

The opinion in support of the decision being entered today
is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ARTHUR R. SLATERS, JR.

Appeal 2007-2107
Application 10/190,123
Technology Center 1734

Decided: July 26, 2007

Before THOMAS A. WALTZ, PETER F. KRATZ, and
JEFFREY T. SMITH, *Administrative Patent Judges*.

WALTZ, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on an appeal under 35 U.S.C. § 134 from the Primary Examiner's final rejection of claims 1-6 and 8-21, which are the only claims pending in this application. We have jurisdiction pursuant to 35 U.S.C. § 6(b).

According to Appellant, the invention is directed to a method of forming plastic carriers by punching carriers from a web of plastic in adjacent rows and ranks, and separating carriers within the ranks to leave

carriers interconnected only in rows after the web is advanced from the punch press (Br. 7-10). Independent claim 1 is illustrative of the invention and is reproduced below:

1. A method of forming plastic carriers for containers, said method comprising steps of:

providing a web of carrier material by welding at least two sheets together;

forming carriers in the web in adjacent rows and adjacent ranks, with adjacent carriers in a row remaining connected to each other and adjacent carriers in a rank remaining connected to each other, said forming including removing material from the web to form apertures in the nature of loops for holding containers, a handle and a truss-like suspension between the handle and the apertures;

advancing the web of formed carriers; and

after forming said carriers in adjacent rows and adjacent ranks, and after advancing the web of formed carriers interconnected in rows and in ranks, separating carriers within said ranks to leave carriers interconnected only in said rows.

The Examiner has relied on the following prior art references as evidence of obviousness:

Fisher	US 3,044,230	Jul. 17, 1962
Marco	US 5,072,829	Dec. 17, 1991
Broskow	US 5,487,465	Jan. 30, 1996
Jackson	US 6,394,330 B1	May 28, 2002

ISSUES ON APPEAL

Claims 1-6, 8, 9, 13, 14, 16, 19, and 20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Broskow in view of Fisher and Jackson (Answer 3).

Claims 3, 4, 9-12, 15-18, and 21 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Broskow in view of Fisher, Jackson, and Marco (Answer 5).

Appellant contends that claim 1 on appeal requires advancing the web with formed carriers remaining connected in both rows and ranks, and Jackson does not teach partial slitting for the purpose of improving the performance of upstream processing (Br. 16).

Appellant contends that it was not known to perform downstream separation of connected ranks of carriers, and Jackson does not teach modification of the stamping process by removing the slitting operation some distance from the punch press (Br. 17). Appellant further contends that there is no “connecting reference” to lead one to combine the teaching of Jackson with Broskow and Fisher (Br. 17).

Appellant contends that Jackson does not address the problem addressed by Appellant, and does not teach where the final slitting should occur relative to the punching process (Reply Br. 6-8, 11).

The Examiner contends that Jackson teaches that it is generally more efficient to process material in wider webs, and that wandering and other problems are avoided by keeping the web portions together as a full width web until complete separation near the winding station (Answer 7).

Accordingly, the issue presented from the record in this appeal has been agreed upon by Appellant and the Examiner, and we agree: namely, whether it would have been obvious to one of ordinary skill to have punched rows and ranks of carriers in a single wide continuous web, followed by separation of the single wide continuous web into individual webs each

having a row of carriers only after advancing the web away from the punch, as opposed to separating into individual webs during the punching (Answer 7; Reply Br. 5).

We determine that the Examiner has properly established a *prima facie* case of obviousness in view of the reference evidence, which *prima facie* case has not been adequately rebutted by Appellant's arguments. Therefore we AFFIRM both grounds of rejection on appeal essentially for the reasons stated in the Answer, as well as those reasons set forth below.

OPINION

We determine the following factual findings from the record in this appeal:

(1) Broskow discloses a method of making plastic carriers for carrying containers comprising providing two continuous sheets of plastic material, joining the two sheets at a seam or joined portion by heat seal fusing to form a combined sheet, stamping the combined sheet by a stamping die (punching) to form a continuous strip of carriers having a handle and apertures, and rolling the continuous web of carriers (Answer 3; *see* Broskow, Figures 1 and 5; Abstract; col. 1, ll. 5-6 and 57-65; col. 3, ll. 40-42; and col. 4, ll. 30-57);

(2) Fisher discloses a carrier for containers with slits and holes made by a punch press, and teaches that the carrier could be formed from a blank much wider than that shown, with several carriers being formed simultaneously side by side (Answer 4; *see* Fisher, col. 1, ll. 8-9; col. 2, ll. 12-19; and Figures 1 and 2);

(3) Jackson teaches that it is generally more efficient to produce and/or process material in wider webs but often more convenient to package, ship, sell, and/or use the material in narrower rolls (Answer 4; *see* Jackson, Abstract; and col. 1, ll. 13-21);

(4) Jackson teaches the problem of “wandering” which happens to narrow webs when guided and under tension (col. 2, ll. 13-21);

(5) Jackson discloses a two-stage separation process to combat “wandering” where the first stage involves a partial separation but leaves the web portions connected to be handled as a full width web, and after handling, processing, and transporting, complete separation occurs near the winding station (Answer 4; *see* Jackson, col. 3, l. 59-col. 4, l. 19; and col. 6, ll. 9-16);

(6) Jackson teaches that the web portions after the first stage separation can be handled as a full width web, thus allowing conventional apparatus to be employed but avoiding the handling and tensioning of each of the web portions separately that can lead to wandering (Answer 4; *see* Jackson, col. 6, ll. 40-53);

(7) Jackson teaches that other web processes can be done during the period when the full width web is being guided and transported between the first and second separation stages (col. 7, ll. 6-12);

(8) Jackson teaches various web materials can be employed, and the “lines of weakness” that substantially separate the web portions can be slits or other alternatives (col. 9, ll. 39-55; and col. 11, ll. 21-24); and

(9) Marco teaches carrier stock with weakened perforated lines to facilitate severance (Answer 6; *see* Marco, col. 4, ll. 12-20).

Under 35 U.S.C. § 103, the factual inquiry into obviousness requires a determination of (1) the scope and content of the prior art; (2) the differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) secondary considerations. *See Graham v. John Deere of Kansas City*, 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966). “[A]nalysis [of whether the subject matter of a claim is obvious] need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1740-41, 82 USPQ2d 1385, 1396 (2007), quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336-37 (Fed. Cir. 2006). The analysis supporting obviousness should be made explicit and should “identify a reason that would have prompted a person of ordinary skill in the art to combine the elements” in the manner claimed. *KSR*, 127 S. Ct. at 1731, 82 USPQ2d at 1389.

Applying the preceding legal principles to the factual findings in the record of this appeal, we determine that the Examiner has properly stated an analysis identifying reasons why a person of ordinary skill in the art would have combined the elements in the manner claimed. As shown by factual findings (1) and (2) listed above, and acknowledged by Appellant as known in the art (Br. 14), we determine that the formation of plastic carriers in adjacent rows and ranks would have been well within the ordinary skill in this art. As shown by factual findings (3) through (6) listed above, we determine that Jackson teaches the benefits and advantages of processing web material in full width, with partial separation leaving connected

portions, and only completely separating into rows *after* processing but before the winding operation. As further shown by factual finding (7) listed above, we determine that Jackson clearly teaches that other processing, which one of ordinary skill would have interpreted as including stamping or punch pressing, should occur between the first and second (complete) separation stages. Accordingly, we agree with the Examiner that Jackson teaches and suggests the benefits of keeping the portions of the web as a full width web material until just before complete separation into rows for winding into an end use roll.

As shown by factual findings (8) and (9) listed above, and not contested by Appellant (Br. 23), we determine that the perforated lines taught by Marco would have been within the scope of the lines of weakness contemplated by Jackson to facilitate separation in the first and/or second stage.

For the foregoing reasons and those stated in the Answer, we affirm both rejections presented in this appeal. The decision of the Examiner 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)(1)(iv).

AFFIRMED

clj

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Todd T. Taylor
Taylor & Aust, PC
142 S. Main St.
P.O. Box 560
Avilla, IN 46710