

The opinion in support of the decision being entered today was *not* written for publication in 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* HARRY BUSSEY JR and HARRY (BUDDY) BUSSEY III

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Appeal No. 2006-1962  
Application No. 10/133,776  
Technology Center 3700

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ON BRIEF

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Decided: February 27, 2007

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Before, MURRIEL E. CRAWFORD, LINDA E. HORNER, and  
JENNIFER D. BAHR *Administrative Patent Judges*.

MURRIEL E. CRAWFORD *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. §134 from the examiner's final rejection of claims and, which are all of the claims 1 to 7, and 22 to 25. Claims 8 to 21 and 26 to 34 have been withdrawn from consideration. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

## STATEMENT OF THE CASE

The appellants' invention relates to a packaging module using loose fill packaging elements. An understanding of the invention can be derived from a reading of exemplary claims 1, 2, 22 and 25 which read as follows.

1. A packaging module comprising

a porous deformable membrane defining an enclosed space and characterized in being deformable in three dimensions; and

a mass of loose fill elements disposed within said membrane and occupying an amount of said space sufficient to permit said membrane to be shaped about an item of three dimensional shape to be packaged and to permit said elements to move within said membrane to accommodate the three-dimensional shape of the item.

2. A packaging module as set forth in claim 1 wherein said membrane is a net bag.

22. A packaging module comprising

a deformable net bag defining an enclosed space and characterized in being deformable in three dimensions; and

a mass of loose fill elements disposed within said bag and occupying an amount of said space sufficient to permit said bag to be shaped about an item to be packaged and to permit said elements to move within said bag to accommodate the deformed shape of said bag.

25. A packaging module as set forth in claim 22 wherein said net bag is made of a material having self-adherent characteristics.

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

Spertus	3,606,726	Sep. 21, 1971
Alivizatos	4,607,403	Aug. 26, 1986
Fuss	5,826,404	Oct. 27, 1998
Bainbridge	6,032,300	Mar. 7, 2000

Claims 1, 2, 5, 7, 22 and 24 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Alivizatos.

Claims 1, 3 and 6 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Spertus.

Claims 1, 3, 4, 6, and 7 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Fuss.

Claims 1 to 3 and 22 to 25 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Bainbridge.

Appellants contend that the subject matter of the claims is not anticipated by any of Alivizatos, Spertus, Fuss or Bainbridge. Specifically, appellants contend that Alivizatos, Spertus, Fuss and Bainbridge do not disclose a porous membrane having loose fill elements disposed therein that permit the membrane to be shaped about an item of three dimensional shape.

The examiner contends that each of the references Alivizatos, Spertus, Fuss and Bainbridge discloses a porous membrane having loose fill elements disposed

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therein that permit the membrane to be shaped about an item of three dimensional shape.

Appellants further contend that neither Alivazatos nor Bainbridge anticipates the subject matter of claims 2 and 22 because neither reference discloses that the membrane is a net bag.

The examiner contends that both Alivazatos and Bainbridge disclose net bags.

Appellants contend that Bainbridge does not anticipate claim 23 because Bainbridge does not disclose a net bag with a mass of loose fill elements disposed within the bag which occupy up to 90% of the space within the bag.

The examiner contends that Bainbridge discloses a net bag with a mass of loose fill elements disposed within the bag which occupy up to 90% of the space within the bag.

Appellants contend that Bainbridge does not disclose a net bag made of a material that has self-adherent characteristics as recited in claim 25.

Appellants have only argued the patentability of claims 1, 2, 22, 23 and 25 and thus we will decide the patentability of these claims only. The remaining claims stand or fall with these claims.

## ISSUES

The issue is whether appellants have shown that the examiner erred in rejecting the claims under 35 U.S.C. § 102(b).

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Specifically:

Does Alivizatos, Spertus, Fuss or Bainbridge disclose a porous membrane having loose fill elements disposed therein that permit the membrane to be shaped about an item of three dimensional shape?

Does Alivizatos or Bainbridge disclose that the membrane is a net bag?

Does Bainbridge disclose a net bag with a mass of loose fill elements disposed within the bag which occupy up to 90% of the space within the bag.?

Does Bainbridge disclose a net bag made of a material that has self-adherent characteristics?

## FINDINGS OF FACTS

### The references

Alvizatos discloses a membrane defining an enclosed space filled with a mass of loose fill elements (col. 3, lines 37 to 43). The elements are packed so as to take up approximately 60% to 70% of the interior space (col. 4, lines 14 to 18). The bag is formed of a flexible cloth fabric (col. 3, lines 16 to 17) which is a porous material. As shown in Figure 3, the membrane may be shaped about an item of three dimensional shape and permit the elements to move within the membrane to accommodate the three dimensional shape of the item. The flexible cloth disclosed in Alvizatos is not a net and therefore Alvizatos does not disclose a net bag.

Spertus discloses membrane defining an interior space filled with a mass of elements (col. 1, lines 26 to 34; col. 3, lines 22 to 25). The membrane is porous as it is made to have perforations 39 (col. 3, lines 33 to 36). Spertus discloses that as

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a three dimensional object pushes against the membrane the elements permit the membrane to expand and contract about the object preventing breakage of the object (col. 3, lines 36 to 39).

Fuss discloses a membrane made of a flexible plastic material. The membrane defines an interior space filled with a mass of elements (col. 3, lines 4 to 11). The membrane may be placed about a three dimensional item to cushion same (col. 3, lines 45 to 49). Figures 2 and 7 depict that the membrane may be shaped about a three dimensional item. Fuss discloses that the membrane has vent holes 27 and is therefore porous (col. 2, lines 27 to 32).

Bainbridge discloses a membrane 20 made of a porous, breathable and flexible material that is preferably plastic mesh (col. 4, lines 41 to 46). The membrane 20, as depicted in Figure 9, permits the membrane to be shaped about an item of three dimensions. Bainbridge discloses that in one embodiment the interstitial volume is about 25% to 30% (col. 5, lines 14 to 16). As such, the elements take up 70% to 75% of the space within the membrane. The membrane is heat sealable (col. 4, lines 45 to 47).

### Claim construction

The issues decided in this case depend in part on a construction of the recitation in claim 1 of the language:

to permit said membrane to be shaped about an item of three dimensional shape to be packaged and to permit said elements to move within said membrane to accommodate the three-dimensional shape of the item.

The above quoted language of claim 1 is not limited to a membrane that is able to totally surround an item. Rather, the language is broad enough to include a membrane that is shaped about an item to any extent. We note that claim 1 does

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not recite that the elements in the membrane are packaged so as to permit the membrane to be shaped *completely* about an item of three dimensional shape.

The language of claim 25 of a packaging module having self-adherent characteristics is interpreted to mean a membrane that is itself self adherent without the addition of other elements or other processes.

## PRINCIPLES OF LAW

To support a rejection of a claim under 35 U.S.C. § 102(b), it must be shown that each element of the claim is found, either expressly described or under principles of inherency, in a single prior art reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

## ANALYSIS

As the claim language is broad enough to include a membrane that is partially shaped about an article as depicted in Figure 3 of Alvizatos, Alvizatos discloses each and every element of claim 1. However, as Alvizatos does not disclose a net bag, Alvizatos does not disclose each and every element of claims 2 and 22.

Spertus discloses each and every element of claim 1. In particular, Spertus discloses a porous membrane by disclosing a membrane which includes vent holes with loose fill elements that occupy an amount of space sufficient to permit the members to be shaped about an item of three dimensions.

Fuss discloses each and every element of claim 1. In particular, Fuss discloses and depicts in Figures 2 and 7 a membrane which is shaped about an item.

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Bainbridge discloses each and every element of claim 1. In particular, Bainbridge discloses and depicts in Figure 9 a membrane that deforms about an item (a knee, elbow etc.). As Bainbridge discloses a mesh bag, Bainbridge discloses each and every element of claims 2 and 22. Bainbridge also discloses each element of claim 23. In particular, Bainbridge discloses a bag with elements that occupy up to 90% of the space within the membrane. Bainbridge does not disclose each and every element of claim 25 because the heat sealable material which forms the membrane is not self-adherent. Rather, the material of Bainbridge's membrane must be heated before it is adherent.

#### CONCLUSION AND ORDER

The examiner's rejection of claims 1, 5, 7 and 24 under 35 U.S.C. § 102(b) as being anticipated by Alivizatos is sustained.

The examiner's rejection of claims 2 and 22 under 35 U.S.C. § 102(b) as being anticipated by Alivizatos is not sustained.

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The examiner's rejection of claims 1, 3 and 6 under 35 U.S.C. § 102(b) as being anticipated by Spertus is sustained.

The examiner's rejection of claims 1, 3, 4, 6, and 7 under 35 U.S.C. § 102(b) as being anticipated by Fuss is sustained.

The examiner's rejection of claims 1- 3, 22 to 24 under 35 U.S.C. § 102(b) as being anticipated by Bainbridge is sustained.

The examiner's rejection of claim 25 under 35 U.S.C. § 102(b) as being anticipated by Bainbridge is not sustained.

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

AFFIRMED-IN-PART

MURRIEL E. CRAWFORD )  
Administrative Patent Judge )  
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