

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CARL A. MILLER

Appeal No. 95-3178
Application 08/055,477¹

ON BRIEF

Before COHEN, KIMLIN and LYDDANE, Administrative Patent Judges.
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1
through 5 and 8, and from the refusal of the examiner to allow

¹ Application for patent filed May 3, 1993.

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claims 6 and 7, as amended subsequent to the final rejection. These claims constitute all of the claims in the application.

Appellant's invention pertains to a mechanism for sealing an envelope (claims 1 through 7) and to a method for sealing an envelope (claim 8). A basic understanding of the invention can be derived from a reading of exemplary claims 1 and 8, copies of which appear in the "APPENDIX" to the brief.

In rejecting appellant's claims under 35 U.S.C. § 102(b), the examiner has relied upon the references listed below:

Jaynes	826,169	Jul. 17, 1906
Markoe (France) ³	366,099	Sep. 26, 1906

The following rejections are before us for review.

Claims 1 through 6 and 8 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Jaynes.

Claims 1 through 4 and 6 through 8 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Markoe.

² The panel designated in this appeal, upon review of appellant's brief, discovered appellant's request for an oral hearing. A Program and Resource Administrator of the board, responsible for setting hearings, inquired of appellant as to whether an oral hearing was still sought. As indicated in Paper No. 15, appellant chose to waive the oral hearing requested. This panel therefor proceeded to decide the appeal on brief.

³ Our understanding of this document is derived from a reading of a translation thereof prepared in the United States Patent and Trademark Office. A copy of the translation is appended to this opinion.

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The full text of the examiner's rejections and response to the argument presented by appellant appears in the answer (Paper No. 14), while the complete statement of appellant's argument can be found in the brief (Paper No. 13).

In the brief (page 3), appellant points out that the following groups of claims do not stand or fall together and are argued separately: claims 1 through 5 and 8; claim 6; and claim 7. As to the first claim grouping, like appellant in the brief (page 3), we focus our attention, infra, exclusively upon claims 1 and 8, with claims 2 through 5 standing or falling with claim 1.

OPINION

In reaching our conclusion on the anticipation issues raised in this appeal, this panel of the board has carefully considered appellant's specification⁴ and claims, the applied references, and the respective viewpoints of appellant and the examiner. As

⁴ Appellant's "Background Of The Invention" section of the specification (page 1) informs us that prior to the present invention it was a known method of sealing an envelope to drive the envelope between a pair of rollers and then deflect a lower edge of the envelope upwards against a resilient stop. When the envelope is decoupled from the rollers, the resilient stop and the force of gravity urge the upper edge of the envelope into the nip of a second pair of rollers to fold and seal the envelope flap against the rear panel of the envelope. As further disclosed, to avoid buckling the envelope as it is deflected, the deflecting surface is typically curved so that the rate at which the lower edge is deflected is limited so that thicker, stiffer envelopes do not buckle.

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a consequence of our review, we make the determinations which follow.

The rejection based upon the Jaynes reference

We sustain the rejection of claims 1 through 5 and 8 under 35 U.S.C. § 102(b) based upon the teaching of Jaynes, but not the rejection of claim 6.

At the outset, we recognize that anticipation under 35 U.S.C. § 102(b) is established only when a single prior art reference discloses, either expressly or under principles of inherency, each and every element of a claimed invention. See In re Paulsen, 30 F.3d 1475, 1478-1479, 31 USPQ2d 1671, 1675 (Fed. Cir. 1994), In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990), and RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). However, the law of anticipation does not require that the reference teach specifically what an appellant has disclosed and is claiming but only that the claims on appeal "read on" something disclosed in the reference, *i.e.*, all limitations of the claim are found in the reference. See Kalman v. Kimberly

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Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983); cert. denied, 465 U.S. 1026 (1984).

We turn now to the claimed subject matter.

Claim 1 on appeal is drawn to a mechanism for sealing an envelope comprising, *inter alia*, stop means displaced from a path for engaging a lower edge of an envelope and urging an upper edge of the envelope towards an intake, and resilient deflecting means for deflecting the lower edge towards the stop means at a variable rate of deflection, the rate of deflection varying inversely with the stiffness of the envelope to prevent buckling of the envelope.

Claim 8 on appeal addresses a method for sealing an envelope comprising, *inter alia*, the steps of deflecting a lower edge from a path as the envelope moves forward; the rate at which the lower edge is deflected being varied inversely with the stiffness of the envelope to avoid buckling; after deflecting the lower edge continuing to apply a first force and simultaneously applying a second, smaller force to urge the envelope rearward towards an intake, and when the upper edge is proximate the intake ceasing to apply the first force; whereby the envelope responds to the second force to move the upper edge into the intake to fold and seal a flap.

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The Jaynes patent discloses an envelope sealing machine (Figures 1 through 3) including rollers 3 and 4 for moving an envelope z, a so-called "deflecting-leaf" made up of a transverse rod 12 and a rod 13 (page 1, lines 78 through 80), a skeleton flap-pressing lever pivoted on rod 14, preferably formed from a single piece of wire bent to form a bail 15, having rearwardly-extending arms 15a and having the intermediate portion of its laterally-spaced arms coiled around the rod 14 (page 1, lines 89 through 95), and rollers 3 and 5 for passing the envelope therebetween. As noted by Jaynes (page 2, lines 29 through 34),

The skeleton supporting shelf or leaf 12, 13, as well as the spring-arms 15a, will yield very considerably, so that envelopes that vary a great deal in size may be run through this machine and sealed without readjusting any parts of the machine.

Claims 1 through 5 and 8

We share the examiner's view that the subject matter of claims 1 and 8 is anticipated by the teaching of Jaynes. From our perspective, one versed in the art would understand that the lower edge of an envelope passing through the nip of the rollers 3,4, of Jaynes (Figure 1) would be deflected by the so-called "deflecting leaf" (12, 13) towards the spring-arms 15a. Thus, we consider the spring-arms and "deflecting leaf" to correspond to

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the claimed stop means and resilient deflecting means respectively of claim 1. Additionally, it is clear to us that in operation the machine of Jaynes causes a deflecting of the lower edge of the envelope (by "deflecting leaf") and after deflecting effects simultaneously applying of a second smaller force (by spring-arms 15a) to urge the envelope toward the intake to rollers 3, 5, as required by steps of method claim 8.

The argument advanced by appellant (brief, page 5) is not convincing. In particular, for the reasons addressed, supra, we do not share appellant's point of view that the rollers 3 and 4 disclosed by Jaynes would apply a rearward force to the envelope even before any deflection might occur.

Claim 6

As to the rejection of claim 6, it is apparent to this panel of the board that the subject matter thereof is not anticipated by the Jaynes patent. More specifically, we are of the opinion that the fixed ends of the "deflecting leaf" attached to the supporting-plates 2 (page 1, lines 78 through 84) in the Jaynes patent cannot be fairly said to be "proximate", i.e., very near

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or close⁵, to the stop means, as required by claim 6. Thus, the rejection of claim 6 under 35 U.S.C. § 102(b) based upon the Jaynes patent is not sustained.

The rejection based upon the Markoe reference

We sustain the rejection of method claim 8, but not the rejection of claims 1 through 4, 6, and 7 under 35 U.S.C. § 102(b).

Method claim 8

Our review of the Markoe disclosure, and in particular the perceived operation of the envelope sealing machine construction of Figure 6 (translation, page 6) relied upon by the examiner, indicates to us that the method steps of appellant's claim 8 are anticipated thereby.

In appellant's view (brief, page 4), the Markoe document (the French reference) does not teach the step of applying a rearward force to the leading edge (lower edge) of an envelope

⁵ Webster's New Collegiate Dictionary, G. & C. Merriam Company, Springfield, Massachusetts, 1979.

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only after it is deflected from a path. Appellant's argument is not commensurate with the scope of the subject matter of claim 8. Claim 8 recites, inter alia, that after deflecting a lower edge of an envelope continuing to apply a first force and simultaneously applying a second force to urge an envelope rearward towards an intake. Thus, contrary to appellant's argument, the second force is not required to be applied to the lower "edge", as claimed. Based upon the configuration of components in Figure 6, in particular, we are of the view that those skilled in this art would understand that the lower edge of an envelope emanating from the nip between rollers 24, 25 of Markoe would engage and be deflected by the directing plate and thereafter a second, smaller force effected by the roller 48 cooperating with the directing plate 49 urges the envelope rearward towards the intake between the rollers 25, 26. Accordingly, the method of appellant's claim 8 is determined to be anticipated by the Markoe disclosure.

Claims 1 through 4, 6, and 7

As to the subject matter of independent claim 1, like appellant, we do not discern a stop means in the teaching of

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Markoe (Figure 6) for engaging a "lower edge" of an envelope and urging an upper edge towards an intake. At best, it appears to us that the roller 48 would help make an envelope descend between rollers 25 and 26 by engaging a side of an envelope after the envelope is deflected by the directing plate 49. Thus, we cannot sustain the rejection of claims 1 through 4, 6, and 7 under 35 U.S.C. § 102(b) based upon the teaching of Markoe.

In summary, this panel of the board has:

affirmed the rejection of claims 1 through 5 and 8 under 35 U.S.C. § 102(b) as being anticipated by Jaynes, but reversed the rejection of claim 6 on the same ground; and

reversed the rejection of claims 1 through 4, 6, and 7 under 35 U.S.C. § 102(b) as being anticipated by Markoe, but affirmed the rejection of claim 8 on the same ground.

The decision of the examiner is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

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Administrative Patent Judge)	
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