

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 CHRIS KREUTNER

Appeal 2007-2897
Application 09/934,777
Technology Center 3600

Decided: September 26, 2007

Before DONALD E. ADAMS, DEMETRA J. MILLS, and NANCY J. LINCK,
Administrative Patent Judges.

MILLS, *Administrative Patent Judge.*

DECISION ON APPEAL

The Appellant appeals the Examiner's final rejection of claims 6-11 and 13-21 for obviousness. We have jurisdiction under 35 U.S.C. § 6(b) (2006).

The following claims are representative:

6. A packaging tape system, comprising:
multiple rolls of adhesive tape having a sufficient length to extend across a face of a box and seal two flaps of the box in a closed position; and indicia repeatedly pre-printed on each roll of the adhesive tape

along the length thereof indicating a single room or location within a house or office from which contents of the box originated or are destined within another house or office;

wherein each roll is of a distinctive color so as to be readily visually distinguishable from another roll indicating another room or location within the house or office; and

wherein the box can be sealed and labeled simultaneously without the marking the box or tape with a writing instrument.

9. A process for packaging articles to be moved, comprising the steps of: supplying a moving box having opposed open flaps; placing articles to be moved into the moving box; closing the flaps toward one another; and applying adhesive tape over substantially the length of opposing edges of the closed flaps to hold the flaps in a closed position, the adhesive applying adhesive tape over substantially the length of opposing edges of the closed flaps in a closed position, the adhesive tape having indicia repeatedly pre-printed thereon indicating a single room or location from which the articles were taken within a house or office, or where the box of articles is destined within another house or office, the moving box is sealed and labeled simultaneously without the need more [sic.] marking the tape or the box with a writing instrument.

17. A packaging tape system, comprising:
a roll of adhesive tape configured to extend across a face of a box and seal two flaps of the box in a closed position; and
indicia repeatedly pre-printed on the adhesive tape indicating a single room or location in a house from which contents of the box originated or are destined within another house, wherein the pre-printed indicia relating to the rooms and locations of the house is selected from: a bedroom, a bathroom, a kitchen, a dining room, a living room, a garage, a storage room, an office, a study, a den, a family room a utility room;
wherein the box can be sealed and labeled simultaneously without marking the box or tape with a writing instrument.

19. A packaging tape system, comprising:
a roll of adhesive tape configured to extend across a face of a box and seal two flaps of the box in a closed position; and
indicia repeatedly pre-printed on the adhesive tape indicating single a [sic] room or location in an office from which contents of the box originated or are destined within another office, wherein the pre-printed indicia relating to the

single room or location within the office is selected from: a breakroom, a conference room, a file room, a reception area, an office, a computer and a department;

wherein the box can be sealed and labeled simultaneously without marking the box or tape with a writing instrument.

References Cited

Plummer	US 4,252,258	Feb. 24, 1981
Williams	US 4,557,971	Dec. 10, 1985
Kitagawa	US 5,099,991	Mar. 31, 1992
Okisawa	JP 110927224A	Sep. 19, 1997

Grounds of Rejection

Claims 17 and 19 stand rejected under 35 U.S.C. § 103(a), for obviousness over Williams in view of Okisawa.

Claims 9-11 stands rejected under 35 U.S.C. § 103(a), for obviousness over Kitagawa in view of Williams and Okisawa.

Claims 6-8 and 17-20 stands rejected under 35 U.S.C. § 103(a), for obviousness over Plummer in view of Williams.

Claims 9, 13-16 and 21 stand rejected under 35 U.S.C. § 103(a), for obviousness over Kitagawa in view of Plummer and Williams.

DISCUSSION

Claims 17 and 19 stand rejected under 35 U.S.C. § 103(a), for obviousness over Williams in view of Okisawa. We select claim 17 as representative of this rejection as Appellant has not provided separate argument for claim 19. 37 C.F.R. § 41.37(c)(1)(vii).

The Examiner finds that

Williams teaches self-adhereable tape comprising a pre-printed message such as "Handle with Care" or "Fragile" such that the tape serves not only to seal a carton, but also to communicate a message. Williams also teaches indicia related to the address or destination of the carton. The tape taught by Williams may be dispensed from a tape-dispensing machine (not shown) which automatically moistens the gumming layer 22 and cuts the tape to length. (See column 4, lines 7-17).

Okisawa teaches an adhesive tape 1 with repeated pre printed indicia 2 listing the rooms of a house in a side-by-side arrangement. The destination of the box in which the tape is applied is indicated by marking the already printed destination room with a circle.

(Answer 4.)

The Examiner concludes:

It would have been obvious to one having ordinary skill in the art at the time this invention was made to construct the address indicia on the tape taught by Williams with a room designation[] as taught by Okisawa to further define the destination of the seal carton.

(Answer 4.)

In order to determine whether a prima facie case of obviousness has been established, we considered the factors set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1996); (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; (3) the level of ordinary skill in the relevant art; and (4) objective evidence of nonobviousness, if present.

In the present case we find that it was known to those of ordinary skill in the art to have messages pre-printed on a carrier layer of a tape and it is further known to customize the message desired on the tape. (Williams, col. 1, ll. 43-53.) It was also known in the art to customize tape with an address or destination, company

name or warning. (Williams, col. 2, ll. 23-31, col. 3, ll. 33-36.) Okisawa further evidences that it was known in the art to provide a tape with repeating room destinations to reduce the inconvenience of writing the room designation.

(Okisawa, translation 3 ¶10, Drawing 1.) We further find that the claim language before us includes the transitional language "comprising", which allows for the inclusion of additional repeated locations on the tape.

We find that it would have been obvious to one of ordinary skill in the art to provide a tape with a single, repeating room designation in view of the combination of Williams, teaching a preprinted tape with a single address or destination, and Okisawa, teaching a packing tape with multiple repeating room designations. The combination of Williams and Okisawa would not have required circling of a room designation or location and thus no marking of the box or tape with a writing instrument would have been required.

Appellant argues Okisawa teaches that a "selected room or location is circled with a writing instrument so as to identify the destination of the box. This not only requires a writing instrument and additional steps, but can present the problem of smudging, . . . as disclosed in Applicant's application." (Br. 14.) We are not persuaded by this argument. Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097, 231 USPQ 375, 380 (Fed. Cir. 1986). The test of obviousness is whether the teachings of the prior art, taken as a whole, would have made obvious the claimed invention. *In re Gorman*, 933 F.2d 982, 986, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991). Williams teaches pre-printed tape with a single address or destination. We find one of ordinary skill in the art aware of the prior art as a whole, including the teachings of Okisawa of a tape repeating multiple room designations, would have

been motivated to provide a repeated single address or destination on pre-printed packaging tape, as taught by Williams. We find that a writing instrument would not have been required to circle a specific location when a repeating single address or location is printed on the tape.

The obviousness rejection of claims 17 and 19 over Williams in view of Okisawa is affirmed.

Claims 9-11 stand rejected under 35 U.S.C. § 103(a), for obviousness over Kitagawa in view of Williams and Okisawa. We select claim 9 as representative of this rejection as Appellant has not provided separate argument for other claims. 37 C.F.R. 41.37(c)(1)(vii).

The Examiner finds that

Kitagawa teaches a method of packing electrolytic capacitors within a box comprising the step of providing a box 18, inserting the electrolytic capacitor 14 within the box 18 of corrugated cardboard with flaps 191, 191, 192, 192. Thereafter, the flaps 191, 191, 192, 192 are closed and the box is closed by known adhesive tapes 20 to seal the box 18. (See column 3, lines 12-31). Kitagawa does not teach tape having preprinted indicia thereon. Williams teaches indicia related to the address or destination of the carton. Okisawa teaches an adhesive tape with repeated pre printed indicia 2 listing the rooms of a house in a side-by-side arrangement.

(Answer 5.)

The Examiner concludes:

It would have been obvious to one having ordinary skill in the art at the time this invention was made to construct the tape of the package taught by Kitagawa with pre-printed address indicia as taught by Williams to provide a means to indicate the designation of the box. In addition, it would have been obvious to one having ordinary skill in the art at the time this invention was made to construct the tape taught

by Kitagawa and Williams with repeating designation indicia as taught by Okisawa to provide a means to further define the destination of the box/package and as a means to provide the indicia extending over the entire length of the tape so that the tape would convey the same message over the length of the tape.

(Answer 5-6.)

The Examiner has provided sufficient evidence to support a prima facie case of obviousness of the claimed subject matter. Kitagawa discloses a process of sealing a box with tape. We have discussed the teachings of Williams and Okisawa (*see supra*, at pp. 4-6).

Appellant argues that Kitagawa does not overcome the shortcomings of Okisawa. (Br. 16.) For the reasons discussed previously, we have found no shortcomings in the combination of Williams and Okisawa. The obviousness rejection is affirmed.

Claims 6-8 and 17-20 stand rejected under 35 U.S.C. § 103(a), for obviousness over Plummer in view of Williams. We select claim 6 as representative of this rejection as Appellant has not provided separate argument for other claims. 37 C.F.R. 41.37(c)(1)(vii).

The Examiner finds that

Plummer teaches a gang tape dispenser 10 for a multiplicity of dissimilar rolls of pressure sensitive tape 51 selectively usable at the user option. Each roll may bear repeated distinctive symbols and/or color dissimilar from those on the other rolls enabling the user to employ the strip alone or in combination for coding and/or identifying articles. Although the drawings show numeric indicia on the tape rolls, Plummer teaches that other symbols or combination of symbols may be disposed on the different tape rolls. Plummer also teaches that the rolls may be distinguished from one another [sic.] by various other means as by different colors, letters or symbols as well as by various

colors of tapes imprinted with various symbols. (See column 3, lines 39-63).

(Answer 6-7.)

The Examiner acknowledges that Plummer does not teach the different symbols on the rolls comprising the names of rooms, locations or destinations. (Answer 7.)

The Examiner, therefore, relies on Williams as teaching a self-adhereable tape comprising a pre-printed message . . . such that the tape serves not only to seal a carton, but also to communicate a message [including] the address or destination of the carton. . . . (See column 4, lines 7-17).

(Answer 7.)

The Examiner concludes:

It would have been obvious to one having ordinary skill in the art at the time this invention was made to construct the tape dispenser by Plummer with the pre-printed indicia as taught by Williams to provide a means to convey the destination or room contents of the box in which the tape is applied.

(Answer 7.)

We find the Examiner has provided sufficient evidence to support a prima facie case of obviousness. Plummer teaches that it was known in the art to provide pressure sensitive tape bearing repeated symbols, including letters, and that the tape may be of various colors. (Plummer, col. 3, ll. 59-63.) Williams teaches that it was known in the art to provide a packaging tape with an address or destination. (Williams, col. 1, ll. 51-54, col. 2, ll. 23-31.) Thus, we find it would have been obvious in view of the teachings of Plummer and Williams to provide a packaging tape of different colors with a repeating location or destination printed on the tape.

Appellant argues "[l]abeling boxes having numeric indicia or other symbols, even if color coded, does not arise to the present claimed invention." (Br. 17.) With respect to this argument Appellant references a Declaration of record submitted by the inventor, Chris Kreutner. The Declaration describes sales of "labeled packaging tape" (Declaration, at 2), and discusses the teachings of Hunter and Williams (*id.* at 3-4). Hunter is no longer relied upon by the Examiner. The Declaration does not explain how the sales are tied to the claimed invention or discuss the cited prior art teachings as a whole. In fact, the Declaration is silent with respect to the teachings of Plummer, Kitagawa, and Okisawa. Thus, we find the Declaration does not provide sufficient evidence to overcome the Examiner's prima facie case of obviousness.

Appellant also argues that neither Plummer nor Williams discloses pre-printing indicia repeatedly on a roll of adhesive tape. (Br. 16.) We disagree. The Examiner relies on Plummer for teaching colored tape with repeated indicia, including letters. (Plummer, col. 3, ll. 59-63.) Williams further teaches that it was known to those of ordinary skill in the art to have messages pre-printed on a carrier layer of a tape and it is further known to customize the message desired on the tape. (Williams, col. 1, ll. 43-53.) It was also known in the art to customize tape with an address or destination, company name or warning. (Williams, col. 2, ll. 23-31, col. 3, ll. 33-36.) In any case, it would have been obvious to one of ordinary skill in the art to substitute the repeated indicia of Plummer with the destination of Williams, thereby obtaining the invention of claim 6. Such a substitution does not lend patentability to an invention otherwise old in the art, absent unexpected results. *See KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, 1740 (2007) ("the mere substitution of one element for another known in the field . . . must do more than yield a predictable result").

Thus, we are not persuaded by Appellant's arguments and the rejection of claims 6-8 and 17-20 is affirmed.

Claims 9, 13-16, and 21 stand rejected under 35 U.S.C. § 103(a), for obviousness over Kitagawa in view of Plummer and Williams. We select claim 9 as representative of this rejection as Appellant has not provided separate argument for other claims. 37 C.F.R. 41.37(c)(1)(vii).

The Examiner finds:

It would have been obvious to one having ordinary skill in the art at the time this invention was made to construct [a] process for packing a box taught by Kitagawa with a plurality of different tapes having different symbols and/or colors to provide a means to selectively code each box. In addition, it would have been obvious to one having ordinary skill in the art at the time this invention was made to construct the taped box by Kitagawa and Plummer with preprinted indicia as taught by Williams to provide indicia related to the destination of the box after it's packed.

(Answer 8-9.)

Appellant argues that neither Kitigawa, Plummer, nor Williams teaches utilizing adhesive tape having indicia pre-printed thereon indicating a single room or location. (Br. 16-17.) Appellant argues that "labeling boxes having numeric indicia or symbols, even if color coded, does not give rise to the claimed invention." (Br. 17.)

As discussed herein, we find Plummer teaches it was known in the art to produce a colored tape and repeated indicia which may be letters. (Plummer, col. 3, ll. 59-63.) Williams teaches it was known in the art to pre-print an address or designation on tape. (Williams, col. 2, ll. 23-31, col. 3, ll. 33-36.) Williams further teaches that because each carton may require a different message, the

decision on the message to be applied is made while the interior of the carton is still accessible for easy determination of the contents. (Williams, col. 4, ll. 13-17.) Thus, we find the combination of the cited references describes or suggests color coded tape preprinted with a repeating single room address or location. Because a single location or address, repeated on a tape, is suggested by the combination of Plummer and Williams (*see supra*, at pp. 9-10), no marking of the package with a writing instrument would be required. Therefore, we are not persuaded by Appellant's argument. The rejection of the claims for obviousness is affirmed.

CONCLUSION

The obviousness rejections of claims 6-11 and 13-21 are 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).

AFFIRMED

LP

KELLY LOWRY & KELLEY, LLP
6320 CANOGA AVENUE
SUITE 1650
WOODLAND HILLS, CA 91367