

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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 JOHN H. SCHNEIDER, DONALD L. CREVIER,
STEVEN AUSNIT, MICHAEL MCMAHON,
LAWRENCE SHARE, ERIC P. PLOURDE
and ROBERT E. HOGAN

Appeal No. 2006-1740
Application 10/337,124¹

ON BRIEF

Before GARRIS, FRANKLIN and LINCK, Administrative Patent Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the Examiner's final rejection of claims 1, 8 and 47. We AFFIRM.

Independent claim 1 is representative of the subject matter on appeal and is set forth below:

1. A reclosable package having a top, bottom, and sides, said package comprising:
a first wall and a second wall opposite to said first wall;
a first zipper profile having a first interlocking member and a first flange portion,

¹ Application for patent filed January 6, 2003.

said first flange portion being attached to said first wall along a first attachment line extending substantially from side to side of said package;

a second zipper profile having a second interlocking member engageable with said first interlocking member and a second flange portion, said second flange portion being attached to said second wall along a second attachment line extending substantially from side to side of said package;

at least one of said first wall and said first flange portion including a first wall segment beyond said first attachment line, at least one of said second wall and said second flange portion including a second wall segment beyond said second attachment line, said first and second wall segments extending over said first and second interlocking members, said first wall segment being joined to said second wall segment by a first frangible connection;

a slider disposed upon said interlocking members for movement from side to side of said package between a zipper fully open and a zipper fully closed position, said first and second wall segments extending over said slider; and

a second frangible connection below said interlocking members joining said first wall to said second wall.

The Examiner relies upon the following references as evidence of unpatentability:

| | | |
|------------------------|-----------|---------------|
| Thomas et al. (Thomas) | 5,713,669 | Feb. 3, 1998 |
| Strand et al. (Strand) | 6,360,513 | Mar. 26, 2002 |
| Tilman et al. (Tilman) | 6,412,254 | Jul. 2, 2002 |

Claims 1, 8 and 47 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Tilman and Strand.

OPINION

For the reasons set forth in the Answer and below, we sustain this rejection.

Tilman discloses a resealable package 10 with first and second panels 19, 20 that are heat sealed along the edges (Figure 2; col. 3, lines 21-28). We note that Tilman contemplates an embodiment where "two separate sheets of film" may be used to form the package 10 (col. 3, lines 28-33). Package 10 includes a resealable closure mechanism 14 in "the specific form of a zipper-type closure mechanism" having "opposite first and second interlocking or mating closure profiles 130, 131 that under the application of pressure will interlock and close a region (not shown), between the closure profiles 130, 131" (col. 3, lines 50-60). The closure profiles 130, 131 include sealing flanges 132, 142, which join the respective closure profiles 130, 131 to the respective panels 19, 20 (col. 3, lines 31-33, 44-46, 53-54, 64-67). The resealable closure mechanism 14 works in combination with a slider device 160 (col. 6, lines 1-3). As shown in Figure 2 of Tilman, first and second panels 19, 20 extend above the resealable closure mechanism 14 and are joined into a closed edge 18 to form a tamper evident structure 180 (col. 7, lines 15-18). As noted above, if two separate panels are used to form the package 10, the closed edge 18 can be formed by heat-sealing the first and second panels 19, 20 (col. 3, lines 28-32). Tilman also teaches that the "closed edge 18 can be opened by cutting the first closed edge 18 or by tearing the first closed edge 18 from the package 10" (col. 3, lines 41-44).

The examiner is relying on Tilman's incorporation by reference of the U.S. Patent No. 5,713,669 to Thomas to alternatively teach joining the first and second panels 19, 20 with a frangible connection to form the closed edge 18 for tamper-evident structures. Specifically, the examiner is relying on Tilman's incorporation by reference of "the principles described in U.S. Patent No. 5,713,669 to Thomas for tamper-evident structures. See column 7, lines 45-47 of Tilman" (Answer, paragraph bridging pages 4 and 5).

Thomas discloses a reclosable bag having opposing panels 12, 14 including a zipper 22 (col. 2 line 64 to col. 3, line 5). A slider 32 is mounted on the zipper 22 (col. 3, lines 20-23). Thomas' reclosable package includes "[f]irst and second upstanding panels 36 and 38 [that] extend upwardly from the respective first and second body panels 12 and 14" (Figure 3; col. 3, lines 32-34). The "upper edges of the respective first and second upstanding panels 36 and 38 are joined to each other to seal the pocket and completely encapsulate the slider 32 and zipper 22 within the sealed pocket. The upper edges of the respective first and second upstanding panels 36 and 38 may be joined to each other either by thermal fusion or by integrally forming these upper edges with each other" (col. 3, lines 61-67).

Thomas also teaches an alternative embodiment that provides a frangible connection between the upper edges of the respective first and second upstanding panels 36 and 38. Thomas discloses creating a "peelable seal [between] the inner surfaces of one or both of the upstanding panels 36 and 38 above the slider 32 and zipper 22 [by] detachably [connecting them] to each other [with] a tacky adhesive-

like substance that is well-known in the art" (col. 4, lines 38-43).

Strand discloses a reclosable bag having opposing sides 35, 36 including a zipper assembly 20 (Figures 10 and 12; col. 9, lines 6-8). In the embodiment of Figures 10 and 12, the reclosable bag has a header 15 above the zipper structure (col. 10, line 31). The header 15 can be formed by heat-sealing the opposing sides 35, 36 (Figure 35; col. 10, lines 8-11). In addition, Strand discloses providing a peelable seal 50 joining opposing sides 35, 36 below the zipper assembly 20 (col. 9, lines 39-54).

According to the examiner,

Tilman et al. '254 discloses [sic, disclose] the claimed device except for a peel seal connecting the first and second walls below the interlocking members. Strand et al. discloses [sic, disclose] that it is known in the art to provide a peel seal connecting the first and second walls below the interlocking members in an analogous bag. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bag of Tilman et al. '254 with the peel seal connecting the first and second walls below the interlocking members as taught by Strand et al, in order to provide a hermetic seal between the interlocking members and the interior of the bag [Answer, page 3].

Appellants argue that

presently pending claim 1 calls for "said first wall segment being joined to said second wall segment by a first frangible connection". It appears that the Office Action is construing the

"first closed edge 18" which is formed by "a single sheet of package film 17 [being] folded" (see col. 3, lines 24, 25) as the claimed "frangible connection" [Brief, page 5].

In response, the examiner contends that "[t]here is nothing in appellant's [sic, appellants'] claims that require the first and second wall segments be made from separate, individual sheets of package film" (Answer, page 4).

We are unpersuaded by appellants' argument regarding the first edge 18 being formed by folding a single sheet of film. As we noted above, Tilman contemplates an alternative embodiment where "two separate sheets of film" may be used to form the package 10 and the closed edge 18 can be formed by heat sealing or ultrasonically crushing the edges (col. 3, lines 28-33).

Appellants further argue that

[w]hile the Office Action notes that the Thomas reference (US. Patent No. 5,713,669) is incorporated by reference in the Tilman reference, it is respectfully submitted that there is nothing in the Tilman reference which would lead one of ordinary skill in the art to seek out the bald reference to the peel seal of col. 4, lines 37-42 of the Thomas reference and substitute two walls for the claimed first and second wall segments for the folded wall of the Tilman reference [Brief, page 5].

The examiner responds "that the claims are rejected over the Tilman and Strand references, not Tilman and Thomas as suggested by appellant[s]" (Answer, page 4) and that "Tilman incorporates by reference the principles

described in U.S. Patent No. 5,713,669 to Thomas for tamper-evident structures. See column 7, lines 45-47 of Tilman" (Answer, page 5).

We disagree with appellants' argument that there is nothing in the Tilman reference that would lead one of ordinary skill in the art to seek out the peel seal of the Thomas reference. It is clear that the examiner is considering the reference to Thomas as incorporated by reference in Tillman. As indicated above, it is also clear that Tillman directs one of ordinary skill in the art to look at the disclosure by Thomas for alternative embodiments for tamper-evident structures, including an embodiment where the tamper-evident structure includes a frangible connection between the edges of the upstanding panels (Tillman, col. 7, lines 46-48; Thomas, col. 4, lines 38-42).

Appellants additionally argue that

presently pending Claim 1 recites "a second frangible connection below said interlocking members joining said first wall to said second wall". In contrast, the Tilman reference discloses bonding strip 132 which appears to be on the flange of one of the zipper profiles and therefore not "below" said interlocking members.

While the Office Action does not cite to a specific portion of the Strand reference, the Applicants note that Figure 12 discloses a peel seal 50. However, in Figure 12, the header 15 appears to be nothing more than is disclosed in the Tilman reference. That is, the top edge is formed by folding the web or film with nothing resembling a "first frangible connection" between

the wall segments. It is therefore respectfully submitted that the Tilman and Strand references, alone or in combination, do not disclose or suggest the presently claimed invention [Brief, paragraph bridging pages 5 and 6].

The examiner contends that appellants' argument is "a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references as applied in the rejection" (Answer, paragraph bridging pages 5 and 6).

We note that the examiner relies on Strand to teach "that it is known in the art to provide a peel seal connecting the first and second walls below the interlocking members in an analogous bag" (Answer, page 3). We also note that appellants have not contested the examiner's conclusion of obviousness as to this issue. Instead, appellants' argument focuses on Strand's top edge as being "formed by folding the web or film with nothing resembling a 'first frangible connection' between the wall segments." We are unpersuaded by this argument since the examiner is relying on Tilman, through the incorporated disclosure of Thomas, to teach the frangible connection of the upstanding panels as known in the art.

Accordingly, we sustain the rejection of claims 1, 8 and 47 as being unpatentable over Tilman and Strand.

CONCLUSION

The decision of the Examiner rejecting all appealed claims is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (effective Sep. 13, 2004; 69 Fed. Reg. 49960 (Aug. 12, 2004); 1286 Off. Gaz. Pat. Office 21 (Sep. 7, 2004)).

AFFIRMED

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| BRADLEY R. GARRIS |) | |
| Administrative Patent Judge |) | |
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| |) | BOARD OF PATENT |
| BEVERLY A. FRANKLIN |) | APPEALS AND |
| Administrative Patent Judge |) | INTERFERENCES |
| |) | |
| |) | |
| NANCY J. LINCK |) | |
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BRG/mcc/sld

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