeal under 35 U.S.C. § 103(a).

TIME PERIOD

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

AFFIRMED

CHUNG K. PAK)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
CATHERINE TIMM)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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BEVERLY A. FRANKLIN)	
Administrative Patent Judge)	

CKP:sld

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