UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHARLES RICE BARMORE, ANDREW BOYD CARROUTH, JR. and, GREGORY EDWARD MCDONALD

Appeal No. 2006-1409
Application No. 10/326,010
Technology Center 3700

ON BRIEF

Decided: March 22, 2007

Before TERRY J. OWENS, MURRIEL E. CRAWFORD, JENNIFER D. BAHR, *Administrative Patent Judges.*

CRAWFORD, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

This is a decision on appeal under 35 U.S.C. §134 from the examiner's final rejection of claims 1 to 21, which are all of the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

Appellants invented packaging for products that are enclosed between a tray or other support member and a flexible film lid sealed thereto. An understanding of the invention can be derived from a reading of exemplary claim reproduced below.

1. A package for a food product, comprising:

a tray for supporting a food product, the tray defining an upper surface;

a multilayer film lid attached to the upper surface of the tray by a heat seal that extends about a perimeter surrounding the food product, an outer edge of the heat seal having two substantially straight portions that are joined by a corner portion of the heat seal, the lid having upper and lower layers joined together such that the upper layer can be peeled from the lower layer, the lower layer being permeable to oxygen and the upper layer being substantially impermeable to oxygen, the lid having a pull tab portion that extends out beyond the corner portion of the heat seal; and

a film fracture feature defined in the corner portion of the heat seal proximate the pull tab portion, the film fracture feature comprising a portion of the outer edge of the heat seal formed as a straight-line segment oriented at a non-perpendicular angle to each of the two substantially straight portions of the heat seal, whereby pulling upward on the pull tab portion focuses forces on said straight-line segment to break the lower layer along the film fracture feature and thereby initiate fracture between the upper and lower layers of the lid.

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

Takata	5,334,272	Aug. 2, 1994
Kocher	5,779,050	July 14, 1998

The examiner rejected claims 1 to 21 under 35 U.S.C. § 103 as being unpatentable over Kocher in view of Takata.

The examiner contends that it would have been obvious to provide the container of Kocher with the film fracture feature extending in a straight line oriented at a non-perpendicular angle to the two straight portions, as disclosed in

Takata, in order to allow the user to separate the elements more easily for opening the container.

Appellants contend that there is no teaching or motivation to modify Kocher to include a film fracture feature comprising a portion of the outer edge of the heat seal formed as a straight-line segment oriented at a non-perpendicular angle to each of the two substantially straight portions of the heat seal, as recited in independent claim 1 and as similarly recited in independent claim 21.

ISSUE

The issue in this case is whether the appellants have shown that the examiner erred in holding that one skilled in the art and would have incorporated the straight-line segment of Takata in the Kocher container.

FINDINGS OF FACT

Appellants invented a package with a two layer film attached to the package by a heat seal 30. The two layer film consists of an upper gas-impermeable layer 34 and a lower gas-permeable layer 32. As depicted in Figure 1, the heat seal has straight portions 31 connected to one another at one corner by a straight-line segment 50 (specification at page 9). The straight-line segment 50 is proximate a pull tab 28 on the lid of the container. The straight-line segment 50 intersects the straight portions 31 at an obtuse angle (specification at page 9; Figure 1). Appellants' specification teaches that when the pull tab 28 is pulled back, the forces are focused on the straight-line segment 50 so that the gas-impermeable layer 34 may be removed in one piece without disturbing the heat seal between the gas-permeable layer 32 and the upper surface of the package (specification page 9).

Kocher discloses a package with a two layer film attached to the package by a heat seal 30. The two layer film consists of an upper gas-impermeable layer 34 and a lower gas-permeable layer 32 (col. 11, lines 15 to 27). As depicted in Figure 1, the heat seal has straight portions 26 connected to one another by a curved corner portion. Kocher also discloses a pull tab 28. Kocher does not disclose a straight-line segment proximate the pull tab 28.

Takata discloses a method for producing an easily openable container. The container includes a lid 3 connected to the flange 2 of the container by a heat seal 6 (col. 3, lines 42 to 49). The heat seal 6 includes straight portions connected to one another by a straight line projecting portion 7 (Figure 2). The projecting portion 7 is preferably made narrower toward the top of the portion (col. 4, lines 7 to 9). Takata discloses that the projecting portion is 5 to 10 mm in width and 2 to 5 mm in length and that if the size of the projecting portion is too large it will affect the openability of the container (col. 4, lines 10 to 12). Takata also discloses that the projecting portion projects outward from notch 5 for beginning opening of the container. A depression 13 is made in the innermost layer 11 of the lid 3 at the outermost edge of the projecting portion (Figure 3(a)). Takata further discloses that opening starts at depression 13 and proceeds along the second circular notch 5 (col. 4, lines 36 to 39). Opening in the Takata device is achieved by the combined operation of depression 13 and projecting portion 7. The narrower portion of the projecting portion makes opening of the container easier at the point of the projecting portion because there is less heat seal strength at the narrower portion.

A person of ordinary skill in the art would understand, from a reading of Takata, that in order to achieve easier opening of a lid or film connected to a container by a heat seal, a projecting portion that narrows at the corners where the

container is opened should be included. A person of ordinary skill in the art would understand that this would assist in the opening of the container even without the inclusion of a depression as is depicted in Takata.

ANALYSIS

While Takata teaches that the projecting portion is used in conjunction with a depression 13, Takata nonetheless teaches that the projecting portion affects the openability of a container. A person of ordinary skill in the art would have understood that the narrow section of the projecting portion would have less heat seal strength and thus make the container easier to open at the point of the narrower portion of the projecting portion. Therefore, a person of ordinary skill in the art would have been motivated to include a projecting portion, which is a straight-line segment, in the Kocher container to increase the openability of the package at the corners of the package proximate the tab.

CONCLUSION OF LAW

On the record before us, appellants have failed to show that the examiner erred in holding that a person of ordinary skill in the art would have included the straight-line segments taught by Takata in the Kocher container. Therefore, we will sustain the examiner's rejection of claims 1 and 21. We will also sustain the examiner's rejection of claims 2 to 20 because the appellants have not argued the separate patentability of these claims.

DECISION

The examiner's rejection of claims 1 to 21 is affirmed.

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

AFFIRMED

TERRY J. OWENS Administrative Patent Judge	)	
MURRIEL E. CRAWFORD Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
JENNIFER D. BAHR Administrative Patent Judge	)	

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