

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEEN VESBORG

Appeal 2007-2896
Application 09/950,910
Technology Center 3700

Decided: November 5, 2007

Before CHARLES F. WARREN, CATHERINE Q. TIMM, and
LINDA M. GAUDETTE, *Administrative Patent Judges*.

TIMM, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 1-10. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE and REMAND.

I. BACKGROUND

The invention relates to a molded package. Claim 1 is illustrative of the subject matter on appeal:

1. A molded package having a hologram image simultaneously molded with said package to be an integral section of a plastic surface thereof the package and the hologram image having been formed in the same molding step.

The Examiner rejects the claims as follows:

1. Claims 1, 5, 9, and 10 under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Suzuki et al. (JP 05112351 A published May 7, 1993) (as translated);
2. Claims 2, 3, and 8 under 35 U.S.C. § 103(a) as unpatentable over Suzuki;
3. Claims 4 and 6 under 35 U.S.C. § 103(a) as unpatentable over Suzuki in view of Fresnel et al. (US 6,113,720 issued September 5, 2000); and
4. Claim 7 under 35 U.S.C. § 103(a) as unpatentable over Suzuki in view of Hippely (US 5,476,194 issued December 19, 1995).

Appellant requests review of all of the above rejections (Br. 3¹).

II. DISCUSSION

The Examiner's Rejection

With respect to the Examiner's rejections, the dispositive issue on appeal arising from the contentions of the Appellant and Examiner is: Is

¹ References to the Brief are to the Brief filed May 2, 2006.

claim 1 broad enough to encompass the molded package described by Suzuki? We answer this question in the negative.

Claim 1 is directed to a package and, as such, we consider how the claim language limits the structure of the package. “[D]etermination of patentability is based on the product itself.” *In re Thorpe*, 777 F.2d 695, 697 (Fed. Cir. 1985). In determining the structural limits on the package, “every limitation in the claim must be given effect rather than considering one in isolation from the others.” *In re Geerdes*, 491 F.2d 1260, 1262-63 (CCPA 1974).

The claim requires a package structure that would result from simultaneously molding the hologram image with the package in a way that results in the hologram being “an integral section of a plastic surface thereof.” As used in the claim, “integral section” must be interpreted as a section of the plastic surface, the hologram being a part of the molded plastic surface itself. The word “integral” in this context does not allow for the hologram to reside on a separately formed sheet or surface. While in other contexts the word “integral” may have a broader meaning, “[i]t is well established that when a general term is used to introduce a concept that is further defined more narrowly, the general term must be understood in the context in which the inventor presents it.” *In re Glaug*, 283 F.3d 1335, 1340 (Fed. Cir. 2002).

Interpreting claim 1 as broadly as is reasonable in light of the Specification as it would be interpreted by one of ordinary skill in the art, *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004), we determine that this claim does not encompass a container having a separately formed holographic sheet on the surface of an injection molded material.

Such a hologram residing on a separate sheet is not an *integral section* of the *plastic surface* as required by claim 1. Therefore, claim 1 does not encompass the package of Suzuki.

Because Suzuki is relied upon in each of the rejections in the same manner, and the other references do not overcome the deficiency discussed above, we cannot sustain any of the rejections.

Remand

We remand for the Examiner to consider patentability in view of the following references and any others deemed relevant. Namely, we remand for the Examiner to consider patentability in view of US 6,929,761 B2 to Gelardi et al., US 5,227,897 to Fohrman, US 5,071,597 to D'Amato, and US 5,200,253 to Yamaguchi.²

Gelardi, Fohrman, and D'Amato all disclose molding processes in which a hologram is formed during a molding operation. The mold in each case includes a hologram surface relief pattern. The molded material is shaped within the mold and against the hologram relief pattern to directly form the hologram in the molded part.

As explained by D'Amato:

A predominant technique for forming plastic molds is by mechanically machining them in the shape of the article to be produced. It has been suggested that an insert be positioned against an inside surface of such a mold in order to form a hologram simultaneously with forming the molded piece. The insert in such a case is a thin surface relief hologram metal master. Formation of the hologram in the surface of the molded part at the same time the molded part is formed is an improvement over

² D'Amato was cited by Applicant in the PTO-1449 of March 12, 2003. Gelardi, Fohrman, and Yamaguchi were not previously of record.

the two-step procedure wherein the molded part is first made in a normal manner and then a separate hologram replica in the form of a film is subsequently attached to the molded part.

(D'Amato, col. 1, ll. 27-39). These references further show that it was known in the art to produce a range of products, including packages in such direct molding processes (Fohrman, col. 6, ll. 10-23), and that the products can be formed by a range of molding techniques such as injection molding, blow molding, and vacuum or pressure forming (i.e., thermoforming) (Gelardi, col. 1, ll. 39-41; D'Amato, abstract). D'Amato exemplifies the formation of a model container cap 21 used to form a cap with an integral hologram on its top surface (D'Amato, col. 5, ll. 9-11; Fig. 4A).

Yamaguchi shows that it was known to place a sheet including a hologram onto particular types of packages such as bottles and containers, including onto curved surfaces, flat surfaces, and the closures of those packages (Yamaguchi, Figs. 30-32; col. 22, ll. 5-11). Yamaguchi's labeling technique is one of the techniques (two-step procedure mentioned by D'Amato) to be replaced by the direct molding process of Gelardi, D'Amato, and Fohrman.

We more generally note that the direct molding method of D'Amato, Gelardi, and Fohrman was considered to be an improvement over, or alternative to, insert or in-mold labeling techniques (such as that of Suzuki), and multi-step processes of attaching labels (Yamaguchi) or hot stamping (embossing) the hologram onto the formed article (D'Amato, col. 1, ll. 27-48; Gelardi, col. 1, ll. 12-26; Fohrman, col. 1, ll. 43-60).

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The Examiner should consider the above references as well as any other pertinent evidence in determining the patentability of what is claimed.

III. DECISION

The decision of the Examiner is reversed, but we remand the Application to the Examiner for further review of the question of patentability.

REVERSED and REMANDED

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