

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 JOSEPH J. HARDING and RICHARD O. RATZEL

Appeal No. 2006-2337
Application No. 10/887,181
Technology Center 3700

ON BRIEF

Before CRAWFORD, GROSS and NAPPI, **Administrative Patent Judges**.

NAPPI, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 of the final rejection of claims 47 through 60. For the reasons stated *infra* we will not sustain the examiner's rejection of claims 47 through 60.

THE INVENTION

The invention relates to a system for packaging products in a container. The system makes use of a probe which measures the void volume of the container. The data from this measurement is used to determine the amount of padding to be used in the container. See page 26 of appellants' specification. Claim 47 is representative of the invention and is reproduced below:

47. A system for providing dunnage to a container for packing an object placed in the container, comprising:

a supply of dunnage material;

a probe for taking measurements of the container within which the object is placed for determining the void volume;

a controller in communication with the probe and the conversion machine that determines the void volume from measurement information communicated by the probe, determines the amount of dunnage required to fill the void volume, and controls the supply to provide the dunnage needed to fill the void.

THE REFERENCES

The references relied upon by the examiner are:

Johnson	3,509,797	May 5, 1970
Pryor	4,561,776	Dec. 31, 1985
Chow	4,922,687	May 8, 1990

THE REJECTION AT ISSUE

Claims 47 through 50, 56, 59 and 60 stand rejected under 35 U.S.C. § 103 as being unpatentable over Chow in view of Pryor. The examiner's rejection is set forth on pages 3 and 4 of the answer. Claims 51 through 55, 57 and 58 stand rejected under 35 U.S.C. § 103 as being unpatentable over Chow in view of Pryor and Johnson. The examiner's rejection is set forth on pages 4 and 5 of the answer. Throughout the opinion we make reference to the briefs and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, appellants' arguments set forth in the briefs along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

With full consideration being given to the subject matter on appeal, the examiner's rejections and the arguments of appellants and the examiner, for the reasons stated *infra* we will not sustain the examiner's rejections of claims 47 through 60 under 35 U.S.C. § 103.

Appellants argue, on pages 6 and 7 of the brief, that one skilled in the art would not be motivated to use a machine tool sensor such as taught by Pryor in a dunnage dispensing system such a Chow. Further, on page 7 of the brief, appellants assert that Chow's teaching of a dunnage dispensing system rejects detecting the volume of a box. Appellants argue that the examiner has not provided evidence which would suggest to one skilled in the art that Chow's system should be modified to measure the volume of the box.

The examiner, in response, states on page 5 of the answer:

Arguably, the probe 13 of Chow et al. could be construed "for taking measurements of the container" and/or is used in a step of "measuring" the void volume. The probe 13 of Chow et al. operates to read the information or receive a data measurement corresponding to the container volume and subsequently performs the filling task according to the processed information. Appellant presents alternatives for the probe for determining the amount of dunnage to be provided to the container as a "code reader such as a bar code reader" or a "mechanical plunger" (see specification, pg. 26, lines 3-27). The claims are read in light of the specification as it would be interpreted by one of ordinary skill in the art. The interpretation of the above limitations has led the examiner to believe that the embodiment described in the claims is limited to the mechanical plunger otherwise Chow et al. by itself would anticipate the majority of the claims.

We disagree with the examiner's rationale. Claim 47 recites, "a probe for taking measurements of the container within which the object is placed for determining the void volume" and further recites that the determined void volume is used to determine and control the amount of dunnage used to fill the void. Independent claim 56 contains similar limitations.

We find that Chow teaches a system for filling packages with dunnage. As the examiner states, Chow teaches using a barcode reader to read indicia on the box to identify the size of the box. See column 2, lines 43 through 59. However, the indicia is not disclosed as being used to determine the volume of the void in the box (container) which contains an object. Chow further teaches that the size of the box is used to control the height to which the box is lifted relative to the dunnage fill tube. A fill valve is then opened for a period of time and the fill is allowed to flow into the box, a mound of fill clogs the fill pipe when the box is filled. See column 3, lines 30 through 35 and column 4, lines 12 through 21. The mound of fill is then leveled with compressed air. See column 5, lines 1 through 5. Chow states that the system provides the proper amount of fill regardless of the contents of the box. See column 4, lines 15 through 20. We do not find that the system of Chow teaches determining the void volume based upon measurements and using the measurements to determine and control the amount of dunnage used to fill the box. Rather, Chow's system works based upon providing as

much dunnage as will fit into the box up to the level established by the height of the box with respect to the fill tube and that the mound of dunnage then completes the fill of the box.

The examiner relies upon Pryor to teach a probe, however the examiner has not asserted, nor do we find that Pryor teaches a probe to measure parameters of a container with an object in it and that the measurements are used to determine the void volume. We find that Pryor teaches a probe for measuring parameters associated with a machine tool.

Thus, we do not find that the combination of Chow and Pryor teaches or suggests all of the claim limitations of independent claims 47 and 56. Accordingly, we will not sustain the examiner's rejection of claims 47 through 50, 56, 59 and 60 under 35 U.S.C. § 103 as being unpatentable over Chow in view of Pryor.

Claims 51 through 55, 57 and 58 ultimately depend upon either independent claim 47 or 56. The examiner has rejected these claims under 35 U.S.C. § 103 as being unpatentable over Chow in view of Pryor and Johnson. The examiner has not asserted, nor do we find that Johnson teaches a probe to measure parameters of a container with an object in it and that the measurements are used to determine the void volume. Accordingly, we will not sustain the examiner's rejection of claims 51 through 55, 57 and 58 under 35 U.S.C. § 103 as being unpatentable over Chow in view of Pryor and Johnson for the reasons discussed above with respect to claims 47 and 56.

Accordingly, we will not sustain the examiner's rejections, under 35 U.S.C. § 103. The decision of the examiner is reversed.

REVERSED

MURRIEL E. CRAWFORD)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
ANITA PELLMAN GROSS)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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ROBERT E. NAPPI)	
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