

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* IMMANUEL T. SINGUILLO

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Appeal 2008-3394  
Application 10/373,805  
Technology Center 3700

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Decided: July 30, 2008

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Before JAMESON LEE, RICHARD TORCZON, and JAMES T. MOORE,  
*Administrative Patent Judges.*

LEE, *Administrative Patent Judge.*

DECISION ON APPEAL

A. Statement of the Case

This is a decision on appeal by an Appellant under 35 U.S.C. § 134(a) from a final rejection of claims 9-13. We have jurisdiction under 35 U.S.C. § 6(b).

References Relied on by the Examiner

Bella	US 4,788,935	Dec. 6, 1988
Graham	US 5,028,147	Jul. 2, 1991
Maultasch	US 5,516,036	May 14, 1996
Ekstrom	WO 92/09493	Jun. 11, 1992

The Rejection on Appeal

The Examiner rejected claims 9-13 under 35 U.S.C. § 103(a) as unpatentable over Ekstrom, Graham, Maultasch, and Bella.<sup>1</sup>

B. Findings of Fact

1. The invention relates to a self-standing, disposable trash receptacle comprising a formed bin having a flexible upper portion, which upper portion may be tied to close the receptacle. (Spec. 1:5-8.)

2. Claim 9 is the independent claim and is reproduced below:

9. A self-standing, disposable trash receptacle, comprising:

a disposable bin having sidewalls with inner surfaces and outer surfaces, a bottom wall and an open top, said bin being fabricated from a disposable material having sufficient rigidity to be self-standing;

a plurality of foldable lids attached to said bin at the open top for closing the bin;

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<sup>1</sup> In the Supplemental Reply Brief filed February 15, 2008 (“Supp. Reply Br.”), the Appellant requests review of the Examiner’s objections to the drawings under 37 CFR § 1.83(a) and 35 U.S.C. § 132 (Supp. Reply Br. 5: 4-7.) Objections are reviewable by petition to the Director and are not appealable to the Board. See *In re Hengehold*, 440 F.2d 1395, 1403-1404 (CCPA 1971). Accordingly, we do not reach the merits of those objections.

a plastic sheath attached directly to the sidewalls of said bin, said plastic sheath including an upper portion extending above said sidewalls of said bin; and

a pair of handle members formed on the upper portion of said plastic sheath, each of said handle members being integral with said plastic sheath and extending beyond the open top of said bin, said handle members being defined by openings in said plastic sheath and adapted to be tied together after closing the bin;

whereby, upon filling the bin with trash, the plurality of lids are folded to close the bin, and the handle members are tied together over the top of the closed bin in order to dispose of both the trash and the receptacle.

(Claims App'x.)

3. Graham discloses an integrated shipping container formed by an interior carton surrounded by a sealable envelope made of flexible plastic.  
(Graham Abstract.)

4. In Graham, the carton is formed from a sheet of cardboard and includes lateral side panels 2 to 5 and a base member 1. (Graham 2:50-54.)

5. In Graham, the carton is adhered to the interior of the surrounding flexible envelope by means of a suitable adhesive applied to the side panels 3 and 5. (Graham 3:43-45.)

6. In Graham, the adhesive maintains the carton in a correct position within the enclosing envelope. (Graham 3:45-48.)

7. A person of ordinary skill in the art would recognize from the disclosure of Graham that where an internal container is surrounded by an outer plastic envelope, the container and envelope may be directly attached

to one another to facilitate the correct positioning of the container within the envelope.

8. In Graham, the container receives animal products, such as bones and meat products containing bones. (Graham 1:19-21; 2:15-23.)

9. In Graham, plastic bags are recognized as sealable to prevent the dissemination of odors or contamination. (Graham 1:26-31.)

10. Bella discloses a disposable cat litter container made of a cardboard box surrounded by a plastic bag. (Bella Abstract; 1:45-50; 2:56-61.)

11. In Bella, box 4 is surrounded by plastic bag 42 having a draw string 82 with ends 81a, 82a that form handles on an upper portion of the bag and are defined by openings in the bag. (Bella 3:52-61; Figures 15 and 16.)

12. In Bella, the handles are knotted together to form a sealed sanitary bag for disposal of spent litter. (Bella 3:65 to 4:6; Figure 17.)

13. A person of ordinary skill in the art would recognize that the draw string handles of Bella are ones that may be attached to any plastic bag and then tied together to seal the bag and its contents for disposal.

14. Each of Graham and Bella are pertinent to the problem of providing sealable containers for perishable or waste products.

15. Maultasch teaches the use of multiple, independent lid segments to close a pizza box. (Maultasch 2:25-27; Figures 3 and 4.)

16. One with ordinary skill would recognize that teaching of Maultasch as a general teaching of the use of lid segments for closing a container that does apply only to shallow boxes.

C. Analysis

The Appellant must show error in the Examiner's rejection of claims 9-13.

Claims 9-13 are argued collectively as a group. We focus our analysis on the contested limitations. The Appellant first disputes that the limitation of "a plastic sheath attached directly to the sidewalls of the said bin" is met by the prior art relied upon by the Examiner. To satisfy that limitation, the Examiner identified Graham as teaching "attaching the bag to the box by applying adhesive to the respective sidewalls." (Ans. 4:12-13.) The Examiner then proposed incorporating that teaching into the bag and box combination of Ekstrom. (Ans. 4:13-17.) The Appellant argues that a person of ordinary skill in the art would not combine that teaching in Graham with the invention of Ekstrom as it would prevent the box in Ekstrom from being removed from the bag. (Supp. Reply Br. 8:17-24.)

Notwithstanding the Appellant's arguments against the combination of Ekstrom and Graham, we find that Graham itself discloses everything that Ekstrom was relied upon to show with the exception of handles. In particular, Graham discloses a disposable bin formed by a cardboard carton having sidewalls, a bottom wall, and an open top, wherein the carton is received within an outer plastic envelope. (Graham Abstract; 2:50-54 and Figure 3.) Graham further provides that the outer plastic envelope is directly attached to the side panels 3 and 5 of the carton by means of a suitable adhesive. (Graham 3:43-45.) That adhesive functions to maintain the carton in the correct position within the envelope. (*Id.* at 45-48)

A person of ordinary skill in the art would recognize from the disclosure of Graham alone that where an internal container is surrounded by

an outer plastic envelope, the container and envelope may be directly attached to one another to facilitate the correct positioning of the container within the envelope. The claim limitations relating to a disposable bin with sidewalls to which a plastic sheath is directly attached are satisfied by Graham.

The Appellant also disputes that the prior art relied upon the Examiner satisfies the claim limitations relating to handle members that are adapted to be or capable of being tied together. The Examiner pointed to Bella for a teaching of tying bag handles to provide a sealed bag. (Ans. 5:1-6.) The Appellant argues that there is no motivation to support the combination of references relied upon by the Examiner to meet the above-noted limitations. (Supp. Reply Br. 11:5-19.)

The Examiner based his rejection under 35 U.S.C. 103(a), at least in part, on the combined teachings of Graham and Bella. Each of those references disclose flexible bags arranged around disposable cardboard containers. (Graham 2:19-23; 50-52 and Figure 3; Bella Abstract; and Figure 16.) In Graham, the cardboard container receives animal products, such as bones and meat products containing bones. (Graham 1:19-21; 2:15-23.) A plastic bag envelopes the container (Graham Abstract) and plastic bags are recognized as sealable to prevent the dissemination of odors or contamination. (Graham 1:26-31.) In Bella, the container receives cat litter and the surrounding plastic bag 42 and its draw string handles 81a, 82a function to form a sealed sanitary bag for disposal of spent litter. (Bella 3:65 to 4:6.) Thus, each of those references is pertinent to the problem of providing sealable containers for perishable or waste products.

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 International Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1740 (2007). One with ordinary skill in the art is presumed to have skills apart from what the prior art references explicitly say. *See id.* at 1741. A person of ordinary skill in the art is also a person of ordinary creativity, not an automaton. *Id.* at 1742.

A person of ordinary skill in the art would reasonably recognize that the handles of Bella are ones that may be attached to any plastic bag and then tied together to seal the bag and its contents for disposal. In Bella, the handles 81a, 82a are formed on the upper portion of the plastic bag 42 and defined by openings in the bag. (Bella Figure 15.) The handles are then knotted together to form a sealed bag. (Bella 3:65 to 4:6; Figure 17.) Applying the teaching of handles in Bella to the upper portions of the plastic bag 29 of Graham is applying a known technique for a similar purpose and would result in an arrangement that satisfies each of the following claim limitations:

a pair of handle members formed on the upper portion of the plastic sheath. . . . said handle members being defined by openings in said plastic sheath and adapted to be tied together after closing the bin;

whereby. . . . the handle members are tied together over the top of the closed bin in order to dispose of both the trash and the receptacle.

The Appellant also argues that the handles of Bella do not satisfy the Appellant's claimed handles as they are draw strings that cannot be considered to be integrally formed on the upper portion of the bag as

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required by claim 9. (Supp. Reply Br. 9:22-25.) The limitation in claim 9 corresponding to that argument is as follows (Claims App'x):

each of said handle members being integral with said plastic sheath and extending beyond the open top of said bin...

Here, the dispute centers on the meaning of the claim term “integral.” During examination, claim terms are given their broadest reasonable interpretation consistent with the specification. *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989). An applicant seeking a narrower construction must either show why the broader construction is unreasonable or amend the claim to state expressly the scope intended. *In re Morris*, 127 F.3d 1048, 1057 (Fed. Cir. 1997).

We note that the term “integral” appearing in claim 9 is similar to the “integrally formed” terminology that was in dispute in *In re Morris*. In that case, the court pointed to a line of precedents in which the term “integral” was interpreted as not limited to a unitary construction and found that the Appellant’s specification did not include any express definition that conflicted with the broad interpretation of “integral.” *In re Morris*, 127 F.3d at 1055-1056. Here, in similar fashion, the Appellant’s specification does not provide any express definition for “integral” that would exclude treating the draw string handles 81a, 82a in Bella as integral with the plastic bag 42. We interpret the integral limitation of claim 9 as requiring only attachment and not necessarily a structure of unitary or homogenous construction. Once Graham’s plastic bag 29 is modified to include handles such as those disclosed in Bella, those handles would then be integral with that bag and extend beyond the open top of Graham’s carton in order to be tied together to form a sealed bag as taught in Bella (Bella 4:4-6). We reject the

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Appellant's argument that the combined teachings of Graham and Bella do not satisfy the above-quoted integral handles limitation of claim 9.

The Appellant also disputes the Examiner's reliance on Maultasch. The Examiner pointed to Maultasch for the showing of four top closure flaps for a cardboard box and found those flaps to satisfy the corresponding claim limitation of "a plurality of foldable lids attached to said bin at the open top for closing the bin." The Examiner reasoned (Ans. 4:18-21):

It would have been obvious to increase the number of lid closure flaps in order to provide closure flaps that uncover only a part of the top to limit the access to the contents to provide access to a portion while the remainder is covered and protected.

The Appellant argues that the box in Maultasch is too shallow to render it suitable for the purpose disclosed by the Appellant in forming a trash bin. (Supp. Reply Br. 9:7-9.)

The Appellant's argument is misplaced. The Examiner does not rely on the depth of Maultasch's box or its dimensions to satisfy any element of the Appellant's claim. Instead, the Examiner relied on Maultasch for its general teaching to one with ordinary skill in the art of the use of multiple closure flaps or lids to close the top opening of a cardboard container. One with ordinary skill would recognize that general teaching and would not regard it as having application only for shallow boxes.

A basis to combine teachings need not be expressly stated in any prior art reference. *In re Kahn*, 441 F.3d 977, 989 (Fed. Cir. 2006). There need only be an articulated reasoning with rational underpinnings to support a motivation to combine teachings. *Id.* at 988. The Examiner's reasoning is rational and is not addressed by the Appellant.

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For the reasons given above, no error has been shown in the rejection of claims 9-13 under 35 U.S.C. § 103(a) as unpatentable over Ekstrom, Graham, Maultasch, and Bella.

D. Conclusion

The rejection of claims 9-13 under 35 U.S.C. § 103(a) as unpatentable over Ekstrom, Graham, Maultasch, and Bella is **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**

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