

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

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WALTER C. ROMAN

Appeal No. 2000-1479
Application No. 08/915,355

ON BRIEF

Before CALVERT, NASE, and GONZALES, Administrative Patent Judges.

NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 9, 14 to 19, 23 and 24. Claims 10 to 13 and 25 to 27 have been objected to as depending from a non-allowed claim. Claims 20 to 22 have been canceled.

We REVERSE.

BACKGROUND

The appellant's invention relates to an assembly for splitting open contents-filled garbage bags, an assembly for splitting open cans and bottles-filled garbage bags, an assembly for splitting open yard waste-filled garbage bags, and a method for splitting open contents-filled garbage bags. A copy of the claims under appeal is set forth in the appendix to the appellant's brief.¹

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

Davis 1971	3,606,058	Sep. 20,
Roman 1993	5,267,823	Dec. 7,

Claims 1 to 3, 5 to 9, 14 to 19 and 23 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Roman.

¹ In claim 5, it appears to us that the word "rearward" should be "forward" for consistency with the specification (p. 5, lines 27-30) and claims 15 and 18.

Claims 4 and 24 stand rejected under 35 U.S.C. § 103 as being unpatentable over Roman in view of Davis.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the final rejection (Paper No. 6, mailed July 20, 1999) and the answer (Paper No. 13, mailed January 31, 2000) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 12, filed November 12, 1999) for the appellant's arguments thereagainst.

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 make the determinations which follow.

The anticipation rejection

We will not sustain the rejection of claims 1 to 3, 5 to 9, 14 to 19 and 23 under 35 U.S.C. § 102(b).

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegaal Bros. Inc. v. Union Oil Co., 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir.), cert. denied, 484 U.S. 827 (1987). The inquiry as to whether a reference anticipates a claim must focus on what subject matter is encompassed by the claim and what subject matter is described by the reference. As set forth by the court in Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984), it is only necessary for the claims to "'read on' something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or 'fully met' by it."

Claims 1 to 3, 5 to 9, 14 to 19 and 23 each include the limitation that the bag slitter assembly include horizontally-disposed canard-like blades wherein the blades are disposed

substantially continuously laterally across the width of the bag splitter assembly.²

Roman's invention is directed to a bag splitter assembly for tearing open conveyed bags containing municipal solid waste and emptying the contents therefrom. As shown in Figures 2 and 3, the bag splitter assembly comprises a series of pivotally mounted splitter blades 36 and 36' which are located above a bag transporting conveyor 30. Confronting serrated edges 48 and 48' of the splitter blades tear open the conveyed bags while the trailing edges of the blades contain

² The United States Patent and Trademark Office (USPTO) applies to the verbiage of the claims before it the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the appellant's specification. In re Morris, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). See also In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983). In this case, it is our determination that the term "horizontally-disposed" as used in the claims under appeal would be understood by one of ordinary skill in the art to mean that the canard-like blades which are disposed substantially continuously laterally across the width of the bag splitter assembly lie in a plane more horizontal than vertical.

grippers 50 which grip the torn bags allowing the conveyor to separate the contents from the retained bag. As shown in Figure 3, the blades 36 and 36' with their serrated edges 48 and 48' and grippers 50 are vertically-disposed.

The appellant argues (brief, pp. 11-12) that Roman does not disclose the recited "horizontally-disposed canard-like blades." We agree. As shown in Figure 3, the blades 36 and 36' with their serrated edges 48 and 48' and grippers 50 are vertically-disposed, not "horizontally-disposed" as claimed. The examiner's position (answer, p. 3) that the grippers 50 of Roman are "horizontally-disposed canard-like blades" carried by a plurality of blade holders (i.e., blades 36 and 36') is unconvincing since while the grippers have a horizontal component one skilled in the art would consider the grippers to be vertically-disposed, not "horizontally-disposed."

Since all the limitations of claims 1 to 3, 5 to 9, 14 to 19 and 23 are not disclosed in Roman for the reasons set forth

above, the decision of the examiner to reject claims 1 to 3, 5 to 9, 14 to 19 and 23 under 35 U.S.C. § 102(b) is reversed.

The obviousness rejection

We have also reviewed the Davis reference additionally applied in the rejection of claims 4 and 24 (dependent on claims 1 and 23) but find nothing therein which makes up for the deficiencies of Roman discussed above regarding claims 1 and 23. Accordingly, the decision of the examiner to reject claims 4 and 24 under 35 U.S.C. § 103 is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 3, 5 to 9, 14 to 19 and 23 under 35 U.S.C. § 102(b) is reversed and the decision of the examiner to reject claims 4 and 24 under 35 U.S.C. § 103 is reversed.

REVERSED

IAN A. CALVERT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JEFFREY V. NASE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JOHN F. GONZALES)	
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Appeal No. 2000-1479
Application No. 08/915,355

Page 9

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Appeal No. 2000-1479
Application No. 08/915,355

Page 10

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