

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 WILLIAM J. REMAKS and RONALD D. TIMBROOK

Appeal 2006-2365
Application 10/209,736
Technology Center 3700

Decided: January 12, 2007

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

DECISION ON APPEAL

This is a decision on appeal under 35 USC § 134(a) from the examiner's final rejection of claims 1-11, all of the claims pending in the application.

We REVERSE.

BACKGROUND

The appellants' invention relates to a container blank and container with a hazard warning feature. Claim 1, reproduced below, is representative of the subject matter on appeal. A copy of all of the claims can be found in the appendix to the appellants' brief.

1. A blank for a container having a plurality of sidewalls, corner walls, and bottom panels configured to form a container having truncated corners, the blank comprising:
 - a plurality of substantially triangular shaped corner tabs each having an upper surface; and
 - an indicia on the upper surface;

wherein the blank is formed from a corrugated material.

The examiner relies upon the following as evidence of unpatentability:

Cummings	D90,803	Oct. 03, 1933
Watts	3,373,922	Mar. 19, 1968
Croley	4,225,078	Sep. 30, 1980
Kuchenbecker	5,259,550	Nov. 09, 1993
Batchelor	5,746,318	May 05, 1998
Giampapa	6,059,179	May 09, 2000

Wiley (The Wiley Encyclopedia of Packaging Technology, pp. 204, 216, and 217)

Questar (Questar Boxes) showing StarBox2000 & StarBox2400,
<http://questarusa.com/boxes/boxes.html>

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The following rejections are before us for review:

1. Claims 1, 2, 4-7, and 9 stand rejected under 35 USC § 103(a) as being unpatentable over Kuchenbecker in view of Watts or Giampapa and further in view of Batchelor.
2. Claims 3, 8, and 9 stand rejected under 35 USC § 103(a) as being unpatentable over Kuchenbecker in view of Watts or Giampapa and further in view of Batchelor and Wiley.
3. Claims 1, 2, 4-7, 9, and 10 stand rejected under 35 USC § 103(a) as being unpatentable over Croley in view of Cummings or Questar.
4. Claims 3, 8, and 11 stand rejected under 35 USC § 103(a) as being unpatentable over Croley in view of Cummings or Questar and further in view of Wiley.

Rather than reiterate in detail the conflicting viewpoints advanced by the examiner and the appellants regarding this appeal, we make reference to the examiner's answer (mailed October 19, 2005) for the examiner's complete reasoning in support of the rejections and to the appellants' brief (filed March 3, 2004) for the appellants' arguments.

OPINION

In reaching our decision in this appeal, we have carefully considered the appellants' specification and claims, the applied prior art, and the respective positions articulated by the appellants and the examiner. As a consequence of our

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review, we make the determinations that follow. It is our view that, after consideration of the record before us, we cannot sustain the examiner's rejections.

**KUCHENBECKER IN VIEW OF WATTS OR GIAMPAPA
AND FURTHER IN VIEW OF BATCHELOR**

Claims 1, 2, 4-7, and 9 stand rejected under 35 USC § 103(a) as being unpatentable over Kuchenbecker in view of Watts or Giampapa and further in view of Batchelor. Independent claims 1, 4, and 9 all require substantially triangular-shaped corner tabs or panels having indicia on the upper surface of the corner panels.

In the rejection of independent claims 1, 4, and 9, the examiner determined that Kuchenbecker meets all of the claimed limitations except for indicia on the upper surface of the triangular-shaped corner tabs. The examiner relied on either Watts or Giampapa for the teaching that it is known in the art to provide indicia on a container. The examiner found that it would have been obvious to one of ordinary skill in the art to provide indicia on a container in Kuchenbecker, as taught by Watts or Giampapa, to provide advertisement and/or to decorate the box. Answer, p. 3. The examiner further relied on Batchelor to teach that it was known in the art to make a container from corrugated material, and found that it would have been obvious to make the container of Kuchenbecker from corrugated material to provide added strength. Answer, pp. 3, 4.

The appellants argue that there is no teaching, suggestion, or motivation to add indicia on the upper surface of the end flaps (51-56) of Kuchenbecker because these end flaps are internal structural supports for their respective octagonal end panels (42 and 44), and thus, the end flaps are not externally visible when the container is formed. Brief, p. 9. We agree with the appellants' position.

As shown in Figure 5, the triangular end flaps (51, 51', 52, 52', 54, 54', 56, and 56') of Kuchenbecker are inwardly folded such that they underlie and support each of the respective octagonal end panels (42, 44) to form a rigid end to the octagonal prism (col. 3, lines 18-23 and col. 4, lines 54-57).¹ We find that the teachings of Watts, Giampapa, and Batchelor, when combined with Kuchenbecker, would not have led one of ordinary skill in the art to the claimed invention. Watts relates to a container (19) made from a blank. Watts discloses that the outside surface of the container is laminated with a sheet of metallic foil and treated to give the appearance of a basket weave (col. 3, lines 23-27). Watts, similar to Kuchenbecker, teaches adding a decorative pattern only to the outer surface of the container. As such, there is no motivation in the combined teachings of Watts and

¹ We note that Kuchenbecker teaches that the outer surface of the blank (B₁) is preferably printed with a decorative pattern for display to the consumer (col. 4, lines 61-63). Because the end flaps of Kuchenbecker are not externally visible to the consumer, however, we find it speculative to read this disclosure of Kuchenbecker to teach or suggest printing a decorative pattern on the hidden portions of the blank. Rather, we interpret this disclosure of Kuchenbecker to teach or suggest adding decorative printing only on the portion of the blank (B₁) that is disposed on the outer surface of the container, and thus visible to the consumer, once the container is formed.

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Kuchenbecker to add indicia to the upper surface of the hidden triangular end flaps of Kuchenbecker.

Giampapa relates to a container formed from a single continuous portion of sheet plastic or cardboard and having indicia on its inside surface so that it can be unfolded and laid out to serve as an eating or activity mat (col. 3, lines 33-35 and col. 4, lines 25-27). We find no motivation to modify the container of Kuchenbecker to add indicia on the inside surface, as taught by Giampapa.

Kuchenbecker relates to a tissue carton. The container of Giampapa is a picnic basket or a container used for carrying games or arts and crafts materials. There is no motivation to add such indicia as described in Giampapa to a tissue carton, because the tissue carton of Kuchenbecker is not a continuous surface when unfolded and laid out (see e.g., Figure 1). As such, the blank of Kuchenbecker would not be useful as an eating or activity mat, as taught by Giampapa.

The examiner relied on Batchelor to teach only that it is known to make containers from corrugated cardboard. Batchelor does not cure the deficiencies of Kuchenbecker, Watts, and Giampapa, in that it does not teach or suggest triangular-shaped panels having indicia on the upper surface. Batchelor, like Kuchenbecker, relates to a tissue box (col. 1, line 6). The container of Batchelor is square and thus does not teach or suggest triangular-shaped panels (see e.g., Figures 1-4). Further, Batchelor contains no teaching or suggestion of any indicia on any panels of the box.

As such, we find that a person having ordinary skill in the art at the time the invention was made, possessed with the teachings of Kuchenbecker, Watts,

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Giampapa, and Batchelor, would not have been led to make the combination recited in claims 1, 4, and 9. Claims 2 and 5-7 depend from and further limit independent claims 1 and 4. As such, these dependent claims are also not rendered unpatentable based on the prior art relied upon by the examiner. Accordingly, we do not sustain the examiner's rejection of claims 1, 2, 4-7, and 9 under 35 USC § 103(a) as being unpatentable over Kuchenbecker in view of Watts or Giampapa and further in view of Batchelor.

**KUCHENBECKER IN VIEW OF WATTS OR GIAMPAPA
AND FURTHER IN VIEW OF BATCHELOR AND WILEY**

Claims 3, 8, and 9² stand rejected under 35 USC § 103(a) as being unpatentable over Kuchenbecker in view of Watts or Giampapa, further in view of Batchelor, and further in view of Wiley. The examiner relied on Wiley only for its teaching of using a fluorescent color on packaging materials. Answer, p. 4. Wiley does not cure the deficiencies of the teachings of Kuchenbecker, Watts, Giampapa, and Batchelor. Specifically, Wiley does not teach or suggest a blank or container having substantially triangular-shaped panels with indicia on the upper surface. Rather, the excerpt from Wiley relied upon by the examiner relates only to colorants for packaging materials. As such, we do not sustain the examiner's rejection of claims 3, 8, and 9 under 35 USC § 103(a) as being unpatentable over Kuchenbecker in view of Watts or Giampapa and further in view of Batchelor and Wiley.

² We note that claim 11, not claim 9, requires that the indicia is either a fluorescent or day-glow color.

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CROLEY IN VIEW OF CUMMINGS OR QUESTAR

Claims 1, 2, 4-7, 9, and 10 stand rejected under 35 USC § 103(a) as being unpatentable over Croley in view of Cummings or Questar. The examiner determined that Croley meets all of the claimed limitations except for the claimed indicia on the upper surface. The examiner relied on Cummings to teach that it is known in the art to provide pattern indicia on a box blank and thus it would have been obvious to one of ordinary skill in the art to provide pattern indicia in Croley, as taught by Cummings, to advertise and/or identify the container easily. Answer, p. 4.

The appellants argue that Croley, like Kuchenbecker, uses triangular flaps (22b, 24b, 26b, 28b) as internal structural supports such that the flaps are not externally viewable and therefore there is no motivation to print indicia on the flaps. We agree with the appellants' position.

Based on the same reasoning discussed *supra*, we find that even if one having ordinary skill in the art were to combine the teachings of Cummings, which shows indicia printed on the externally visible portions of a box blank, with the container of Croley, it would not lead that hypothetical person skilled in the art to print indicia on the triangular flaps of Croley, which are not visible. The examiner's assertion that one would have been motivated to add indicia to the flaps of Croley for advertising or identification does not make sense, because the flaps are not visible once the box of Croley is constructed.

Similarly, Questar does not cure the deficiencies of Croley. The depiction of the Questar boxes on the web site shows that the visible external portions of the

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box are bright yellow, but the internal portions, for example on the inside of the top flaps, are a natural paperboard color. As such, there is no teaching or suggestion from the Questar boxes that would have led one having ordinary skill in the art to modify the triangular flaps of Croley to add indicia to the upper surface of the flaps. Accordingly, we do not sustain the examiner's rejection of claims 1, 2, 4-7, 9, and 10 as being unpatentable over Croley in view of Cummings or Questar.

**CROLEY IN VIEW OF CUMMINGS OR QUESTAR AND
FURTHER IN VIEW OF WILEY**

Claims 3, 8, and 11 stand rejected under 35 USC § 103(a) as being unpatentable over Croley in view of Cummings or Questar and further in view of Wiley. For the same reasons discussed *supra*, we find that Wiley does not cure the deficiencies of the teachings of Croley, Cummings, and Questar, because Wiley does not teach or suggest a blank or container having substantially triangular-shaped panels with indicia on the upper surface. As such, we do not sustain the examiner's rejection of claims 3, 8, and 11 under 35 USC § 103(a) as being unpatentable over Croley in view of Cummings or Questar and further in view of Wiley.

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CONCLUSION

To summarize, the rejections by the examiner of claims 1-11 are reversed.

REVERSED

MURRIEL E. CRAWFORD)
Administrative Patent Judge)
JENNIFER D. BAHR) BOARD OF PATENT
Administrative Patent Judge) APPEALS
LINDA E. HORNER) AND
Administrative Patent Judge) INTERFERENCES

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