

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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte GARFIELD STOVIN et al.

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Appeal No. 2000-1202  
Application No. 08/982616

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ON BRIEF

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Before McCANDLISH, Senior Administrative Patent Judge, ABRAMS, and NASE,  
Administrative Patent Judges.

ABRAMS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-9, which are all of the claims pending in this application.

We REVERSE.

### BACKGROUND

The appellants' invention relates to an apparatus for folding box blanks and depositing panels into the box. An understanding of the invention can be derived from a reading of exemplary claim 1, which appears in the appendix to the appellant's Brief.

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

Doman	4,778,554	Oct. 18, 1991
Fluent <u>et al.</u> (Fluent)	5,024,045	Jun. 18, 1991

Claims 1, 2 and 4 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Fluent.

Claims 3 and 5-9 stand rejected under 35 U.S.C. § 103 as being unpatentable over Fluent in view of Doman.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the Answer (Paper No. 10) and the first office action (Paper No. 3) for the examiner's complete reasoning in support of the rejections, and to the Brief (Paper No. 9) for the appellants' arguments thereagainst.

OPINION

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

The Rejection Under 35 U.S.C. § 102(b)

The invention before us is directed to the sorting and packing of panels such as vinyl siding in corrugated paper boxes. According to the appellants, in the prior art these endeavors were accomplished essentially by hand in several locations, and it is the objective of their invention to provide a combined sorting and box folding machine that automatically folds and positions a box adjacent to a panel receiving station (specification, pages 2 and 3). In furtherance of this objective, independent claim 1 is directed to a "unitary" packing and folding machine which comprises a panel receiving station for positioning in line with a panel extrusion production line, and a box folding section positioned "generally adjacent said panel receiving station" and having "means for folding a corrugated paper box blank" along predetermined fold lines to form a container for the

panels from the panel receiving station. Claim 1, along with dependent claims 2 and 4, stands rejected as being anticipated<sup>1</sup> by Fluent.

Fluent was cited by the appellants on page 2 of their specification as being representative of the type of prior art system over which they believe their invention to be an improvement. This reference discloses separate machines for folding the boxes and for filling them with panels. As shown in Figure 1 and explained in columns 3 and 4, box blanks<sup>2</sup> (10) having predetermined score lines are received at a container folding area (A) where they are pre-folded before being passed to a forming area (B) to be erected and have the end flaps glued. At this juncture, a plurality of erected boxes are stacked one on top of another

and moved to area C, as by a wheeled cart, to the container storage and transfer section 300 of the panel packer/tray closer 35 for packing with a predetermined number of panels 33, as each issues from extrusion operations 32 (column 4, lines 54-58, emphasis added).

As shown and described with regard to Figures 3 and 3A, a stack of boxes is placed on a platform (303) on the panel packer unit, whereupon they are individually moved into the

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<sup>1</sup>Anticipation is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of the claimed invention. See, for example, In re Paulsen, 30 F.3d 1475, 1480-1481, 31 USPQ2d 1671, 1675 (Fed. Cir. 1994).

<sup>2</sup>As explained in Fluent, a “blank” is a flat, substantially rectangular sheet of material (column 3, line 47).

loading position and filled with panels. The loaded boxes then are closed, sealed and moved to a palletizer.

Two key requirements of the appellants' claim 1 are that the panel packing and folding machine be "unitary," and that the box folding section be positioned "generally adjacent" to the panel receiving section. The common definition of "unitary" is "having the character of a unit," that is, "undivided" or "whole," and of "adjacent" is "not distant," "having a common endpoint or border," "immediately preceding or following."<sup>3</sup> The appellants describe the orientation of the box folding section and the panel packing section in the specification in a manner which is in accord with these definitions. It is abundantly clear to us from the portion of the description quoted above that in the Fluent system the box folding section is not "unitary" with the panel receiving section. Nor, in our view, can it be considered to be "generally adjacent" thereto, in view of the fact that the assembled boxes are moved in a wheeled cart from the box folding section to the container packing area. This also establishes that box "blanks" are not present at the panel receiving section, and thus there is no means for folding box blanks at that location, as is recited in the claim. Fluent thus does not disclose or teach some of the structure recited in claim 1, and therefore cannot be anticipatory thereof. This being the case, we will not sustain the rejection of claim 1 or, it follows, of claims 2 and 4, which depend therefrom.

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<sup>3</sup>See, for example, Merriam Webster's Collegiate Dictionary, Tenth Edition, 1996, pages 14 and 1293.

The Rejection Under 35 U.S.C. § 103

Independent claims 5, 8 and 9 stand rejected as being obvious<sup>4</sup> in view of the combined teachings of Fluent and Doman, the latter being cited for its disclosure of using arm means for folding boxes. Claims 5 and 8 require that the box folding section be “adjacent” the panel receiving section, and claim 9 that it be “sidewardly adjacent” thereto. All three of these claims also recite that the box folding section includes means acting upon box blanks. For the reasons explained above, Fluent actually teaches away from such arrangements. Doman is concerned with closing the top flaps of a corrugated container that has previously been erected and filled with goods, and which has arrived at the machine from “a previous operating station” (column 3, lines 35 and 36). While Doman does teach folding the flaps of the box into the closed position by means of arms, it certainly does not provide teachings that would cure the deficiencies in Fluent that are discussed above. Moreover, from our perspective, no other evidence is before us which

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<sup>4</sup>The test for obviousness is what the combined teachings of the prior art would have suggested to one of ordinary skill in the art. See, for example, In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In establishing a prima facie case of obviousness, it is incumbent upon the examiner to provide a reason why one of ordinary skill in the art would have been led to modify a prior art reference or to combine reference teachings to arrive at the claimed invention. See Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Int. 1985). To this end, the requisite motivation must stem from some teaching, suggestion or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art and not from the appellant's disclosure. See, for example, Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1052, 5 USPQ2d 1434, 1052 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988).

would have suggested to one of ordinary skill in the art that it would have been obvious to modify Fluent in order to meet the claim limitations.

It therefore is our conclusion that a prima facie case of obviousness has not been established with regard to the subject matter of independent claims 5, 8, and 9, and we will not sustain the rejection of these claims or of claims 6 and 7, which are dependent from claim 5.

In view of the highly developed nature of the packaging arts, however, we feel constrained to suggest that the examiner consider further review with regard to the issue of whether it would have been obvious to one of ordinary skill in the art to modify the Fluent system by placing the box folding section adjacent to the panel receiving section.

#### CONCLUSION

Neither of the rejections is sustained.

The decision of the examiner is reversed.

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

REVERSED

HARRISON E. McCANDLISH	)	
Senior Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
NEAL E. ABRAMS	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
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JEFFREY V. NASE	)	
Administrative Patent Judge	)	

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WILLIAM BRUCE DAY  
SWANSON MIDGELY LLC  
2420 PERSHING ROAD, SUITE 400  
KANSAS CITY , MO 64108

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APJ ABRAMS

APJ McCANDLISH

APJ NASE

**DECISION: REVERSED**

Prepared By:

**DRAFT TYPED:** 27 Apr 01

**FINAL TYPED:**