

The opinion in support of the decision being entered today  
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* OTTFRIED WALDENBURG

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Appeal 2007-1181  
Application 10/513,879  
Technology Center 1700

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Decided: August 14, 2007

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Before EDWARD C. KIMLIN, THOMAS A. WALTZ, and  
LINDA M. GAUDETTE, *Administrative Patent Judges*.

GAUDETTE, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the Examiner's final rejection of claims 8-12 and 14-17. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

We affirm.

Claims 15 and 16 are illustrative of the invention and are reproduced below:

15. A device for detecting the presence of occult blood in feces, said device comprising a liquid tight packet that is opened manually, said packet including a sheet of absorbent material impregnated with a liquid solution that reacts with feces to produce a color change when blood is present, said packet being evacuated to remove air therefrom and sealed to prevent the liquid solution from escaping the packet until opened to use the impregnated sheet of absorbent material, said packet being essentially impermeable to light and air.

16. The device of Claim 15 where the liquid solution comprises guaiac material and hydrogen peroxide.

The Examiner relies on the following prior art references to show unpatentability:

Guadagno	US 4,582,685	Apr. 15, 1986
Waldenburg	US 5,840,584	Nov. 24, 1998

The Examiner made the following rejections:

1. Claims 14-15 under 35 U.S.C. § 103 as unpatentable over Guadagno.
2. Claims 8-12 and 16-17 under 35 U.S.C. § 103 as unpatentable over Guadagno in view of Waldenburg.

## ISSUE

The Examiner contends that the invention as claimed would have been obvious in view of the applied prior art. Appellant contends that the applied prior art fails to disclose or suggest the claim limitation of “air evacuation of

the sealed package holding premixed reagents on the absorbent material.” The issue for us to decide is: Has the Examiner established that the prior art discloses or suggests the claim limitation of premixed reagents within a sealed package as claimed?

For the reasons discussed below, we answer this question in the affirmative.

#### RELEVANT FINDINGS OF FACT

- 1) Guadagno discloses “[a] test kit for preparing a chemical test pad used in testing for the presence of occult blood in a specimen.” (Abstract).
- 2) Guadagno discloses that all of the reagents necessary to perform the test are contained within an outer package and all preparation takes place within the protection of the outer package. (Col. 3, ll. 13-16).
- 3) Guadagno teaches that the outer package is provided to protect the reagent materials from moisture during storage. (Col. 3, ll. 18-19). In one embodiment, the outer package includes a top foil sheet and a bottom foil sheet secured together about their periphery by means of a heat seal adhesive, as previously described. The package is divided into first and second compartments by an internal seal having a weakened portion formed in the middle thereof. A first reagent is retained in the center of a test pad disposed in the first compartment. A

second reagent is contained in the second compartment. (Col. 4, ll. 27-37).

- 4) In use, hand pressure is applied to the outside of the second compartment to rupture or break the internal seal at the weakened portion. The second reagent then flows toward the test pad and is absorbed through the absorbent top layer of the test pad to activate the first reagent. The patient then tears open the outer package on one end to remove the wetted test pad 12 from the outer package. (Col. 4, ll. 54-62).

## ANALYSIS AND CONCLUSIONS

Appellant asserts that the claims stand or fall as a single group. (Br. 6). Therefore, we decide the first ground of rejection on the basis of claim 15 and the second ground of rejection on the basis of claim 16, which depends from claim 15. 37 C.F.R. § 41.37(c)(1)(vii) (2005).

### *Claims 14-15*

The Examiner found that Guadagno discloses the invention as claimed in claim 15 with the exception of a teaching that the package is evacuated to remove air. (Answer 4). The Examiner determined that it would have been obvious to one of ordinary skill in the art at the time of the invention to evacuate air in Guadagno's package upon sealing the layers of the package together since Guadagno teaches that the package should protect the reagents held within the package from moisture during storage, and the removal of air in the package upon formation would remove any moisture

present in the air that could be detrimental to the reagents held within the package. (Answer 4).

Appellant maintains that the two reagents within the Guadagno package are separated and not mixed until the packet is burst by the user, who at the same time tears open the package to expose to air the wetted pad holding the mixed reagents. Appellant thus argues that the Examiner has not established a *prima facie* case of obviousness because Guadagno fails to disclose or suggest “air evacuation of the sealed package holding premixed reagents on the absorbent material.” (Reply Br. 2).

Appellant’s argument is not persuasive. Contrary to Appellant’s contention, we find that the limitation of a “packet including a sheet of absorbent material impregnated with a liquid solution that reacts with feces to produce a color change when blood is present” is clearly taught by Guadagno’s disclosure that the internal seal is ruptured and the reagents mixed within the sheet of absorbent material prior to opening the packet. Based on Gaudagno’s instruction, the user opens the sealed package only after the reagents are mixed therein. (Finding of Fact 4). Regardless of whether the sealed package is opened within seconds, minutes, or hours of rupturing the internal seal (*see* Reply Br. 1-2), the claim limitation is still met (Answer 6). In addition, Appellant’s argument fails to address the Examiner’s finding that it would have been obvious to one of ordinary skill in the art at the time of the invention to evacuate air in Guadagno’s package upon sealing the layers of the package together. Accordingly, the rejection of claims 14 and 15 as unpatentable over Guadagno is affirmed.

*Claims 8-12 and 16-17*

Appellants assert that the claims stand or fall as a single group. (Br. 6). Therefore, we decide this ground of rejection based on claim 16. 37 C.F.R. § 41.37(c)(1)(vii) (2005).

The Examiner found that Guadagno discloses the invention as claimed in claim 16 with the exception that the peroxygen reagent impregnated into the absorbent sheet can be hydrogen peroxide. The Examiner relies on Waldenburg for a teaching of a fecal occult blood testing device in which a solution containing hydrogen peroxide and an alcohol reacts with guaiac material to produce a blue color in the presence of occult blood in the feces. The Examiner concluded that it would have been obvious to one of ordinary skill in the art at the time of the invention to use hydrogen peroxide as the peroxygen reagent impregnated into the absorbent sheet in the fecal occult blood testing device taught by Guadagno since Waldenburg teaches that hydrogen peroxide is a well known and commonly used peroxygen reagent in combination with guaiac and an alcohol. (Answer 5).

Appellant does not contest the aforementioned findings. Rather Appellant argues that neither reference discloses “air evacuation of the sealed package holding *premixed reagents* on the absorbent material.” (Reply Br. 7). We do not find these arguments persuasive for the reasons noted above in connection with claims 14-15. Accordingly, the rejection of claims 8-12 and 16-17 as unpatentable over Guadagno in view of Waldenburg is affirmed.

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ORDER

The rejection of claims 14-15 under 35 U.S.C. § 103 as unpatentable over Guadagno is affirmed

The rejection of claims 8-12 and 16-17 under 35 U.S.C. § 103 as unpatentable over Guadagno in view of Waldenburg is affirmed.

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

AFFIRMED

sld/ls

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