

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 34

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* DAVID J. INSTANCE

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Appeal No. 97-1872  
Application 08/371,620<sup>1</sup>

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HEARD: APRIL 9, 1999

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Before CALVERT, STAAB and NASE, *Administrative Patent Judges*.  
STAAB, *Administrative Patent Judge*.

*DECISION ON APPEAL*

This is a decision on an appeal from the examiner's final rejection of claims 1, 3-12, 14, 16 and 19-38, all the claims

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<sup>1</sup> Application for patent filed January 12, 1995. According to appellant, the application is a continuation of Application 07/842,370, filed March 27, 1992, now abandoned.

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currently pending in the application.<sup>2</sup>

Appellant's invention pertains to a self-adhesive label and to a method of making self-adhesive labels. The subject matter on appeal is reproduced in an appendix to the brief.

The references of record relied upon by the examiner in support of the rejections are:<sup>3</sup>

Instance (Instance '686) 1987	4,711,686	Dec. 8,
Instance (Instance '043) <sup>4</sup>	4,933,043	Jun. 12, 1990

Claims 11, 19 and 20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Instance '043.

Claims 14, 16, 22-25 and 31-34 stand rejected under 35

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<sup>2</sup> Finally rejected claims 15, 17 and 18 were canceled by amendments filed subsequent to the final rejection. Although these amendments have been approved for entry (see, inter alia, the examiner's initialed approval for entry in the margin on page 1 of each of said amendments), they have not yet been clerically entered.

<sup>3</sup> The patentee of each of the applied references is the appellant.

<sup>4</sup> It appears that appellant may be entitled to an effective filing date of September 28, 1990, the filing date of PCT/GB90/014187. If so, Instance '043 would not be prior art in this case. However, in that appellant has not raised this issue, we will treat this patent as prior art.

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U.S.C. § 102(b) as being anticipated by Instance '686.<sup>5</sup>

Claim 12 stands rejected under 35 U.S.C. § 103 as being unpatentable over Instance '043 in view of Instance '686.

Claims 1, 3-10, 21, 26-30 and 35-38 stand rejected under 35 U.S.C. § 103 as being unpatentable over Instance '686.<sup>6</sup>

The rejections are explained in the examiner's answer (Paper No. 28, mailed September 11, 1996).

The opposing viewpoints of appellant are set forth in the brief (Paper No. 27, filed July 24, 1996) and the reply brief (Paper No. 29, filed November 18, 1996).

#### *Opinion*

We will not sustain the standing rejections for basically the same reasons set forth by appellant on pages 13-25 of the brief. We add the following to emphasize and further clarify our views with respect to the issues raised by this appeal.

A fundamental issue in this appeal is the proper

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<sup>5</sup> In the answer, the examiner inadvertently included canceled claim 17 in the statement of this rejection.

<sup>6</sup> In the answer, the examiner inadvertently included a rejection of canceled claim 18 as being unpatentable over Instance '686.

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interpretation to be given to the language "release material" found in each of the independent claims on appeal. The examiner is of the view that the term may be broadly interpreted so as to read on the support web 18 of Instance '043 and/or the support web 26 of Instance '686 (answer, page 9), whereas appellant argues that the "release material" language of the claims is not met by the support webs 18 and 26 of the respective references.

Like appellant, we do not believe that the ordinarily skilled artisan would consider that web 18 of Instance '043 and/or web 26 of Instance '686 provides a "release material" when such language is given its broadest reasonable interpretation consistent with appellant's specification as such would be understood by one of ordinary skill in the art (*In re Sneed*, 710 F.2d 1544, 218 USPQ 385 (Fed. Cir. 1983); *In re Tanaka*, 551 F.2d 855, 193 USPQ 138 (CCPA 1977)). The disclosures of the present application, the Instance '043 patent, and the Instance '686 patent are consistent in their use of terms like "release material," "backing of release material" and "release backing material" to describe the web of material that carries

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the individual labels prior to their being applied to a product.<sup>7</sup> Consistent with these disclosures, the ordinarily skilled artisan would understand the term "release material" as used in the appealed claims to denote a material<sup>8</sup> having surface characteristics that would allow for relatively easy removal of the labels therefrom with the adhesive therebetween preferentially adhering to the labels rather than the release material.

Each of independent claims 1, 19<sup>9</sup> and 21, in one fashion or another, calls for at least a portion of the folded sheet of the label to be directly adhered to the release material. This limitation is not disclosed or suggested by either Instance '043 or Instance '686 because in each case, no portion of the folded panels of the label is directly attached

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<sup>7</sup> See, for example, page 5, lines 3-7, of the specification of the present application; column 9, lines 16-20, of Instance '043; and column 7, lines 37-64, of Instance '686.

<sup>8</sup> For example, waxed or siliconized paper (page 5, line 7 of the specification of the present application; column 9, line 21 of Instance '043).

<sup>9</sup> The term "the release material" in the fourth to the last line of claim 19 lacks a proper antecedent. This claim deficiency is worthy of correction.

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to the release material. Rather, the folded panels of Instance '043 and Instance '686 are directly attached to the support web (element 18 of Instance '043; element 26 of Instance '686), which is not a "release material" as that term is used herein.

Independent claims 11 and 14 are somewhat broader than claims 1, 19 and 21 in the sense that they call for at least a portion of "the label" to be directly adhered to the release material. With respect to the standing rejection of claim 11 as being anticipated by Instance '043, the examiner's position that this claim limitation is met by Instance '043 because support web 18 may be considered a release material is not well taken for the reasons given above. Further, the support web 18 itself of Instance '043 cannot be considered a part of "the label" because claim 11 further specifies that the label comprises an upper panel and a lower panel connected by a folded edge with the label being directly releasably adhered to the release material by means of a self-adhesive rear surface of the lower panel. These additional limitations have the effect of precluding one from considering the support web 18 of Instance '043 to be a part of the label.

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As to the standing rejection of claim 14 as being anticipated by Instance '686, considering the claimed upper panel as corresponding to one of the panels 6, 8, 10, 12 of Instance '686 and the lower panel which is separate from the upper panel as being the support web 26 of Instance '686, Instance '686 does not anticipate claim 14 because the upper panel (any one of the panels 6, 8, 10 and 12) does not extend beyond the lower panel (support web 26). Alternatively, if the support web 26 of Instance '686 in conjunction with the release material 73 is considered to read on the claimed "release material," Instance '686 still does not anticipate claim 14 because the "lower panel being separate from the upper panel" requirement of claim 14 cannot be read on the panels of Instance '686 that are unitary in the sense that they are joined together by fold lines 14, 16 and 18.

Independent claims 22 and 26 in effect call for a self-adhesive label comprising a support web carried on a release material, and a folded sheet disposed on the support web having a free outer edge extending past the support web and over the backing of release material so that the free outer edge is adhered to the release material. This limitation is

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not disclosed or suggested by Instance '043 or Instance '686 because no portion of the folded label panels (elements 10, 12, 14, 16 of Instance '043; elements 6, 8, 10, 12 of Instance '686) of either reference can be reasonably interpreted as extending past the support web (element 18 of Instance '043; element 26 of Instance '686) and over the release material (element 37 of Instance '043; element 73 of Instance '686) so as to be releasably adhered thereto.

Independent claims 31 and 35 in effect call for folded label portions adhered to a release material, and laminar material extending past the folded label portions thereby to form an end portion which is directly adhered to the release material. This limitation is not disclosed or suggested by either of the applied references because no portion of the laminar material (element 30 of Instance '043; element 28 of Instance '686) extends past and is adhered to the release material (element 37 of Instance '043; element 73 of Instance '686). Rather, the laminar material of the applied references is coextensive with and directly attached to the support web (element 18 of Instance '043; element 26 of Instance '686), which is not a "release material" as that term is used herein.

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For these reasons, as well as the reasons set forth by  
appellant in the brief, the decision of the examiner is  
reversed.

*REVERSED*

IAN A. CALVERT	)	
Administrative Patent Judge	)	
	)	
	)	
LAWRENCE J. STAAB	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
JEFFREY V. NASE	)	
Administrative Patent Judge	)	

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