

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BERNARD TALLIER, JEAN-PIERRE FIEMS,
and MARC BUDIN

Appeal 2008-6046
Application 10/496,244
Technology Center 1700

Decided: January 15, 2009

Before EDWARD C. KIMLIN, TERRY J. OWENS and
JEFFREY T. SMITH, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

The Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 11-20, which are all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

The Invention

The Appellants claim a wrapping comprising a wrapping film having a coupon fixed against its inner surface. The Appellants state that the

wrapping is especially, but not exclusively, for cigarette packs (Spec. 1:4).

Claim 11 is illustrative:

11: A wrapping formed around at least one pack by a wrapping film, the pack having at least one face against which a coupon is placed, the coupon having two opposite faces comprising a first face placed against the pack and a second face attached against an inner surface of the film, a tear strip disposed between the coupon and the film, opening of the wrapping film being achieved by the tear strip which separates the film into two portions, the coupon being fixed against the inner surface of the film whereby after opening of the film by the tear strip the coupon remains at least partly attached to a single one of the first portion of the film, the second portion of the film and the tear strip.

The References

Kutchin	4,784,261	Nov. 15, 1988
Tallier	6,467,614 B1	Oct. 22, 2002

The Rejection

Claims 11-20 stand rejected under 35 U.S.C. § 103 over Tallier in view of Kutchin.

OPINION

We reverse the Examiner's rejection. We need to address only the broadest claim, i.e., claim 11.

Issue

Have the Appellants shown reversible error in the Examiner's determination that the applied references would have rendered *prima facie* obvious, to one of ordinary skill in the art, a coupon fixed against the inner surface of a wrapping film such that after separating the film into first and second portions by use of a tear strip, the coupon remains at least partly

attached to only one of the first film portion, the second film portion and the tear strip?

Findings of Fact

Tallier discloses a cigarette pack (1) that is covered with a wrapping film (2) and has a coupon (3) on one of its faces outside the film (col. 2, ll. 36-38). The coupon has a line of weakness (31) essentially parallel to and facing a portion of a conventional tear tape (20) used to open the film and separate it into two portions (22, 23) (col. 2, ll. 50-54). Opening the film using the tear tape separates the coupon, at the line of resistance, into two portions, the larger of which (300) remains attached to the film portion (22) that remains on the pack, and a second portion (301) attached to the other film portion (23) that is removed from the pack and is discarded (col. 2, ll. 54-60). Opening the film simultaneously opens the coupon (col. 1, ll. 45-46; Figs. 1, 2).

Kutchin discloses a wrapped cigarette package containing three separate packs having an advertising card or coupon interleaved between one or more of them (col. 1, ll. 29-36; col. 3, ll. 22-30). The wrapper (11) may be provided with a tear strip for easy access through the wrapper to the individual packs (col. 1, ll. 36-40). Kutchin also discloses that a tax stamp (29) may be placed under the wrapper and span the top of each pack such that if the packs are separated, each pack contains a portion of the stamp (col. 3, ll. 35-39).

Analysis

The Appellants argue that if Tallier's coupon were placed inside the film, opening the film using the tear tape would not open the coupon and, therefore, would not achieve Tallier's stated objective (Br. 7).

The Examiner argues that one of ordinary skill in the art would have placed Tallier's coupon inside the pack to retain the coupon until after opening the film (Ans. 4).

That argument is not well taken because the Examiner has not provided evidence that there was a known problem of Tallier's coupon separating from the film.

The Examiner argues that relocating Tallier's coupon to inside the film is merely a rearrangement of a known combination of parts (Ans. 9).

Tallier discloses not only that the coupon is on the outside of the film, but also that opening the film opens the coupon (col. 1, ll. 43-46). The Examiner has not provided evidence that it was known in the art to attach a coupon to the inside of a wrapping film such that opening the film opens the coupon. The Examiner relies (Ans. 9) upon Tallier's admitted prior art wherein pulling a tear strip simultaneously opens a cigarette pack wrapping film and tears a tax coupon attached to the inside the film (col. 1, ll. 29-38). Tallier, however, places the coupon outside film portion 22, which remains attached to the pack after the film is opened, so that upon opening the film, the coupon opens as shown in Tallier's Fig. 2. The coupon would not open in that manner if it were inside that film portion. Kutchin's coupon is merely inserted between the individual packs within a three-pack cigarette package (Fig. 3). Thus, arriving at the Appellants' claimed invention from

the applied prior art would require more than the mere rearrangement of known parts asserted by the Examiner.

The Examiner argues, in reliance upon Kutchin's column 3, lines 31-40 and Figure 6, that Kutchin discloses a coupon located inside package 10 and outside the individual packs (Ans. 11).

That portion of Kutchin discloses a tax stamp. Kutchin's disclosure that the tax stamp spans the top of each pack so that if the package is separated, each pack contains a portion of the stamp (col. 3, ll. 36-40), indicates that the tax stamp is a stamp applied to the packs, not that it is a coupon attached to the inner surface of the wrapping film.

The Examiner argues that Tallier's "coupon clearly separates into two portions whether or not the coupon is placed on the inside or outside of the film (See FIGs 6A, 6B, 7A and &B [sic, 7B] of Tallier ('614)" (Ans. 10).

Those portions of Tallier do not disclose a coupon inside the film or indicate that a coupon inside the film will separate into two portions upon pulling the tear strip, as argued by the Examiner, or open, as desired by Tallier, when the film is opened.

Conclusion of Law

The Appellants have shown reversible error in the Examiner's determination that the applied references would have rendered prima facie obvious, to one of ordinary skill in the art, a coupon fixed against the inner surface of a wrapping film such that after separating the film into first and second portions by use of a tear strip, the coupon remains at least partly attached to only one of the first film portion, the second film portion and the tear strip.

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DECISION/ORDER

The rejection of claims 11-20 under 35 U.S.C. § 103 over Tallier in view of Kutchin is reversed.

It is ordered that the Examiner's decision is reversed.

REVERSED

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CONNOLLY BOVE LODGE & HUTZ, LLP
P.O. BOX 2207
WILMINGTON, DE 19899