

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written for publication and is not binding precedent of the Board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 DONALD L. VAN ERDEN

Appeal No. 2006-1088
Application No. 09/974,400

ON BRIEF

Before KIMLIN, GARRIS, and JEFFREY T. SMITH, Administrative
Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 3-9
and 11-14. Claim 1 is illustrative:

1. A reclosable zipper comprising:

a first profile and a second profile;

said first profile including an interlocking member and
a flange extending laterally from one side only of said
interlocking member;

said second profile including an interlocking member
interlockable with said first profile interlocking member and a
flange extending laterally from said second profile interlocking
member in only the same direction as said first profile flange,

Appeal No. 2006-1088
Application No. 09/974,400

said second profile flange being attached to said first profile flange by a peel seal; and

a slider disposed on said interlocking members, said slider being adapted to open the zipper as it is moved along said interlocking members in an opening direction and to close the zipper as it is moved along said interlocking members in a closing direction.

The examiner relies upon the following references as evidence of obviousness:

Yeager 5,829,884 Nov. 3, 1998

Thieman 5,956,924 Sep. 28, 1999

Appellant's claimed invention is directed to a reclosable zipper having first and second profiles which include interlocking members and flanges extending laterally from only one side of the interlocking member. The zipper also comprises a slider disposed on the interlocking members to facilitate opening and closing the zipper.

Appealed claims 1, 3-9 and 11-14 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Yeager in view of Thieman.

Appellant does not separately argue any particular claim on appeal. Accordingly, all the appealed claims stand or fall together with claim 1. In re McDaniel, 293 F.3d 1379, 1383, 63 USPQ2d 1462, 1465 (Fed. Cir. 2002).

We have thoroughly reviewed each of appellant's arguments for patentability. However, we are in complete agreement with the examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Accordingly, we will sustain the examiner's rejection for the reasons set forth in the answer, and we add the following for emphasis only.

There is no dispute that Yeager, like appellant, discloses a reclosable zipper comprising first and second profile strips having interlocking members and flanges extending laterally from the profiles. Also, flange 40 of Yeager is longer than flange 42 and the flanges are connected by a peel seal

. As appreciated by the examiner, Yeager does not teach the use of a slider to open and close the zipper. However, we fully concur with the examiner that Thieman evidences the obviousness of employing a slider to open and close a zipper. As for the claim limitation that the first and second flanges extend laterally from one side only of the interlocking member, we agree with the examiner that not only does Thieman establish the obviousness of this limitation, but portion 43 of Yeager's

Appeal No. 2006-1088
Application No. 09/974,400

flange can be reasonably considered as an attachment point rather than a flange.

Appellant contends that the claim limitation regarding the flange extending laterally from one side only of the interlocking member "is quite different from the Yeager reference which discloses a construction where the zipper, including the profiles and flanges, are completely within the reclosable bag" (page 4 of brief, last paragraph). However, as properly noted by the examiner, the zipper of the claimed invention is also employed within a reclosable bag (see appellant's Figure 15).

Appellant also maintains that "[a] slider-operated zipper could not function with the apparatus disclosed by the Yeager reference as such a flange would prevent the slider from functioning" (id.). However, appellant has not rebutted the examiner's reasonable position that "the flanges [of Yeager] are only bonded at the end portions and therefore the slider could still operate between the bonded portions" (page 4 of answer, second paragraph). As for appellant's argument that a slider for the Yeager zipper "would be positioned within the bag and out of reach" (page 5 of brief, first paragraph), we do not understand how the zipper would be out of reach once the outer

Appeal No. 2006-1088
Application No. 09/974,400

seal of Yeager's package is opened. Again, appellant's zipper is also disclosed to be used within a bag.

Also, contrary to appellant's arguments, we do not find that the use of impermissible hindsight is necessary for concluding that it would have been obvious for one of ordinary skill in the art to use a slider of the type disclosed by Thieman to facilitate opening and closing the zipper of Yeager.

As a final point, we note that appellant bases no argument upon objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the inference of obviousness established by the applied prior art.

In conclusion, based on the foregoing and the reasons well-stated by the examiner, the examiner's decision rejecting the appealed claims is affirmed.

Appeal No. 2006-1088
Application No. 09/974,400

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a) (iv) (effective Sept. 13, 2004).

AFFIRMED

Edward C. Kimlin)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
Bradley R. Garris)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
)	
)	
)	
Jeffrey T. Smith)	
Administrative Patent Judge)	

ECK/cam

PITNEY HARDIN LLP
Account: Illinois Tool Working, Inc.
7 Times Square
New York, NY 10036-7311