

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KURT W. VETTER

Appeal No. 1998-0953
Application No. 08/467,084¹

ON BRIEF

Before COHEN, McQUADE and GONZALES, Administrative Patent Judges

GONZALES, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the examiner's final rejection of claims 1, 3 through 11, 13 through 21 and 31 through 33. Claim 12, the only other claim remaining in the

¹ Application for patent filed June 6, 1995.

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application, stands withdrawn from further consideration under
37 CFR

§ 1.142(b), as being directed to a non-elected species.

Claims 2 and 22 through 30 have been canceled.

We REVERSE.

The invention is directed to a plastic security envelope,
and particularly to a tamper-resistant envelope having two
different adhesive closure seals. The subject matter before
us on appeal is illustrated by reference to claims 1, 13 and
31 which, along with the other claims on appeal, have been
reproduced in an "appendix" filed on September 21, 1998 (Paper
No. 15).

The prior art references of record relied upon by the
examiner in rejecting the appealed claims are:

Craig 1987	4,712,729	Dec. 15,
Canno 1988	4,759,643	Jul. 26,
Holcomb et al. 26, 1990 (Holcomb)	4,937,040	Jun.
Restello 1966 (British Patent Document)	1,025,034	Apr. 06,
Carter 1993	2,265,883	Oct. 13,

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(British Patent Document)

The following rejections are before us for review:²

claims 1, 3, 4, 6, 9, 10, 13, 15, 18, 19 and 31
through 33

stand rejected under 35 U.S.C. § 103 as being unpatentable
over Holcomb in view of Canno;³

claims 5 and 14 stand rejected under 35 U.S.C. § 103 as
being unpatentable over Holcomb in view of Canno, as applied
to claims 1 and 13, and further in view of Carter;

claims 7, 8, 16 and 17 stand rejected under 35 U.S.C. §
103 as being unpatentable over Holcomb in view of Canno, as
applied to claims 1 and 13, and further in view of Craig; and

claims 11, 20 and 21 stand rejected under 35 U.S.C. § 103
as being unpatentable over Holcomb in view of Canno, as

² In the final rejection, claims 1, 3-11, 13-21 and 31-33 were also rejected under 35 U.S.C. § 112, second paragraph. Since no mention of this rejection has been made by the examiner in the answer, we presume that the examiner has withdrawn the final rejection of claims 1, 3-11, 13-21 and 31-33 on this ground. Ex parte Emm, 118 USPQ 180, 181 (Bd. App. 1957).

³ We note that claim 4 is inconsistent with claim 1 from which it depends. Claim 1 recites that it is the second adhesive seal which is disposed to adhere to an exterior surface of the second panel. For purposes of our review, we construe claim 4 as reciting that the second adhesive seal is positioned on the fold-over flap. Correction of claim 4 is in order upon return of this application to the jurisdiction of the examiner.

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applied to claims 1 and 13, and further in view of Restello.

The full text of the examiner's rejections and the responses to the arguments presented by appellant appear in the final rejection (Paper No. 6, mailed May 1, 1997) and the answer (Paper No. 10, mailed December 10, 1997), while the complete statement of appellant's arguments can be found in the main and reply briefs (Paper Nos. 9 and 11, filed November 3, 1997 and January 8, 1998, respectively).

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we have made the determinations which follow.

The rejection of claims 1, 3, 4, 6, 9, 10, 13, 15, 18, 19 and
31 through 33

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We reverse the examiner's rejection of claims 1, 3, 4, 6, 9, 10, 13, 15, 18, 19 and 31 through 33 under 35 U.S.C. § 103.

In rejecting claims under 35 U.S.C. § 103 the examiner bears the initial burden of presenting a prima facie case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993); In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). Only if that burden is met does the burden of coming forward with evidence or argument shift to the applicant. Id. If the examiner fails to establish a prima facie case, the rejection is improper and will be overturned. In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In order to establish the prima facie

obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 985, 180 USPQ 580, 583 (CCPA 1974).

We begin our review with independent claim 1. We note that claim 1 calls for a tamper resistant envelope comprising, inter alia, first and second panels, a first adhesive seal

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disposed on an interior surface of the first panel opposite an interior surface of the second panel for sealingly adhering to the interior surface of the second panel at a location spaced from the upper edge of the second panel and formed of an adhesive material having adherent properties which are resistant to release at temperatures substantially below room temperature, and a second adhesive seal disposed on the first panel for sealingly adhering to an exterior surface of the second panel at a location spaced from the upper edge of the second panel and formed of an adhesive material having temperature related adherent properties which are different from those of the adhesive material from which the first adhesive seal is formed.

The examiner describes Holcomb (final rejection, pages 2 and 3) as disclosing an adhesive seal 38' (Figures 9A-9C) including a first adhesive seal 46 and a second adhesive seal 52 of different

materials. The adhesive seal 52 is described by the examiner as "disposed on the flap 36 for adhering to the exterior

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surface 24 of the second panel 12 (Fig. 9C)" (id.). The examiner, acknowledging that Holcomb does not show the adhesive seal 38' disposed on the interior surface 28 of the first panel 14, cites Canno for its teaching of an adhesive seal 25 (Figs. 2-5) on both a flap 24 and an interior surface of a panel 21. It is the examiner's position that it would have been obvious

to extend the adhesive seal 38' of Holcomb et al. from the flap to the interior surface of the first panel (thus inherently disposing the first adhesive seal 46 on the interior surface 28 of the first panel 14) as taught by Canno, in order to provide the envelope with an effective and self-sealing closure. (Final rejection, page 3).

Appellant argues that the combined disclosures of Holcomb and Canno fail to teach or suggest positioning first and second adhesive seals having different adherent properties at the locations recited in claim 1 (main brief, page 10).

We agree. Assuming, arguendo, that it would have been obvious to extend the adhesive seal 38' of Holcomb to the interior surface 28 of panel 14 opposite the interior surface of panel 12, as suggested by the examiner, the adhesive seal would not have been capable of sealingly adhering to the interior surface

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of the second panel at a location spaced from the upper edge of the second panel. Rather, the seal 38' of Holcomb would have extended to the upper edge of panel 12 (see Canno's Fig. 5). Since all the claim limitations would not have been taught or suggested by the combined disclosures of Holcomb and Canno, it follows that the examiner has not established the prima facie obviousness of the invention set forth in claim 1. See In re Royka, supra. Accordingly, we cannot support the examiner's rejection of claim 1 under 35 U.S.C. § 103.

Independent claims 13 and 31 call for a tamper resistant envelope comprising, inter alia, first and second panels, a first adhesive seal disposed on an interior surface of the first panel and a second adhesive seal disposed on the interior surface of the first panel spaced from the first adhesive seal. Appellant argues (brief, pages 12 and 14) that neither Holcomb nor Canno discloses "a second adhesive seal . . . spaced from the first adhesive seal." We agree. Holcomb discloses a single closure strip 38' in Figures 9A-9C composed of a low adhesion material 52 and a layer of adhesive 46 applied over the low adhesion material (col. 8, lines 1-16).

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As shown in Figure 9A, the adhesive 46 is in direct contact with, not spaced from, low adhesion material 52. Canno also fails to teach or suggest two adhesive seals

spaced from one another on the same panel. Accordingly, we will not sustain the standing 35 U.S.C. § 103 rejection of independent claims 13 and 31.

Claims 3, 4, 6, 9 and 10, dependent on claim 1, claims 15, 18 and 19, dependent on claim 13, and claims 32 and 33, dependent on claim 31, contain all of the limitations of their respective independent claim. Therefore, we will also not sustain the standing 35 U.S.C. § 103 rejection of these claims.

The rejection of claims 5 and 14

We reverse the examiner's rejection of claims 5 and 14 under 35 U.S.C. § 103.

Carter is cited by the examiner (final rejection, pages 3 and 4) for its teaching of a fold line, i.e., weld seam 25, between a first panel 14 and a flap 30 (see, Carter, page 3).

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Our review of Carter reveals that Carter also discloses that more than one strip of adhesive 31 may be provided (id.). For example, in Figure 2, Carter shows a second band of adhesive 80 located on wall portion 16.

Claims 5 and 14 recite that the first adhesive seal has adherent properties which are resistant to release at temperatures substantially below room temperature and that the

second adhesive seal has temperature related adherent properties which are different from those of the first adhesive seal. Holcomb does, in fact, suggest forming closure strip 38' with a layer of adhesive 46 which is resistant to release at temperatures substantially below room temperature (see, col. 10, lines 29 et seq.). The examiner has determined (final rejection, page 2) that Holcomb teaches or suggests that low adhesion material 52 has adherent properties which are different from those of adhesive layer 46. Assuming, arguendo, that the different adherent properties of low adhesion material 52 are temperature related as required by the claims, we can find no motivation in the combined

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teachings of Holcomb, Canno and Carter for forming the adhesive layer 46 of Holcomb spaced from the low adhesion material 52 so as to provide spaced first and second seals. Holcomb teaches that the layer of adhesive 46 must be applied over the low adhesion material 52 so that if the bag is sealed, reopened and then resealed, indicia is formed indicating that the bag has been opened and resealed. See, col. 5, lines 49 through col. 6, line 31. Thus, separating the adhesive layer 46 of Holcomb from the low adhesion material 52 would be contrary to the very teachings of Holcomb.

Since all the limitations of claims 5 and 14 would not have been taught or suggested by the combined disclosures of Holcomb, Canno and Carter, it follows that the examiner has not established the prima facie obviousness of the invention set forth in these claims. See In re Royka, supra.

The rejection of claims 7, 8, 16 and 17

We reverse the examiner's rejection of claims 7, 8, 16

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and 17 under 35 U.S.C. § 103.

Claims 7 and 8, which depend from claim 1, and claims 16 and 17, which depend from claim 13, include all of the limitations of their respective parent claims. Our review of Craig, which is applied by the examiner along with Holcomb and Canno to reject claims 7, 8, 16 and 17, indicates to us that this reference does not supply the deficiencies in the combined teachings of Holcomb and Canno noted above. Accordingly, we will not sustain the standing 35 U.S.C. § 103 rejection of these claims.

The rejection of claims 11, 20 and 21

Our review of Restello which is used in combination with Holcomb and Canno to reject claims 11, 20 and 21, respectively, reveals that it also fails to supply the deficiencies in Holcomb

and Canno discussed above. Since claims 11, 20 and 21 are dependent from claims 1 or 13, we will not sustain the standing 35 U.S.C. § 103 rejection of these claims.

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In summary, all of the examiner's rejections of claims 1, 3 through 11, 13 through 21 and 31 through 33 are reversed.

REVERSED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JOHN P. McQUADE)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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JOHN F. GONZALES)	
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