

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 GUY S. KIRALY, DONALD P. KLEIN,
and BRIAN J. BAUMGART

Appeal 2007-2415
Application 11/200,690
Technology Center 1700

Decided: July 17, 2007

Before EDWARD C. KIMLIN, BRADLEY R. GARRIS, 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 1, 7, 8, and 10-12, the only claims pending in this application. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

We affirm.

Appellants' invention relates to labels with visual effects which are made by placing lenticular lenses over images printed on label stock. (Br. 2). Independent claim 1 is illustrative of the invention:

1. A continuous web of lenticular labels comprising;

a label stock having a longitudinal axis;

a first lenticular assembly including first lenticules adhered to the label stock, said first lenticules transverse to the longitudinal axis, said first lenticular assembly and said label stock forming a first lenticular label;

a second lenticular assembly including second lenticules adhered to the label stock, said second lenticules traverse to the longitudinal axis, said second lenticular assembly and said label stock forming a second lenticular label, said first and second lenticular assemblies disposed on the label stock so that the first lenticules are substantially parallel to the second lenticules; and

a release liner secured to at least one of the label stock and the first and second lenticular assemblies.

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

Birkholz	US 4,895,747	Jan. 23, 1990
Sekiguchi	US 5,494,445	Feb. 27, 1996

The Examiner made the following rejection:

Claims 1, 7, 8, and 10-12 under 35 U.S.C. § 103(a) as unpatentable over Birkholz in view of Sekiguchi.

ISSUE

The Examiner contends that it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Birkholz's labels with a lenticular viewing member as taught by Sekiguchi. Appellants contend that one of ordinary skill in the art would not have been motivated to make the Examiner's proposed modification because such modification would destroy the intended function of Birkholz. The issue for us to decide is: Has the Examiner provided a reasonable basis to conclude that one of ordinary skill in the art would have been motivated to combine Birkholz and Sekiguchi in the manner claimed?

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

RELEVANT FINDINGS OF FACT

- 1) Birkholz discloses a plurality of labels, each comprising (a) a sheet member having a first major surface and an opposing second major surface, (b) a layer of moisture dissipative material applied to said second major surface of said sheet member, and (c) a pressure sensitive adhesive applied to said moisture dissipative layer opposite said second major surface of said sheet member, and further comprising a common removable liner, wherein said sheet members are each releasably adhered to said common liner by said layer of pressure sensitive adhesive and each of said sheet members may be removed from said common liner and adhered to the support surface and then removed from the support surface by dissipating said moisture dissipative layer.
(Claim 9).

- 2) Birkholz discloses that “[t]he moisture dissipative layer may include a [layer of] moisture activated adhesive such as is commonly used in conventional postage stamps.” (Birkholz, col. 2, ll. 47-48).
- 3) Birkholz discloses that “[t]he moisture dissipative layer may also include a barrier coating that prevents migration of materials through the sheet member from the second surface to the first surface.” (Birkholz, col. 2, ll. 51-54).
- 4) Birkholz teaches that removal of a label from the support surface is effected by applying moisture, such as by immersing the label and support surface in water to dissipate the layer of moisture dissipative material. (Birkholz, col. 3, ll. 8-12).
- 5) According to Birkholz, the sheet member may be constructed of stamp grade paper, polymeric film or metallic foil. (Claims 5-7).
- 6) Sekiguchi discloses a postage stamp display comprising a postage stamp having an image printed thereon, which may include indicia such as the amount of postage and the country of origin. (Sekiguchi, col. 32, ll. 17-26).
- 7) Sekiguchi discloses bonding or molding a rectangular transparent viewing member, such as a lenticular lens, over the front face of the stamp. (Sekiguchi, col. 32, ll. 26-34).
- 8) According to Sekiguchi, the back of the stamp may include a gum (adhesive) which is activated with moisture, e.g., saliva or water, in order to stick the stamp on an envelope. Alternatively, the back of the stamp may include a self-sticking adhesive. (Sekiguchi, col. 32, ll. 37-40).

ANALYSIS AND CONCLUSIONS

The Examiner found that Birkholz discloses the invention as claimed with the exception of a lenticular assembly. (Answer 3). The Examiner notes that Birkholz teaches that suitable label stock includes stamp grade paper. (Answer 4). The Examiner further found that Sekiguchi discloses the use of a lenticular lens on an image printed on an underlying web, such as a postage stamp. (Answer 3). The Examiner concluded that it would have been obvious to one of ordinary skill in the art at the time of the invention to have provided Birkholz's labels with a lenticular viewing member as taught by Sekiguchi to facilitate viewing of the images on Birkholz's labels. (Answer 4).

Appellants dispute the Examiner's proposed motivation for combining the applied prior art, arguing that one of ordinary skill in the art would not have been motivated to modify Birkholz to include the lenticular member of Sekiguchi because such modification would destroy the intended function of Birkholz. (Br. 8). In particular, Appellants maintain that Sekiguchi's "plastic or glass lenticular member would encapsulate the top surface of the stamp, substantially impair contact of the dissipative layer 20 with water applied over the stamp, and thereby defeat the Birkholz purpose/function of making the stamp easily removed or washed-off." (Br. 8).

Contrary to Appellants' contention, we find that the facts and reasons set forth by the Examiner provide a reasonable basis to conclude that one of ordinary skill in the art would have been motivated to combine the references in the manner claimed. *See KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1739, 82 USPQ2d 1385, 1395 (2007) (A prima facie case of obviousness is established where the Examiner demonstrates that the

invention is nothing more than the predictable result of a combination of familiar elements according to known methods). Contrariwise, we find that Appellants' position lacks factual support. For example, Appellants have not identified any teaching in Birkholz requiring application of water "over" the label. Birkholz teaches that the layer of moisture dissipative material may be dissipated by immersing the label and support surface in water. (Finding of Fact 4). Thus, water could enter the dissipative material along an edge of the label, i.e., an area of the label which is not covered by the lenticular member.

Appellants further contend that, even if the references were combined, there is no teaching or suggestion of orienting the lenticules in the manner claimed. (Br. 9). We do not find this argument persuasive, since Appellants have not addressed the Examiner's finding that the claimed orientation is suggested by Birkholz Figure 3 and Sekiguchi Figures 108 and 109. (Answer 5-6).

The rejection of claims 1, 7, 8, and 10-12 under 35 U.S.C. § 103(a) as unpatentable over Birkholz in view of Sekiguchi is affirmed.

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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).

AFFIRMED

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