

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PEDRO EMILIO RENGIFO, ROBIN BOVAIR STEVEN,
BRUCE CHARLES DORSTEWITZ, and JAMES LEE COLDIRON III

Appeal 2008-1623
Application 10/322,976
Technology Center 3600

Decided: March 25, 2008

Before TONI R. SCHEINER, DEMETRA J. MILLS,
and LORA M. GREEN, *Administrative Patent Judges*.

GREEN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1-7, 10-14, and 16-18.¹ We have

¹ Claims 1-18 are pending, claims 8, 9, and 15 have been indicated as being allowable (Ans. 4).

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jurisdiction under 35 U.S.C. § 6(b). Claim 1 is representative of the claims on appeal, and reads as follows:

1. A dispensing container for a roll of bulk sheet material, comprising:
 - a container body defined by a plurality of side panels defining therebetween an internal chamber dimensioned to rotatably house a roll of sheet material therein, the container body substantially enclosing the roll of material in a transportation configuration;
 - roller means for substantially centering the roll of sheet material at a centered level within the chamber;
 - at least one container side panel portion opening to configure the container body into a dispensing configuration in which an access passageway is exposed substantially at the centered level opposite the centered roll of material and communicates with the container chamber and through the passageway a free end of the material may be withdrawn at the option of a user as the roll of material rotates within the chamber;
 - the container side panel portion closing the passageway at the option of the user to place the container body and the roll of material into the transportation configuration.

The Examiner relies on the following references:

Letourneau	US 4,978,085	Dec. 18, 1990
Tan	US 5,415,279	May 16, 1995
Taylor	US 5,593,035	Jan. 14, 1997

We affirm.

DISCUSSION

Claims 1-5, 7, 10-13, and 16-18 stand rejected under 35 U.S.C. § 103(a) as being obvious over the combination of Tan and Letourneau. Appellants only present separate arguments as to claim 7, thus claims 2-5, 10-13, and 16-18 stand or fall with claim 1. 37 CFR § 41.37(c)(1)(vii).

Tan is cited for teaching a dispensing container for a roll of bulk sheet material meeting all of the limitations of claim 1 except roller means for

substantially centering the roll of sheet material at a centered level within the chamber (Ans. 3 (referencing Tan, Figs. 1-3)).

Letourneau is cited for teaching a container body comprising roller means/guide rollers (Ans. 3 (referencing Letourneau, Figs. 1 and 2)).

The Examiner concludes that it “would have been obvious to one of ordinary skill in the art to provide the container of Tan with rollers, as taught by Letourneau, for the purpose of allowing the roll of material to rotate within the chamber without frictionally contacting the interior surfaces of the container.” (Ans. 3-4.)

The burden is on the examiner to set forth a prima facie case of obviousness. *In re Fine*, 837 F.2d 1071, 1074 (Fed. Cir. 1988). The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) secondary considerations of nonobviousness, if any. *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). The Supreme Court has recently emphasized that “the [obviousness] analysis 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 v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007). “The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* at 1739. Moreover, an “[e]xpress suggestion to substitute one equivalent for another need not be present to render such substitution obvious.” *In re Fout*, 675 F.2d 297, 301 (CCPA 1982).

Appellants argue that while Tan shows a rotating roll of material, the roll “is positioned in frictional contacting engagement with the walls of the container and is not supported at a centered level by roller means within the container.” (Br.² 4.) Moreover, Appellants argue, the “Tan reference clearly does not teach or suggest an orientation in which the roll of material, the exit passageway through which an edge of material is fed are at a common level, nor a work surface upon which the exited material is supported at the same common level.” (*Id.*) As such, Appellants assert, it is not suitable for dispensing a heavy rolled material, and in fact would be “*inoperable* in the application for which the present invention is intended.” (*Id.*) Thus, Appellants argue, Tan teaches away from the claimed invention (*id.*).

Appellants argue further that the Letourneau does not make up the deficiencies of Tan (Br. 5). Appellants assert that Letourneau is drawn to a wire-dispensing spool in which the spool is situated within a container on rollers, wherein the wire is fed through an opening on the bottom of the container, and is not on the same centered level as the roll (*id.*). Appellants also argue that there is no teaching or suggestion of a worktable in Letourneau (*id.*) Appellants urge that there is no teaching in either reference to combine a container for dispensing wire with a container for dispensing film, and even if the combination were to be made, “one skilled in the art would logically place the table of Tan at the bottom of the container where Letourneau contemplates the wire to exit.” (*Id.*)

According to Appellants,

² All references to the Brief (Br.) are to Appellants’ Corrected Brief, mail stamped September 25, 2006.

Still further, the Letourneau reference does not teach a configuration capable of accommodating an inversion of the material roll on the support rollers at the option of the user. Indeed, using the Letourneau reference container with a top feed oriented heavy material stock would prove infeasible for the same reason as the Tan reference. That is, were one to top feed material from the Letourneau container, it would require routing the free material edge down the forward side of the container all the way to the bottom and then at a right angle out the opening at the bottom. For thick material stock, such a serpentine path would prove *inoperable*. The subject invention, to the contrary, by orienting the material roll, the exit passageway, and the worktable at a common centered level, allows for a substantially in-line removal of the sheet material whereby allowing the material roll to be placed alternatively within the container in either a top feeding or bottom feeding orientation.

(*Id.*)

Appellants' arguments are not convincing. First, Appellants appear to be attacking the references separately, and not the combination. Obviousness, however, is determined in view of the sum of all of the relevant teachings in the art, not isolated teachings in the art. *See In re Kuderna*, 426 F.2d 385, 389 (CCPA 1970); *see also In re Shuman*, 361 F.2d 1008, 1012 (CCPA 1966).

Second, as noted by the Examiner, Appellants are arguing limitations that are not in the claims. Specifically, Appellants argue that the dispensing containers of Tan and Letourneau would be inoperable for dispensing heavy material of thick stock material (*see, e.g.*, Br. 5), but the claims are not limited to dispensing such heavy material.

Third, we do not find that the references relied upon by the Examiner would teach away from the claimed invention. Although Tan teaches that

the rotating roll of material is positioned in frictional contacting engagement with the walls of the container and is not supported at a centered level by roller means within the container, that does not teach away from the combination with Letourneau, which teaches the use of a roller means for centering the rolled material within the dispensing container. The ordinary artisan would understand the advantages obtained by using such a roller means to remove the frictional contact with the walls of the container.

In addition, we agree with the Examiner's analysis that the combination teaches all of the limitations of claim 1 (Ans. 4-10). Figure 1 of Tan, as annotated by the Examiner (Ans. 6), is reproduced below:

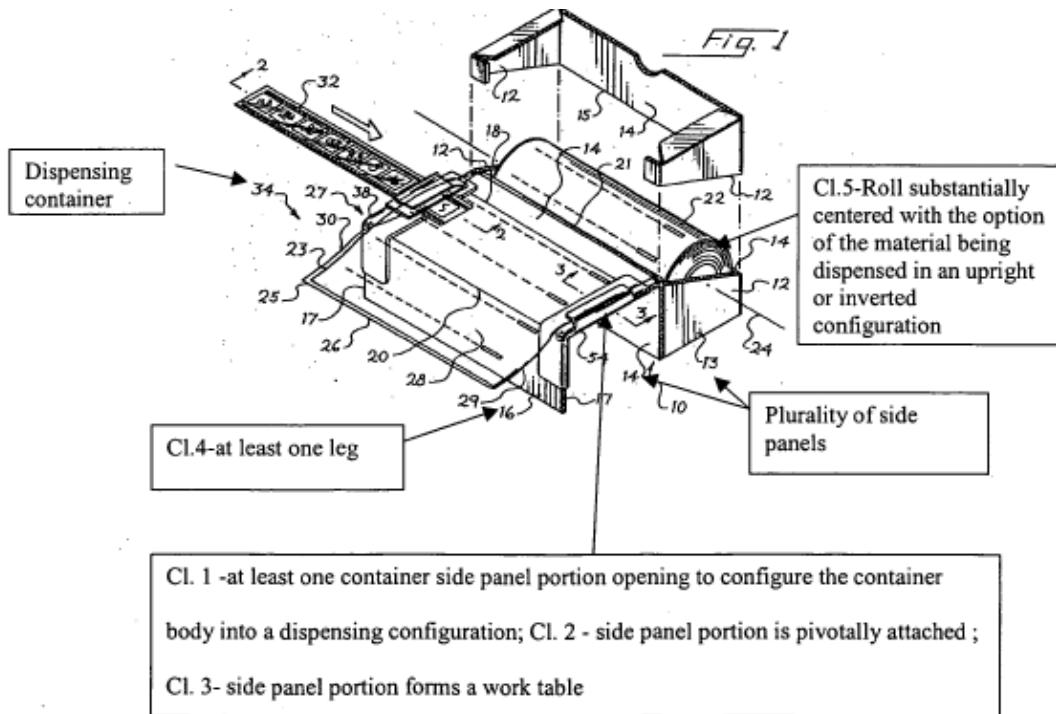


Figure 1 of Tan is drawn to a dispensing container (sleaving device), which utilizes a shipping box 10 for a roll of sleaving material 22 (Tan, col. 1, l. 67-col. 2, l. 2). Thus, as can be seen by Figure 1, Tan teaches a dispensing container for a roll of bulk sheet material, comprising: 1) a container body defined by a plurality of side panels defining therebetween

an internal chamber dimensioned to rotatably house a roll of sheet material therein, the container body substantially enclosing the roll of material in a transportation configuration; 2) at least one container side panel portion opening to configure the container body into a dispensing configuration in which an access passageway is exposed substantially at the centered level opposite the centered roll of material and communicates with the container chamber and through the passageway a free end of the material may be withdrawn at the option of a user as the roll of material rotates within the chamber; and 3) the container side panel portion closing the passageway at the option of the user to place the container body and the roll of material into the transportation configuration. Thus, the only limitation that Tan fails to teach is a roller means for substantially centering the roll of sheet material at a centered level within the chamber.

Figure 2 of Letourneau, as annotated by the Examiner, is reproduced below.

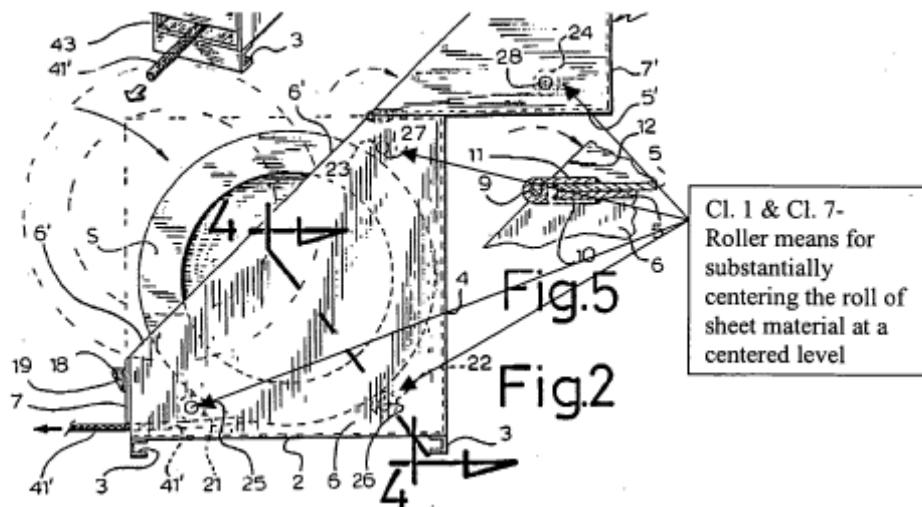


Figure 2 of Letourneau is a side elevation of the dispensing container (casing) of Letourneau, showing a spool in position in the casing

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(Letourneau, col. 2, ll. 22-25). Roller members **21**, **22**, **23**, and **24**, are disposed at of the four corner extremities of the casing in an X-like configuration (Letourneau, col. 3, ll. 7-15), and thus serve to center the roll of material within the dispensing container.

As noted by the United States Supreme Court,

If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.

KSR, 127 S. Ct. at 1740. The combination of the Examiner demonstrates that it was known in the art to use roller means for substantially centering the roll of sheet material at a centered level within the chamber, and thus it would have been obvious to the ordinary artisan to use such roller means to prevent the rolled material from coming into frictional contact with the sides of the dispensing container.

Thus, we conclude that the combination renders obvious the dispensing container of claim 1, and the rejection is affirmed as to that claim. As claims 2-5, 10-13, and 16-18 stand or fall with claim 1, the rejection is affirmed as to those claims as well.

As to claim 7, Appellants assert that supplying Tan with rollers to dispense roll material is unsupported by Tan, and Letournou does not center a roll for center feeding of a free edge (Br. 8). Appellants assert that the Examiner has engaged in hindsight, as neither reference “teaches a centered free rolling roll of material dispensed from a center of the container.” (*Id.*)

Again, Appellants are attacking the references individually. For the reasons set forth above with respect to the analysis of claim 1, we find that it would have been obvious to add rollers as taught by Letournou to the dispensing container of Tan.

Claims 6 and 14 stand rejected under 35 U.S.C. § 103(a) as being obvious over the combination of Tan and Letourneau, as further combined with Taylor.

The combination of Tan and Letourneau is relied upon as above (Ans. 4). Taylor is relied upon for teaching “a roll of material including a pivot shaft **18** having protruding opposing ends and the container body comprises a slot channel **100** in opposite side panels, each receiving a respective pivot shaft end therein to center the roll of material with the body chamber.” (*Id.*) The Examiner concludes that it “would have been obvious to one of ordinary skill in the art to provide Tan with protruding shafts, as taught by Taylor . . . , for the purpose of rotating the mandrel from outside of the chamber.” (*Id.*)

Appellants reiterate their arguments as to the combination of Tan and Letourneau (Br. 9). Those arguments are not convincing for the reasons set forth above with respect to the combination.

Appellants argue further that Taylor buttresses their position as it teaches a dispensing container that dispenses a sheet of material from the bottom of the container, and is thus cumulative to Letourneau (Br. 9). Appellants argue further that Taylor would be inoperative for dispensing a roll of heavy material, and by teaching that the sole support of the roll material is the spindle ends actually teaches away from the invention (*id.*).

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Again, Appellants are attacking the references individually. The claims do not require dispensing a heavy material. Moreover, it would have been well within the level of ordinary skill in the art to dispense any material from any location from the container, as evidenced by Tan, Letourneau, and Taylor. As noted by the Court in *KSR*, “[a] person of ordinary skill is also a person of ordinary creativity, not an automaton.” 127 S.Ct. at 1742.

CONCLUSION

In summary, the rejection of claims 1-5, 7, 10-13, and 16-18 under 35 U.S.C. § 103(a) over the combination of Tan and Letourneau, and the rejection of claims 6 and 14 under 35 U.S.C. § 103(a) over the combination of Tan and Letourneau, as further combined with Taylor, 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

Ssc:

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