



1 jurisdiction under 35 U.S.C § 6(b) (2002). We AFFIRM the rejection of  
2 independent claims 11 and 30. We REVERSE the rejection of dependent  
3 claims 12, 15, 16, 19, 20, 22-24 and 26-29.

4 The claims on appeal relate to the production of bags with sealed  
5 edges distinguished in that sealing seams are formed into a web before the  
6 web is formed into a sheathing tube. (Spec. 3, ¶ 0010.) Claim 30 is typical  
7 of the claims on appeal:

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30. An apparatus for producing bag packages (10), from a length of packaging material, the apparatus comprising:  
- a folding station (52) for forming folds (44) in a moving sheet of packaging material,  
- a sealing station (54) downstream of the folding station for sealing the formed folds (44),  
- a packaging material driving station (58) downstream of the sealing station, and  
- a forming station (56) for forming a sheathing tube from the packaging material, whereby before the sheathing tube is formed, the forming of the sealing means (12, 76) onto the packaging material sheeting (26, 42, 60) is done,  
- said folding station (52) comprising at least two folding plates (68A, 68B) disposed next to one another, a first of said folding plates (68A) being oriented relative to a second of said folding plates (68B) such that in a region where the packaging material enters the folding station, the first of said folding plates (68A) is located on one side of the second of said folding plates (68B), and in the region where the packaging material exits the folding station, the first of said folding plates (68A) is located on the opposite side of the second of said folding plates (68B).

1 ISSUES

2 The issue in this appeal is whether the Appellants have shown that the  
3 Examiner erred by:

4 rejecting claims 11, 12, 15, 16, 19, 20, 22-24, 26, 27 and  
5 30 under 35 U.S.C. § 102(b) (2002) as being anticipated by  
6 Goodwin (Publ. WO 01/24999 A1, publ. 12 Apr. 2001);

7 rejecting claims 11 and 30 under § 102(b) as being  
8 anticipated by Jeffrey (Patent US 5,853,360, issued 29 Dec.  
9 1998); and

10 rejecting claims 28 and 29 under 35 U.S.C. § 103(a)  
11 (2002) as being unpatentable over Goodwin and Official Notice  
12 that it was well known in the art to use feeding rollers in  
13 particular locations as claimed to feed the web material as  
14 desired by the user.<sup>1</sup>

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16 FINDINGS OF FACT

17 The record supports the following findings of fact (“FF”) by a  
18 preponderance of the evidence.

19 1. Goodwin discloses a bag making apparatus. (Goodwin 7, ll.  
20 12-13.)

21 2. Goodwin’s apparatus includes a bow forming device and a V  
22 forming device which cooperate to form folds corresponding in shape to V-  
23 section ridges in the V forming device. (Goodwin 7, l. 21 – 8, l. 7.)

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<sup>1</sup> The fact taken by Official Notice appears in an Office Action mailed 14 Jul. 2005 at 3, ¶ 5. The fact appears nowhere in the Examiner’s Answer. The Board requests that the Examiner state facts taken by official notice in the Examiner’s Answer for ease of reference.

1           3.     As illustrated in Fig. 1 of Goodwin, Goodwin's V forming  
2 device 268 does not have a side edge parallel to the travel direction which is  
3 adjacent to, and side by side with, a side edge of the bow forming device  
4 258.

5           4.     As illustrated in Fig. 1 of Goodwin, Goodwin's V forming  
6 device 268 is disposed entirely on an opposite side of the web 256 from the  
7 bow forming device 258. In addition, the V forming device appears to be  
8 disposed entirely on one side of the bow forming plate both with respect to  
9 the upstream direction and with respect to the direction perpendicular to the  
10 area of the web.

11          5.     Jeffrey discloses an apparatus for making a gusseted container.  
12 (Jeffrey, col. 5, ll. 3-7.)

13          6.     Jeffrey's apparatus includes a set of lower skis which support  
14 container blanks as the blanks move through the apparatus. (Jeffrey, col. 5,  
15 ll. 34-42.)

16          7.     Jeffrey's apparatus also includes upper skis which serve to  
17 stabilize the blanks on the lower skis. (Jeffrey, col. 6, ll. 33-36.)

18          8.     Jeffrey's apparatus also includes a pair of creasing bars. One  
19 end of each creasing bar projects upwardly through the plane of movement  
20 of the unfolded blanks for purposes of creasing the blanks. (Jeffrey, col. 5,  
21 ll. 51-56.)

22          9.     Figs. 3 and 9 of Jeffrey appear to show the creasing bars 28  
23 disposed side by side with the upper skis 29 along the travel direction of the  
24 blanks in such a manner that adjacent sides of the creasing bars and of the  
25 upper skis, disposed side by side, are oriented parallel to the direction of  
26 travel of the blanks.



ANALYSIS

A. *The Rejection of Claims 11, 12, 15, 16, 19, 20, 22-24, 26 and 27 Under § 102(b) as Being Anticipated by Goodwin*

Claim 11 is limited to an apparatus including at least two folding plates disposed side by side in the travel direction of the length of packaging material in such a manner that at least two adjacent side edges, disposed side by side, of the folding plates are oriented parallel to the travel direction of the length of packaging material. The Examiner finds that this limitation is met by Goodwin's disclosure of a bag making apparatus including a bow forming device illustrated as having a pair of opposed sides having opposed side edges oriented parallel to the travel direction and a V-forming device downstream of the bow forming device which also has a pair of opposed sides oriented parallel to the travel direction. (Ans. 3.) The Examiner finds that the bow forming device and the V forming device are adjacent because they are located in close proximity with no structure between them and that the two devices are disposed side by side because they are located in different vertical planes. (Ans. 5-6.) We agree with the Appellants (App. Br. 12) that the bow forming device and the V forming device do not have adjacent side edges disposed side by side as recited in claim 11.

"During examination, 'claims . . . are to be given their broadest reasonable interpretation consistent with the specification, and . . . claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art.'" *In re American Acad. of Science Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). On the other hand, our reviewing court has denounced methods of claim construction

1 which would render claim terms superfluous. *Stumbo v. Eastman Outdoors,*  
2 *Inc.*, 508 F.3d 1358, 1362 (Fed. Cir. 2007).

3         The Examiner’s finding that Goodwin’s bag making apparatus meets  
4 the limitations of claim 11 is dependent on an interpretation of claim 11  
5 sufficiently broad to include an apparatus having folding plates positioned  
6 upstream and downstream of one another such that the “at least two adjacent  
7 side edges” are to be found on opposite sides of a single plate. We conclude  
8 that any interpretation of claim 11 which does not require that each of the  
9 at least two adjacent side edges be on a different folding plate would be  
10 unreasonable. If the limitation requiring “at least two adjacent side edges”  
11 could be met by edges of opposed sides of a single folding plate, then any  
12 folding plate having side edges oriented parallel to the travel direction of the  
13 length of packaging material as recited in claim 11 would necessarily also  
14 have at least two adjacent side edges. Hence, the recitation of “at least two  
15 adjacent side edges” would cease to limit claim 11 independently of the  
16 limitation requiring that the side edges be oriented parallel to the direction of  
17 travel. In other words, such an interpretation would render the limitation of  
18 “at least two adjacent side edges” superfluous. We conclude that any such  
19 interpretation would be unreasonable. Claim 11 must be limited to an  
20 apparatus having folding plates such that a side edge of one folding plate and  
21 a side edge of the other folding plate are adjacent and disposed side by side.

22         Goodwin’s bag making apparatus does not meet the limitations of  
23 claim 11 when those limitations are properly construed. As illustrated in  
24 Fig. 1 of Goodwin, Goodwin’s V forming device 268 does not have a side  
25 edge parallel to the travel direction which is adjacent to, and side by side  
26 with, a side edge of the bow forming device 258. (FF 3.) On the record

1 before us, the Appellants have shown that the Examiner erred in rejecting 11  
2 under § 102(e) as being anticipated by Goodwin. Since claims 12, 15, 16,  
3 19, 20, 22-24, 26 and 27 depend ultimately from claim 11, the Appellants  
4 have shown on the record before us that the Examiner erred in rejecting  
5 those dependent claim as well under § 102(b) as being anticipated by  
6 Goodwin.

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8 *B. The Rejection of Claims 28 and 29 Under § 103(a)*

9 Claims 28 and 29 depend ultimately from claim 11. As such, each  
10 claim is limited to an apparatus including at least two folding plates disposed  
11 side by side in the travel direction of the length of packaging material in  
12 such a manner that at least two adjacent side edges, disposed side by side, of  
13 the folding plates are oriented parallel to the travel direction of the length of  
14 packaging material. This limitation is not suggested either by the teachings  
15 of Goodwin or by the Examiner's finding that it was well known in the art to  
16 use feeding rollers in particular locations as claimed to feed the web material  
17 as desired by the user. The only apparent reason articulated by the Examiner  
18 supporting the Examiner's conclusion that the teachings of Goodwin and  
19 the Official Notice would have suggested this limitation is the Examiner's  
20 finding the Goodwin discloses this limitation. We determined in the  
21 previous section of this opinion that Goodwin does not disclose this  
22 limitation under any reasonable interpretation of the scope of parent claim  
23 11. Therefore, we agree with the Appellants' contention (App. Br. 20) that  
24 the rejection of claims 28 and 29 is unsustainable on the present record.

1           C.     *The Rejection of Claim 30 Under § 102(b) as Being Anticipated*  
2                     *by Goodwin*

3           We agree with the Appellants (*see* App. Br. 16) that Goodwin does  
4 not disclose an apparatus including folding plates meeting the limitations  
5 recited in the last clause of claim 30. The Examiner's Answer appears to  
6 be silent as to how these limitations are met. As illustrated in Fig. 1 of  
7 Goodwin, Goodwin's V forming device 268, which the Examiner finds to  
8 correspond to one of the recited folding plates (*see* Ans. 3), is disposed  
9 entirely on an opposite side of the web 256 from the bow forming device  
10 258, which the Examiner finds to correspond to the other of the recited  
11 folding plates (*id.*). In addition, the V forming plate appears to be disposed  
12 entirely on one side of the bow forming plate both with respect to the  
13 upstream direction and with respect to the direction perpendicular to the area  
14 of the web. (FF 4.) As such, the V forming plate and the bow forming plate  
15 do not meet the limitation of the last clause of claim 30. On the record  
16 before us, the Appellants have shown that the Examiner erred in rejecting  
17 claim 30 under § 102(b) as being anticipated by Goodwin.

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19           D.     *The Rejection of Claims 11 and 30 Under § 102(b) as Being*  
20                     *Anticipated by Jeffrey*

21           The Examiner finds that the upper skis and the creasing bars disclosed  
22 by Jeffrey correspond to the folding plates recited in claims 11 and 30.  
23 (Ans. 4.) With regard to claim 11, the Appellants contend that the upper skis  
24 and the creasing bars are not disposed side by side in the travel direction of  
25 the length of packaging material in such a manner that at least two adjacent  
26 side edges, disposed side by side, are oriented parallel to the travel direction.  
27 (App. Br. 18.) Figs. 3 and 9 of Jeffrey appear to show the creasing bars 28

1 disposed side by side with the upper skis 29 in (that is, along) the travel  
2 direction of the blanks in such a manner that adjacent sides of the creasing  
3 bars and of the upper skis, disposed side by side, are oriented parallel to the  
4 direction of travel of the blanks. (FF 10.) Claim 11 also recites that the  
5 packaging material is guided along the underside of a first of the folding  
6 plates and along the top of a second of the folding plates by the at least two  
7 side edges. Edges on the opposite ends of the undersides of the lower skis  
8 and adjacent edges in the neighborhoods of the upper tangents of the  
9 creasing bars of Jeffrey would contact and guide the blank material as the  
10 blanks were creased. On this basis, we sustain the Examiner's finding that  
11 Jeffrey anticipates the subject matter of claim 11.

12 With regard to claim 30, the Appellants contend that the creasing bars  
13 and the upper skis do not meet the limitation of the last clause of the claim.  
14 We find that the upper skis and the creasing bars together form a folding  
15 station corresponding to the folding station recited in claim 30. The blanks  
16 would enter this folding station at the position where the blanks first contact  
17 the upper skis and exit this folding station at the position where the blanks  
18 cease contact with the creasing bars. Fig. 8 of Jeffrey appears to show the  
19 creasing bars mounted so as to be below the upper skis, that is, on a lower  
20 side of the upper skis, at the position where the blanks first contact the upper  
21 skis. Fig. 8 also appear to show the creasing bars to be at least even with  
22 the upper surfaces, and therefore on an upper side, of the upper skis at the  
23 position where the blanks cease contact with the creasing bars. On this  
24 basis, we sustain the Examiner's finding that Jeffrey anticipates the subject  
25 matter of claim 30.

