

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte JAMES RAY MCGREGOR*

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Appeal 2008-0439  
Application 10/319,185  
Technology Center 3700

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Decided: December 13, 2007

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Before BRADLEY R. GARRIS, CHUNG K. PAK, and  
CATHERINE Q. TIMM, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1, 3, 5, 6, 8-11, 14, 15, and 17. We have jurisdiction under 35 U.S.C. § 6.

We REVERSE.

Appellant claims a bag comprising adjacent panels 11, 12 being folded over to form closed fins 16, 17, each fin having an arcuate outer

portion, the arcuate outer portion 28 of one fin being formed to be readily removed to thereby define an elongate access opening, and a re-closable device 20 positioned within the aforementioned one fin (Figs. 1-6 and 26; claim 1).

Representative claim 1 reads as follows:

1. A bag having a width dimension, a transverse dimension, a vertical longitudinal dimension, opposed sealed ends and panel means extending between the sealed ends, adjacent panels means being folded over to form closed fins extending longitudinally of the bag, each fin having opposed inner surfaces and outer surfaces, and having an arcuate outer portion,

the arcuate outer portion of one fin being formed to enable the arcuate portion to be readily removed from the fin to define an elongate access opening extending longitudinally of the bag,

a re-closable device positioned within said one fin including opposed mating male and female closure elements, each being secured to one of the inner surfaces of said fin and being readily engagable and disengagable with respect to each other for selectively opening and closing the elongate access opening, said closure extending longitudinally of the bag but spaced from the sealed ends.

The references set forth below are relied upon by the Examiner as evidence of obviousness:

|                      |              |               |
|----------------------|--------------|---------------|
| Yano (as translated) | JP 3-240650  | Nov. 28, 1991 |
| Schmidt              | 6,481,183 B1 | Nov. 19, 2002 |

All of the claims on appeal are rejected under 35 U.S.C. § 103(a) as being unpatentable over Schmidt and Yano.

The Examiner's obviousness position is expressed as follows on page 3 of the Supplemental Examiner's Answer:

Schmidt discloses the claimed device, especially adjacent panels of the bag being folded over and sealed together to form closed fins (105-107). However, Schmidt does not show the re-closable device (120) positioned with a closed fin. Japanese Patent No. 3-240650 [i.e., Yano] discloses that it is known in the art to position a re-closable device within a closed fin of an analogous bag. It would have been obvious to one having ordinary skill in the art at the time the invention was made to position the re-closable device of Schmidt within one of the closed fins as suggested by Japanese Patent No. 3-240650 [i.e., Yano], in order to provide external visual indication of surreptitious opening.

This rejection cannot be sustained.

The Examiner is incorrect in finding that Yano discloses that "it is known in the art to position a re-closable device within a closed fin" (*id.*). Instead, Yano teaches positioning zipper 6 (i.e., re-closable device) along the edge where horizontal gusset film 3a meets body-part film 2a (page 5; Fig. 5). As Yano clearly shows in Fig. 5, zipper 6 is exteriorly positioned along an edge of the bag as is the zipper or re-closable device 120 of Schmidt's Fig. 1 bag. Therefore, contrary to the Examiner's conclusion, Yano would not have suggested positioning "the re-closable device of Schmidt within one of the closed fins" (Supplemental Ans. 3) since the bag of Yano does not include a re-closable device within a closed fin.

In this latter regard, the Examiner's erroneous finding with respect to Yano's disclosure may be based on Figs. 2 and 3 of Yano which show the bag in a collapsed position such that gusset film 3a is adjacent body-part film 2a with zipper 6 therebetween. However, these adjacent films of Yano do not comprise a closed fin of the type disclosed by Schmidt (Figs. 11-13) or by Appellant (Specification 8-9; Fig. 3; claim 1).

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In summary, Yano discloses a re-closable device positioned exteriorly along a bag edge rather than within a closed fin and therefore would not have suggested repositioning Schmidt's exteriorly located re-closable device to be within a closed fin as urged by the Examiner. We cannot sustain, therefore, the Examiner's § 103 rejection of all appealed claims as being unpatentable over Schmidt and Yano.

The decision of the Examiner is reversed.

REVERSED

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