

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

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM P. BELIAS, DAVID A. BRYNIARSKI, PAUL N. CHEN,
SUSAN P. EVANS, STEVEN P. LONG, CLIFFORD H. PATRIDGE, and
JASON M. STANCHOCK

Appeal No. 2006-2894
Application No. 10/375,188
Technology Center 3700

HEARD: November 14, 2006

Before FRANKFORT, OWENS and HORNER, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from a rejection of claims 1-9, 14-17, 19-25 and 27-29. Claims 10-13, 18 and 26, which are all of the other pending claims, stand withdrawn from consideration by the examiner as claiming a nonelected invention.

THE INVENTION

The appellants claim a bag or liner for collecting items such as household waste that can produce unpleasant odors.

Claim 1 is illustrative:

1. A bag or liner adapted to collect items, the bag or liner comprising:

a first thermoplastic body panel;

a second thermoplastic body panel, the first and second body panels joined along a pair of opposing sides and a bottom bridging the sides so as to form an open mouth, the joined first and second body panels forming an interior space for collecting items; and

at least one structure being a patch, tape or pouch, the at least one structure comprising a first layer being a barrier layer and including an odor-masking and/or neutralizing agent, the first layer being attached to the bag or liner via attaching means such that the odor-masking and/or neutralizing agent is in communication with the interior space.

THE REFERENCES

Lin	4,105,144	Aug. 8, 1978
Cappuzzo et al. (Cappuzzo)	4,944,393	Jul. 31, 1990

THE REJECTION

Claims 1-9, 14-17, 19-25 and 27-29 stand rejected under 35 U.S.C. § 103 as being unpatentable over Lin in view of Cappuzzo.

OPINION

We affirm the aforementioned rejection.

The appellants state that the claims stand or fall together (brief, page 3). We therefore limit our discussion to the sole

independent claim, i.e., claim 1. See 37 CFR

§ 41.37(c) (1) (vii) (2004).

Lin discloses an insecticide or insect repellent dispenser (14) attached to the inner wall (13) of a trash bag (10) that can be made of polyethylene (which is thermoplastic) (col. 2, lines 12-24 and 66-67). When a tear strip (36) on the dispenser is pulled, insecticide or insect repellent that is inside the dispenser's tubular chamber (30) and is in the form of a solution, emulsion or powder is released and flows downwardly along the inner sides of the trash bag and over trash in the bag (col. 2, lines 30-36). "Preferably a volatile material is utilized to generate fumes throughout the container to repel or kill vermin seeking entry" (col. 3, lines 41-43). The dispenser can have a plastic backing plate (18) fused or attached by heat sensitive adhesive to the inner wall (col. 3, lines 5-10). Alternatively, the insecticide or insect repellent can be coated onto a backing plate (618,¹ 718; figure 7) attached to the inside or outside of the trash bag (col. 5, lines 48-56). The illustrated trash bags have first and second body panels joined along a pair of opposing

¹ Backing plate 618 is omitted from Lin's figures.

sides and a bottom bridging the sides so as to form an open mouth and an interior space for collecting items (figures 1 and 3-7).

Cappuzzo discloses a flexible, polymeric, animal repellent trash bag having deodorizing and animal repellent granules (21 and 22) in a compartment that is attached to an interior surface (17) of a trash bag (10) and covered by a strip (18) (col. 3, lines 45-63; figure 5). When the cover strip is pulled away, some granules (21) are freely distributed inside the bag and other granules (22) having a similar composition are adhesively secured to the trash bag's interior surface (col. 3, line 63 - col. 4, line 4; figure 4).

The appellants argue that Lin does not disclose a barrier layer (brief, page 6). The appellants do not define "barrier layer". What the appellants provide is the barrier layer's function: "The barrier layer assists in keeping the odor-masking and/or neutralizing material in communication with the interior of the bag or liner and, thus, assists in preventing or inhibiting the odor-masking and/or neutralizing material from permeating through the body panel" (specification, page 12, lines 29-32). The appellants' specification states that the barrier layer "comprises a polymeric material such as an ethylene vinyl alcohol (EVOH), polyvinylidene chloride layer

(PVDC), polyester, nylon, cyclic olefin copolymers or combinations thereof" (page 12, lines 10-12). Because this list is merely exemplary, it indicates that polymeric materials in general are suitable as backing layers. Thus, it reasonably appears that Lin's backing layer (18, 618, 718), which is nonpermeable and also is plastic (col. 2, lines 50-51; col. 3, lines 7-8),² can function as a barrier layer, i.e., it can assist to at least some extent in preventing the insecticide or insect repellent from permeating through the trash bag wall.

The appellants argue that "Lin's disclosure of using an insecticide, repellent, or poisonous substance coated on the surface does not appear to have a need for a barrier layer" (brief, page 7). Regardless of whether Lin needs a barrier layer, it reasonably appears that because Lin's only disclosed backing plate material is nonpermeable and plastic (col. 2, lines 50-51; col. 3, lines 7-8), the backing plate, like the appellants' polymeric layer (specification, page 12, lines 10-12), functions as a barrier layer to at least some extent.

The appellants argue that Lin does not disclose a first layer including an odor-masking and/or neutralizing agent (brief, page 6). The appellants are interpreting their claim 1

² The backing plate 618 and 718 material is not disclosed. However, because the only disclosed backing plate material is plastic (col. 3, lines 7-8), it reasonably appears that those backing plates are plastic.

as requiring that the barrier layer includes the odor-masking and/or neutralizing agent. The claim, however, recites that the structure can be a pouch, and the specification states that the pouch can contain a powder placed therein because it is often difficult to embed powders in a patch (page 11, lines 19-22). Thus, the broadest reasonable interpretation of claim 1 in view of the specification is that "at least one structure comprising a first layer being a barrier layer and including an odor-masking and/or neutralizing agent" means that the structure comprises a barrier layer and includes an odor-masking and/or neutralizing agent, not that the structure comprises a barrier layer that includes an odor-masking and/or neutralizing agent (although the claim is open to that structure).³

The appellants argue that Cappuzzo does not disclose a barrier layer that includes an odor-masking and/or neutralizing agent but, rather, simply discloses granules 21 and 22 between two layers (brief, page 7). As discussed above, the broadest reasonable interpretation of the appellants' claim 1 does not require that the barrier layer contains the odor-masking and/or neutralizing agent. Moreover, Lin, not Cappuzzo, was relied

³ During patent prosecution, claims are to be given their broadest reasonable interpretation consistent with the specification, as the claim language would have been read by one of ordinary skill in the art in view of the specification. See *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); *In re Sneed*, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983).

upon by the examiner for a disclosure of a barrier layer (answer, page 6).

The appellants argue that there is no motivation to add Cappuzzo's granules 21 and 22 to Lin's strip 640 because Cappuzzo's granules freely distribute inside the trash bag whereas the insecticide or insect repellent on Lin's strip 640 is a coating (brief, page 8). Cappuzzo's disclosure that particles 22 are adhesively secured to the interior of the bag (col. 3, line 67 - col. 4, line 4) would have fairly suggested, to one of ordinary skill in the art, the use of Cappuzzo's combination of deodorizing and animal repellent granules (col. 3, lines 60-63) in Lin's coating to obtain the benefit of both types of granules. Moreover, Lin is not limited to using insecticide or insect repellent in the form of a coating. Lin also discloses that, like Cappuzzo's granules, the insecticide or insect repellent can be in the form of a powder that flows downwardly onto trash in the bag (col. 2, lines 34-37; col. 3, lines 27-29). Thus, Cappuzzo's disclosure of using deodorizing and animal repellent granules in combination (col. 3, lines 60-63) would have fairly suggested, to one of ordinary skill in the art, using that combination in Lin's tubular pouch to obtain the benefit of both types of granules. Furthermore, Lin's disclosure of using repellent and/or poisonous materials such as

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pyrethrins, malathion and parathion (col. 3, lines 27-34), and particularly the disclosure that volatile materials are preferred (col. 3, lines 41-45), would have fairly suggested, to one of ordinary skill in the art, the use of repellent and/or poisonous materials having strong odors that necessarily mask trash bag odors to at least some extent.

For the above reasons we are not convinced of reversible error in the examiner' rejection.

DECISION

The rejection of claims 1-9, 14-17, 19-25 and 27-29 under 35 U.S.C. § 103 over Lin in view of Cappuzzo 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).

AFFIRMED

CHARLES E. FRANKFORT)
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) BOARD OF PATENT
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Administrative Patent Judge) AND
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