

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOSEPH F. OUELLETTE and RICHARD J. OUELLETTE

Appeal 2007-0807
Application 10/298,456
Technology Center 3700

Decided: May 1, 2008

Before TERRY J. OWENS, MURRIEL E. CRAWFORD, and LINDA E.
HORNER, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 (2002) from a final rejection of claims 2, 6 to 9, 12, 16, 17, 23, 57 to 62 and 67 to 71. Claims 1, 3 to 5, 10, 11, 13, 14, 15, 18, 19, 20, 22 and 63 to 66 have been cancelled. Claims 24 to 56 have been withdrawn from consideration. Claim 21 has been allowed. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

Appellants invented an object conveyor and bagger (Specification 1).

Claim 6 under appeal reads as follows:

6. A conveyor that bags objects conveyed by the conveyor, the conveyor comprising:

a conveying surface that conveys objects in a longitudinal, downstream direction;

a bottom film dispenser that dispenses a bottom film of packaging material to the conveying surface with the bottom film being conveyed in the longitudinal, downstream direction between the conveying surface and the objects conveyed by the conveying surface;

a top film dispenser that dispenses a top film of packaging material to the conveying surface with the top film being conveyed in the longitudinal, downstream direction above the objects conveyed by the conveying surface;

a plurality of connecting devices positioned adjacent the conveying surface that connect the bottom film to the top film with the objects conveyed by the conveying surface between the connected bottom film and top film;

the plurality of connecting devices including a pair of edge connecting devices on laterally opposite sides of the conveying surface that receive laterally opposite edges of the bottom film and top film and connect a bottom film edge to a top film edge; and,

the edge connecting devices on laterally opposite sides of the conveying surface each including a lower guide surface and an opposing upper guide surface, the lower guide surface extending upwardly as the lower guide surface extends in the downstream direction with a portion of the lower guide surface being oriented diagonally and sloping upwardly as the portion of the lower guide surface extends in the downstream direction to guide the bottom film edge upwardly as the bottom film is conveyed in the downstream direction, and the upper guide surface extending downwardly as the upper guide surface extends in the downstream direction with a

portion of the upper guide surface being oriented diagonally and sloping downwardly as the portion of the upper guide surface extends in the downstream direction to guide the top film edge downwardly as the top film is conveyed in the downstream direction.

The Examiner rejected claims 2, 6, 8, 9, 12, 16, 57, 59 to 62, 67 and 69 to 71 under 35 U.S.C. § 102(b) as being anticipated by Niwa.

The Examiner rejected claim 23 under 35 U.S.C. § 103(a) as being unpatentable over Niwa in view of Monaghan or Demler.

The Examiner rejected claims 2, 6 to 9, 57 to 61 and 67 to 71 under 35 U.S.C. § 102(b) as being anticipated by Fiedler.

The Examiner rejected claims 12, 16, 17, 23 and 62 under 35 U.S.C. § 103(a) as being unpatentable over Fiedler in view of Monaghan or Demler.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Demler	US 2,974,461	Mar. 14, 1961
Niwa (as translated)	JP 52-24792	Feb. 24, 1977
Fiedler	US 4,060,959	Dec. 6, 1977
Monaghan	US 4,858,416	Aug. 22, 1989

Appellants contend that Niwa's disclosure is unclear and does not disclose edge connecting devices including a lower guide surface and an opposing upper guide surface.

Appellants further contend that Niwa does not disclose a lower guide surface oriented diagonally and sloping upwardly and an upper guide surface oriented diagonally and sloping downwardly.

Appellants also contend that Monaghan does not disclose a top conveying surface having a plurality of longitudinally extending top

conveying surfaces that are arranged laterally side by side and a lateral spacing between adjacent top conveying surfaces is adjustable.

Appellants further contend that Demler does not disclose a bottom conveying surface and top conveying surface positioned vertically above and opposing the bottom conveying surface where the top conveying surface has a plurality of longitudinally extending top conveying surfaces that are arranged laterally side by side and where the lateral spacing between adjacent top conveying surfaces is adjustable.

Appellants finally contend that Fiedler fails to disclose opposed upper and lower guide surfaces disposed diagonally.

ISSUES

The first issue is whether Appellants have shown that the Examiner erred in finding that Niwa discloses edge connecting devices including a lower guide surface and an opposing upper guide surface.

The second issue is whether the Appellants have shown that the Examiner erred in finding that Niwa discloses a lower guide surface oriented diagonally and sloping upwardly and an upper guide surface oriented diagonally and sloping downwardly.

The third issue is whether the Appellants have shown that the Examiner erred in finding that Monaghan discloses a top conveying surface having a plurality of longitudinally extending top conveying surfaces that are arranged laterally side by side and a lateral spacing between adjacent top conveying surfaces is adjustable.

The fourth issue is whether the Appellants have shown that the Examiner erred in finding that Demler discloses a bottom conveying surface

and top conveying surface positioned vertically above and opposing the bottom conveying surface where the top conveying surface has a plurality of longitudinally extending top conveying surfaces that are arranged laterally side by side and where the lateral spacing between adjacent top conveying surfaces is adjustable.

The fifth issue is whether the Appellants have shown that the Examiner erred in finding that Fiedler discloses opposed upper and lower guide surfaces disposed diagonally.

FINDINGS OF FACT

Niwa discloses a packaging device that includes conveyors 1, 2, 4, and 5. The figures do not clearly depict the other elements of the device. Specifically, the figures are so small and blurred as to be unreadable so that the exact position and operation of the formers 7 cannot be determined. The Niwa written disclosure does not provide assistance in this regard.

Monaghan discloses a packaging device that includes a conveying surface having a plurality of longitudinally extending top conveying surfaces 70 that are arranged laterally side by side having a lateral spacing between adjacent top conveying surfaces 79 (col. 7, ll. 9 to 12; Figure 1). Monaghan does not disclose that the lateral spacing between adjacent top conveying surfaces is adjustable.

Demler discloses a packaging device that includes upper and lower conveying surfaces each having a plurality of longitudinally extending conveying surfaces 7, 7', 8, 8' that are arranged laterally side by side having a lateral spacing between adjacent conveying surfaces (Figure 4). The outer conveying surfaces 7' and 8' move toward and away from the central

conveying surfaces 7, 8 so that packages of different sizes can be clamped (col. 5, ll. 36 to 47).

Fiedler discloses a packaging machine having upper and lower conveyors for feeding upper and lower films from film supply rolls W1 and W2 and a plurality of connecting devices 76, 77 positioned adjacent the conveying surface of conveyor 31 (Figure 6). As can be seen in Figure 6, the guide surfaces are disposed on opposite sides of the conveyor 31 and thus are opposed to each other. These guide surfaces are inclined toward each other and are oriented diagonally. The lower guide surface 77 is sloped upward and the upper guide surface 76 is sloped downward.

ANALYSIS

Rejections based on Niwa

We will not sustain the Examiner's rejections based on Niwa. We agree with the Appellants that the Niwa figures along with the written description are not clear enough to establish anticipation. Any conclusions about the position and function of the formers 7 can only be made by speculation. A reference relied on to prove unpatentability must be so clear and explicit that those skilled in the art will have no difficulty in ascertaining its meaning. *See In re Turlay*, 304 F.2d 893, 899 (CCPA 1962). Therefore, we will not sustain the Examiner's rejection of claims 2, 6, 8, 9, 12, 16, 57, 59 to 62 and 69 to 71 under 35 U.S.C. § 102(b) as anticipated by Niwa.

We will also not sustain the rejection of claim 23 under 35 U.S.C. § 103 as being unpatentable over Niwa in view of Monaghan or Demler for the same reason.

Rejections based on Fiedler

We are not persuaded by Appellants' argument that the Examiner erred in finding that Fiedler discloses opposed upper and lower guide surfaces disposed diagonally. These upper and lower guide surfaces 77 and 76 are clearly depicted in Figure 6 as being opposed to one another in that the guide surface 76 is on the opposite side of the conveying surface 31 in relationship to the guide surface 77. In addition, the left end portion of guide surface 77 is oriented diagonally and sloped downward and the left end portion of guide surface 76 is oriented diagonally and sloped upward. As such, we will sustain the Examiner's rejection of claim 6. We will also sustain the rejection of claims 2, 7 to 9, 57 to 61, and 67 to 71 because the Appellants have not argued the separate patentability of these claims.

We will not sustain the Examiner's rejection of claims 12, 16, 17, 23 and 62 under 35 U.S.C. § 103 as being unpatentable over Fiedler in view of Monaghan because Monaghan does not disclose a plurality of conveying surfaces arranged laterally side by side with an adjustable lateral spacing therebetween. We are not persuaded by the Examiner's argument that the Monaghan device is capable of being modified so that the lateral spacing between the plurality of conveying surfaces is adjustable because the issue in determining obviousness is not whether the device is capable of being modified but, rather, whether it would have been obvious to do so. The Examiner has not presented any rationale to explain why it would have been obvious to modify the Monaghan device so that the lateral spacing between the plurality of conveying surfaces is adjustable.

We will sustain the Examiner's rejection of claims 12, 16, 17, 23 and 62 as being unpatentable over Fiedler in view of Demler. We are not

persuaded by Appellants' argument that the Examiner erred in finding that Demler discloses a bottom conveying surface and top conveying surface positioned vertically above and opposing the bottom conveying surface where the top conveying surface has a plurality of longitudinally extending top conveying surfaces that are arranged laterally side by side and where the lateral spacing between adjacent top conveying surfaces is adjustable. Demler clearly discloses the lateral adjustable spacing between the conveying surfaces 7 and 7' and states that the adjustability allows the conveying surface to accommodate packages of different sizes. Therefore, we will sustain the Examiner's rejection of claims 12, 16, 17, 23, and 62 as being unpatentable over Fielder in view of Demler.

In summary:

The Examiner's rejection of claims 2, 6, 8, 9, 12, 16, 57, 59 to 62, 67 and 69 to 71 under 35 U.S.C. § 102(b) as being anticipated by Niwa is not sustained.

The Examiner's rejection of claim 23 under 35 U.S.C. § 103(a) as being unpatentable over Niwa in view of Monaghan or Demler is not sustained.

The Examiner's rejection of claims 2, 6 to 9, 57 to 61 and 67 to 71 under 35 U.S.C. § 102(b) as being anticipated by Fiedler is sustained.

The Examiner's rejection claims 12, 16, 17, 23, and 62 under 35 U.S.C. § 103(a) as being unpatentable over Fiedler in view of Demler is sustained.

The Examiner's rejection claims 12, 16, 17, 23, and 62 under 35 U.S.C. § 103(a) as being unpatentable over Fiedler in view of Monaghan is not sustained.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

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THOMPSON COBURN, LLP
ONE US BANK PLAZA
SUITE 3500
ST. LOUIS, MO 63101