

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD E. MCVICKER

Appeal No. 1998-0860
Application No. 08/365,710

ON BRIEF

Before HAIRSTON, FLEMING, and LEVY, Administrative Patent Judges.

HAIRSTON, Administrative Patent Judge.

ON REQUEST FOR REHEARING

Appellant has requested that we reconsider our December 21, 2000 decision wherein we affirmed the obviousness rejection of claim 9.

In a discussion of the Stern reference, we explained that "the roll inhibiting device 51 is only in the Figure 6 embodiment," and that "[s]uch a roll inhibiting device is not

in the other embodiment^[1] disclosed by Stern" (Decision, page 3). Appellant argues (Request, page 1) that "Figure 1 shows the inhibiting device 51, albeit there is no number on the drawing (see the heavy lined block below numeral 41)."

Inasmuch as Stern is completely silent as to a description of the element near numeral 41 in Figure 1, we will not assume that it is a roll-inhibiting device. When Figures 1 through 6 are discussed together in the description of the invention, Stern indicates that they are not the same embodiment because she uses the term "embodiments" (column 4, line 42) to refer to these figures. In the "BRIEF DESCRIPTION OF THE DRAWINGS," for example, Stern indicates (column 2, lines 40 and 41) that "FIG. 6 illustrates a modification to an end of the spring-strip depicted in FIGS. 5a and 5b." Stern clearly explains (column 4, lines 17 through 35) that the roll-inhibiting device 51 was added to the Figure 6 embodiment "to ensure that spring-strip 41 rolls from the top edge 21 of the bag, rather than from bottom edge 23."

¹Appellant has correctly argued (Request, page 2) that the roll-inhibiting device 51 is in the "species of figures 7-9."

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In summary, Stern discloses three distinct embodiments (i.e., Figures 1 through 5 are a first embodiment, Figure 6 is a second embodiment, and Figures 7 through 9 are a third embodiment), and the roll-inhibiting device 51 is only used in the latter two embodiments. Accordingly, appellant's request has

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been granted to the extent that our decision has been reconsidered, but such request is denied with respect to making any modifications to the decision.

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

REHEARING
DENIED

)	
KENNETH W. HAIRSTON))
Administrative Patent Judge)	
)	
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)	BOARD OF PATENT
MICHAEL R. FLEMING)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
STUART S. LEVY))
Administrative Patent Judge)	

KWH:hh

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