

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LEON ANTOINE RIBI

Appeal 2008-2871
Application 10/440,269
Technology Center 1700

Decided: August 27, 2008

Before CHARLES F. WARREN, LINDA M. GAUDETTE, and
MICHAEL P. COLAIANNI, *Administrative Patent Judges*.

WARREN, *Administrative Patent Judge*.

DECISION ON APPEAL

Applicant appeals to the Board from the decision of the Primary Examiner finally rejecting claims 1 through 3 and 5 though 8 in the Office Action mailed July 17, 2006. The Primary Examiner subsequently refused to allow these claims as amended in the Amendment filed October 17, 2006 as entered in the Advisory Action mailed October 27, 2007. 35 U.S.C. §§ 6 and 134(a) (2002); 37 C.F.R. § 41.31(a) (2006).

We reverse the decision of the Primary Examiner.

Claims 1 and 6 illustrate Appellant's invention of a composite laminar tape for mass sealing bottles or similar containers, and are representative of the claims on appeal:

1. A composite laminar tape for mass-sealing bottles or similar containers,

i) the tape consisting of at least one flexible but not extensible support tape, which has a line of holes passing through its thickness, whose diameters are longer than the diameter of the openings of the bottles or similar containers to be sealed;

wherein

ii) the holes are of equal diameter

iii) and there is provided also an extensible laminar tape, consisting of an extensible plastomeric film, which is made to adhere to the support tape, and

iv) wherein said extensible tape, made of an extensible plastomer, has weakening or predetermined tear-off areas, extending along closed lines, whose minimum diameter is longer than the diameter of the openings of the bottles or similar containers to be sealed, and wherein said weakening areas of said extensible tape are made to correspond to said holes and to have a maximum diameter equal to or shorter than the diameter of the holes of the at least one support tape.

6. A composite laminar tape for mass-sealing bottles or similar containers, wherein it is composed of a single tape-like extensible plastomeric lamina, film or membrane, whose width allows for an easy grasp thereof, and whose thickness allows for coiling, uncoiling and positioning it, with no appreciable deformation, said tape being:

i) appropriately weakened by a series of one or more concentric grooves, by a succession of little holes or equivalent material removal along closed lines, preferably circular, whose centers are equally spaced and aligned along the tape;

ii) provided with disks or elements having other equivalent shapes, of a laminated abrasion-proof material, which are made to adhere on one side

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of the tape, at the zones enclosed by the weakening areas, or anyway at the zones being meant to adhere to the openings of the bottles or similar containers to be sealed.

The Examiner relies upon the evidence in these references (Ans. 3):

Mueller	US 3,838,550	Oct. 1, 1974
Bakker	US 5,993,942	Nov. 30, 1999
Ribi	WO 96/23702 A1	Aug. 8, 1996

Appellant's request review of the grounds of rejection under 35 U.S.C. 103(a) advanced on appeal (App. Br. 9):
claim 6 over Bakker in view of Mueller (Ans. 4): and
claims 1 through 3, 5, 7, and 8 over Bakker in view of Mueller as applied to claim 6, further in view of Ribi (Ans. 5).

Appellant argues the claims in the second ground of rejection as a group. Thus, we decide this appeal based on claims 1 and 6. 37 C.F.R. § 41.37(c)(1)(vii) (2006).

The principal issues in this appeal are whether the Examiner has carried the burden of establishing a *prima facie* case in each of the grounds of rejection advanced on appeal which, of course, turn on the issues addressed below.

The plain language of independent claim 6 specifies in pertinent part, with respect to Specification Figure 5, a single tape 16 for sealing bottles or similar containers which has, among other things, a succession of “appropriately weakened” areas or “zones,” such as within “closed lines” 23, that are “meant to adhere to the openings of the bottles or similar containers to be sealed.” Similarly, independent claim 1 specifies in pertinent part, with respect to Specification Figures 3 and 4, a tape consisting of at an extensible tape 16 combined with at least one flexible but not extensible

support tape 17, wherein extensible tape 16 “has weakened or predetermined tear-off areas, extending along closed lines” 23 which “correspond to . . . holes” 18 in support tape 17. Spec., e.g. 7-16. We broadly interpret the claim term “tape” to encompass any continuous film which can be, among other things, continuously dispensed from a roll because there is no definition for this term in the Specification. *See, e.g., tape, The American Heritage Dictionary of The English Language 1768* (4th ed., Boston, Houghton Mifflin Company, 2000); *see also* Spec. e.g., 8:21 to 9:6.

We find Bakker would have disclosed to one of ordinary skill in this art, with reference to Bakker Figures 5, 6, and 8, a heat shrinkable plastic film 26 drawn from roll 22 in an apparatus wherein the film can be stretched across top 13 of container 12 and cut with blade 94, which can be circular in shape, resulting in a cut portion of film 26 which is draped across and heat shrunk to the top 13 . Bakker, e.g., col. 2, l. 66 to col. 4, l. 6, and col. 4, l. 44 to col. 5, l. 12, and col. 5, ll. 34-41.

We find Mueller would have disclosed to one of ordinary skill in this art, with reference to Mueller Figures 1, 2, 5-7, 13, 15, and 17, a heat sealable thermoplastic sheet or film 144 used in an apparatus wherein continuous sheet 144 is secured to the upper surface 60 of container rim 58 of sequential containers 34 by heating means 146, and is completely severed longitudinally and transversely into rectangular cover structures 62 over each container 34 by cutting blades 200, 210 in drum 180 at cutting station 42. Mueller teaches that interconnected groups of containers, such as six pack groups, can be formed with a modification of cutting station 42 wherein four of six transverse cutting blades 200 are replaced with blades

350 which have recessed perforating portions 356 between cutting portions 352, and longitudinal blades 210 have recessed perforating portions 366 between cutting portions 364. The perforations permit a rectangular covered container to be separated from the other interconnected rectangular covered containers. Mueller, e.g., col. 1, l. 36 to col. 2, l. 32, col. 3, l. 38 to col. 4, l. 34, col. 6, l. 59 to col. 9, l. 20, col. 11, l. 52 to col. 13, l. 42.

We find Ribi would have disclosed to one of ordinary skill in this art, with reference to Ribi Figures 1, 3, 5, and 6, a device having a support 1 and a counter-pattern 3, with common hole 4, with membrane 2 stretched over hole 4. Support 1 can be “cardboard, thin plastic or metal layers or composite materials” and counter-pattern 3 can be secured to support 1 with elastic clamps 6. “[F]ilm 2 can be . . . weakened by a continuous or discontinuous removal of material along a closed line, within which the diameter of the container opening to be sealed can be inscribed, so that the tearing of the film 2 occurs along said line.” The film of the device is laid on and urged against the rim of the container to be sealed “by applying with the fingers a downward pressure on said device,” tearing the film around the rim. Ribi, e.g., 3:15 to 4:25, 5:11 to 6:20, and 7:1-9.

The Examiner contends, with respect to claim 6, that it would have been obvious “to have placed perforations around the lid areas of the web of [Bakker] in order to aide separation of the lid without further cutting” in view of Mueller.” Ans. 4. The Examiner finds “Mueller precuts the material with a series of slit perforations so that the sealing lid can be separated from the greater film by stretching at the time of use of the container,” which clearly teaches “the concept of weakening by partial

cutting around the desired shape in a larger film,” and combined with Bakker “would eliminate the use of a separate knife” in Bakker’s method. Ans. 10-12. The Examiner contends, with respect to claim 1, that it would have been obvious to add “support layers on both sides of the roll film of [Bakker] in view of Mueller in order to allow even pressure to be used to form the film lid” in view of Ribi. Ans. 6. The Examiner finds Mueller separates the lid from the tape without a knife and Ribi separates “an area enclosed by a line of material weakening that allows for uniform application of pressure to the film and even tearing the film at the perforations.” Ans. 12-13.

Appellant contends, among other things, that there is no motivation to combine Bakker and Mueller because Bakker teaches a blade to cut a circular cover from a film and thus, there is no need to use perforations in the film to accomplish this purpose. Appellant further points out that Mueller’s perforations are between cut lines and thus not along closed lines which would be circular. App. Br. 16-18; Reply Br. 1-2. Appellant further contends, among other things, that there is no motivation to combine Bakker Mueller, and Ribi because Ribi does not teach a supporting layer for the membrane that is flexible to the extent that the membrane and support layer could be rolled up for use in Bakker’s process and would create other problems in Bakker’s process. App. Br. 19-22; Reply Br. 2.

On this record, we agree with Appellant. The Examiner has not explained how and why one of ordinary skill in this art would have modified the apparatus of Bakker so that the circular lid portion formed by perforations is torn from the film which requires different apparatus

components than those shown in the reference in cutting the circular lid portion from the film. We find no teaching in Mueller which provides motivation or a suggestion to so modify Bakker as both references cut the lid portion from a film. Furthermore, Ribi's teachings also do not provide motivation or a suggestion to so modify Bakker. Indeed, Ribi teaches a circularly perforated sealing film must be stiffly supported around the perforated portion in order to apply a downward force in applying the film against the rim of a container in order to tear the film from the support, which is not the manner in which Bakker's apparatus operates.

Thus, as Appellant contends, while one of ordinary skill in this art could have modified Bakker's film to include perforations, thus eliminating Bakker's cutting knife, there must be some motivation or suggestion to do so, and here, no motivation or suggestion is provided by the teachings of Mueller or Ribi. *See, e.g., In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992) (citing *In re Gordon*, 733 F.2d 900, 902 (Fed. Cir. 1984) ("The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification.")); *In re Dow Chem. Co.*, 837 F.2d 469, 473 (Fed. Cir. 1988) ("The consistent criterion for determination of obviousness is whether the prior art would have suggested to one of ordinary skill in the art that [the claimed process] should be carried out and would have a reasonable likelihood of success viewed in light of the prior art. Both the suggestion and the expectation of success must be founded in the prior art, not in the applicant's disclosure." (citations omitted)); *see also KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1741 (2007) ("it can be

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important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does”).

Accordingly, in the absence of a prima facie case of obviousness, we reverse the grounds of rejection under 35 U.S.C. § 103(a) advanced on appeal.

The Primary Examiner’s decision is reversed.

REVERSED

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