

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte TIMOTHY V. STAGG, RICHARD L. SHEEHAN, JR.  
and DEAN A. MINER

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Appeal No. 2006-1760  
Application No. 09/728,697

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ON BRIEF

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Before KIMLIN, TIMM 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, 2, 4-9, 11, 13-18, 20-25, 27, 29-33, 35-39, 41, 42, 44-52 and 56, all the claims remaining in the present application.

Claim 1 is illustrative:

1. Packaging for containing an article, the packaging comprising:

a continuous, tear-resistant film formable to define an enclosed region for containing an article, wherein the film is characterized by a puncture-propagation tear resistance of at least 20 N/ply; and

a tearable tape strip secured to the film, the tearable tape strip being defined by opposing, longitudinal edges and a central section, the central section being tearable relative to the opposing, longitudinal edges such that the tearable tape strip is internally tearable, and wherein the tearable tape strip comprises one of reinforced strapping tape and filament reinforced tape;

wherein the tearable tape strip is configured to controllably tear an opening through the film for accessing the encoded region upon tearing of the tearable tape strip.

The examiner relies upon the following references as

evidence of obviousness:

Underwood et al. (Underwood)	3,179,326	Apr. 20, 1965
Osborn	4,397,703	Aug. 9, 1983
Riddell	4,773,541	Sep. 27, 1988
Leseman et al. (Leseman)	5,080,957	Jan. 14, 1992
Kim	5,203,634	Apr. 20, 1993
Hodson et al. (Hodson)	6,316,036	Nov. 13, 2001
Zurawski et al. (Zurawski)	5,885,630	Mar. 23, 1999

Appellants' claimed invention is directed to packaging for containing an article comprising tear-resistant film having the recited puncture-propagation tear resistance, and a tearable tape

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strip secured to the film which allows for controllably tearing an opening through the film for accessing an article or articles within the enclosed region. The tearable tape strip is defined by opposing, longitudinal edges and a central section that is tearable relative to the longitudinal edges. According to appellants, "[c]onventional tear strips cannot tear a 'clean' opening" through films having the recited puncture-propagation tear resistance. Films of the present invention having such tear resistance are polyethylene, linear low-density polyethylene, low-density polyethylene, and blends of polyethylene.

The appealed claims stand rejected under 35 U.S.C. § 103(a) as follows:

(a) claims 1, 2, 4, 5, 11, 13, 17, 18, 20, 21, 27, 29, 35-38, 41, 42, 44, 45, 47, 51 and 52 over Riddell in view of Osborn,

(b) claims 8, 14-16, 24, 31 and 32 over Riddell in view of Osborn and Kim,

(c) claims 1, 2, 4-8, 11, 13, 14, 17, 18, 20, 21-24, 27, 29, 30, 33, 35-39, 41, 42, 44-48, 51 and 52 over Underwood in view of Osborn and Leseman,

(d) claims 9, 25 and 56 over Underwood in view of Osborn, Leseman and Hodson,

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(e) claims 15, 16, 31 and 32 over Underwood in view of Osborn, Leseman and Kim, and

(f) claims 49 and 50 over Underwood in view of Osborn, Leseman and Zurawski.

Appellants do not present an argument that is reasonably specific to any particular claim on appeal, and appellants' arguments only address the rejections of the independent claims over Riddell in view of Osborn, and Underwood in view of Osborn and Leseman. Accordingly, all the appealed claims stand or fall together and we will consider only the examiner's separate rejections of independent claims 1, 17 and 18 over Riddell in view of Osborn, and over Underwood in view of Osborn and Leseman (see page 4 of the principal brief for the section entitled GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL).

We have thoroughly reviewed each of appellants' arguments for patentability. However we are in complete agreement with the examiner's reasoned analysis and application of the prior art, as well as his cogent and thorough disposition of the arguments raised by appellants. Accordingly, we will adopt the examiner's reasoning as our own in sustaining the rejections of record, and we add the following for emphasis only.

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We consider first the examiner's rejection over Riddell in view of Osborn. There is no dispute that Riddell discloses the use of the presently claimed tearable tape strip that is defined by opposing longitudinal edges and has a central section that is tearable relative to the longitudinal edges. While Riddell discloses that the packaging material maybe polyethylene films (column 2, line 16), the reference is silent with respect to the film's puncture-propagation tear resistance value. However, as set forth by the examiner, Osborn evidences the conventionality of polyethylene films having the recited puncture-propagation tear resistance used as packaging materials for shipping products. Accordingly, based on the combined teachings of Riddell and Osborn, we fully concur with the examiner that "it would have been obvious to select a polyethylene film of at least 20N/ply since Riddell teaches the film must be durable and strong enough for shipping and Osborn teaches the conventional commercial polyethylene film package (i.e. commercial bags) that is durable strong enough for shipping has a PPT value of at least 20 N/ply" (Page 4 of answer, second paragraph."

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A principal argument advanced by the appellants places emphasis on Riddell's disclosure that the packaging material "has sufficiently low tear strength to permit opening of the package" (column 2, lines 14-15). Appellants contend that "[i]nherently, then, Riddell teaches that its tear tape opening system or means 5 is only useful with a packaging material having a low tear strength (page 2 of reply brief). However, appellants seem to overlook that Riddell actually teaches that the tear strength of the polyethylene films is only sufficiently low to permit opening of the package which, manifestly, is a property shared by appellants' "tear-resistant film." Clearly, tear-resistant films within the scope of the appealed claims must also have a sufficiently low tear strength to permit opening of the package. Furthermore, based on the collective teachings of Riddell and Osborn, we are confident that one of ordinary skill in the art would have needed to resort to only routine experimentation to determine the range of tear strength for polyethylene films that are operable with the tape strip of Riddell. We again note that appellants have not made any argument that the claimed tearable tape strip is somehow structurally different than the one fairly taught by Riddell.

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We are also not persuaded by appellants' argument that one of ordinary skill in the art would not have looked to the bag materials of Osborn to make the boxes of Riddell. As explained by the examiner, Riddell does not describe his purpose as making boxes but is directed to pliable material that can be wrapped around a product (see paragraph bridging pages 13 and 14 of answer).

We now turn to the examiner's Section 103 rejection over Underwood in view of Osborne and Leseman. Underwood, like appellants, discloses the use of a tearable tape strip having a tabbed central portion that is tearable with respect to its longitudinal edges to tear an opening in a film of linear low-density polyethylene. While Underwood is silent with respect to the particular puncture-propagation tear resistance of the polyethylene film, we agree with the examiner that it would have been obvious for one of ordinary skill in the art to employ the conventional polyethylene film of Osborn that has the claimed puncture-propagation tear resistance. Appellants contend that "[o]ne seeking to select heat sealable materials for tightly wrapping an article, such as gum or cigarettes, would not look to tarps or sacks closed with lap seams as disclosed by Osborn, nor would they expect tear tapes for one material to function with

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the another" (page 11 of principal brief, 1<sup>st</sup> paragraph). However, as properly pointed out by the examiner, appellants mischaracterize Underwood as being limited to packaging materials for gum and cigarettes. Rather, Underwood teaches that although tear tapes were known for opening wrappings for gum and cigarettes, there was a need for finding tear tape for typical thermoplastic film, particularly, polyethylene film that can be used as wrapping or packaging material, since polyethylene film is more extensible than cellulosic film (see column 1, 2<sup>nd</sup> paragraph). Hence, we find that Underwood is directed towards a tear tape that can be used with polyethylene film that has a higher tear resistance than the cellophane that is used for gum and cigarettes. Appellants claim linear low density polyethylene as the tear-resistant film material, and Underwood discloses a tearable tape strip that is suitable for linear low-density polyethylene film. As stated above, it is our view that one of ordinary skill would have had to resort to only routine experimentation to determine the suitable puncture-propagation tear resistance for the polyethylene film of Underwood.

We also concur with the examiner that Leseman evidences the obviousness of using tear reinforced tear tapes as an improvement over the oriented flat tapes of Underwood. Appellants maintain

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that "Underwood does not describe any greater need for improved cross-direction tear resistance than that supplied by Underwood's tear tape" (sentence bridging pages 11 and 12 of principal brief). However, we are in full agreement with the examiner that Leseman establishes the obviousness of using fiber reinforced tear tapes for providing very good cross-direction tear resistance" (see column 2, lines 26-52 and column 5, line 60 et seq.).

As a final point, we note that appellants base no argument upon objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the prima facie case of obviousness established by the examiner.

In conclusion, based on the foregoing and the reasons well-stated by the examiner, the examiner's decision rejecting the 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).

AFFIRMED

EDWARD C. KIMLIN	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
CATHERINE TIMM	)	APPEALS AND
Administrative Patent Judge	)	INTERFERENCES
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	)	
JEFFREY T. SMITH	)	
Administrative Patent Judge	)	

ECK/hh

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