

1 The opinion in support of the decision being entered
2 today is *not* binding precedent of the Board
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6 UNITED STATES PATENT AND TRADEMARK OFFICE
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9 BEFORE THE BOARD OF PATENT APPEALS
10 AND INTERFERENCES
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13 *Ex parte* LEONARD R. KILBY, JOHN M. LUCIDO, JOHN D.
14 LEATHERBEE, and JAMES J. DIVER
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17 Appeal 2007-1581
18 Application 10/670113
19 Technology Center 3700
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22 Decided: September 25, 2007
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25 *Before:* WILLIAM F. PATE, III, MURRIEL E. CRAWFORD, and DAVID
26 B. WALKER, *Administrative Patent Judges.*

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28 CRAWFORD, *Administrative Patent Judge.*
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31 DECISION ON APPEAL
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33 STATEMENT OF CASE

34 Appellants appeal under 35 U.S.C. § 134 (2002) from a final rejection
35 of claims 63 and 64. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

36 This case was heard by this panel of the Board on September 13, 2007.

1 Appellants invented an apparatus for assembling wrapped bakery
2 products into predetermined patterns prior to the loading thereof into bakery
3 trays (Specification 2).

4 Claims 63 and 64 under appeal reads as follows:

5 63. A method of assembling wrapped bakery products into
6 predetermined patterns and thereafter transferring the patterns of wrapped
7 bakery products into bakery trays for transport including the steps of:
8 providing a grouping apparatus for receiving individual wrapped
9 bakery products;
10 arranging groups of between 1 and about 6 wrapped bakery products
11 on the grouping apparatus;
12 providing a turntable;
13 providing a transfer apparatus for moving groups of wrapped bakery
14 products from the grouping apparatus onto the turntable; and
15 arranging a subsequent group of wrapped bakery products on the
16 grouping apparatus during movement of a previous group of wrapped bakery
17 products from the grouping apparatus onto the turntable under the action of
18 the transfer apparatus.

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20 64. A method of forming wrapped bakery products into
21 predetermined pattern thereafter transferring the patterns of wrapped bakery
22 products into bakery trays including the steps of:
23 providing a turntable;
24 forming a pattern of wrapped bakery products on the turntable;
25 providing a transfer apparatus;
26 moving patterns of wrapped bakery products directly from the
27 turntable into bakery trays under the action of the transfer apparatus; and
28 forming a subsequent pattern of wrapped bakery products on
29 the turntable during movement of a previous pattern of wrapped bakery
30 products into a bakery tray under the action of the transfer apparatus.

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33 The Examiner rejected claim 63 under 35 U.S.C. § 102(b) as being
34 anticipated by Euverard.

1 The Examiner rejected claim 64 under 35 U.S.C. § 102(b) as being
2 anticipated by Schneider.

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

5 Euverard	US 4,522,292	Jun. 11, 1985
6 Schneider	US 5,317,859	Jun. 07, 1994

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8 Appellants contend that Euverard does not disclose a grouping
9 apparatus for receiving individual wrapped bakery products and a separate
10 transfer apparatus for moving groups of wrapped bakery products from the
11 grouping apparatus to the turntable.

12 Appellants also contend that Schneider does not disclose the step of
13 moving patterns of wrapped bakery products directly from the turntable into
14 bakery trays.

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ISSUES

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18 The first issue is whether the Appellants have shown that the
19 Examiner erred in finding that Euverard discloses a grouping apparatus for
20 receiving individual wrapped bakery products and a separate transfer
21 apparatus for moving groups of wrapped bakery products from the grouping
22 apparatus to the turntable.

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23 The second issue is whether the Appellants have shown that the
24 Examiner erred in finding that Schneider discloses the step of moving
25 patterns of wrapped bakery products directly from the turntable into bakery
26 trays.

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1 FINDINGS OF FACT

2 Euverard discloses a method of assembling wrapped bakery products
3 into predetermined patterns including the steps of providing a grouping
4 apparatus for receiving wrapped bakery products. This grouping apparatus
5 comprises the conveyor 21 with conveyor belt 25, grouping gate 27, and
6 gate 68. The bakery products are fed via the conveyor 21 and grouped into
7 groups of four by the grouping gate 27 and the gate 68 (Figs. 1 and 3). The
8 bakery products are then moved from the conveyor 21 to the turntable by a
9 transfer apparatus which comprises conveyor section 47 that includes rollers
10 48. (Euverard, col. 8, ll. 26-29; Fig. 2). As such, Euverard discloses a
11 grouping apparatus separate from the transfer apparatus. In addition, as the
12 conveyor 21 moves the bakery products to the transfer apparatus and to the
13 turntable, another group of bakery products is moved to the grouping
14 apparatus by conveyor 21 (Euverard Fig. 3; col. 8, ll. 29-32).

15 Schneider discloses a method of forming wrapped bakery products
16 including the step of moving patterns of wrapped bakery products from a
17 turntable into bakery trays. However, the bakery products are moved from
18 the turntable to a transfer conveying assembly 80 to a loader assembly 110
19 and then into bakery containers 25 (Figs. 1 and 4A). The bakery products
20 are not moved directly from the turntable into bakery trays.

21 DISCUSSION

22 We will sustain the Examiner's rejection of claim 63 because we find
23 that Euverard discloses the claimed grouping apparatus in the form of
24 grouping gate 27, conveyor 21, and gate 68. This grouping apparatus (21,
25 27, 68) is indeed separate from the transfer apparatus which moves the

1 bakery groups from the grouping apparatus onto the turntable. The transfer
2 apparatus takes the form the the conveyor section 47 with its associated
3 rollers.

4 We will not sustain the Examiner's rejection of claim 64 because
5 Schneider does not disclose the step of moving the bakery products directly
6 from the turntable to the bakery trays. Rather, Schneider discloses that the
7 bakery products are moved first to a transfer conveyor assembly, then to a
8 loader assembly and only then to bakery trays.

9 No time period for taking any subsequent action in connection with
10 this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2006).

11 AFFIRMED-IN-PART

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