

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and (2) is not binding precedent of the Board.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 DAVID C. NOEL, CHARLES R. BARMORE,
H. WALKER STOCKLEY III and E. SUSANNE TROUTT

Appeal No. 2000-1889
Application No. 08/828,903¹

ON BRIEF

Before PAK, LIEBERMAN, and JEFFREY T. SMITH, Administrative
Patent Judges.

PAK, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal under 35 U.S.C. § 134 from
the examiner's final rejection of claims 19, 20, 22, 23 and 25
through 27, which are all the claims pending in the above-
identified application.

¹ Application for patent filed April 2, 1997

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Claim 19 is representative of the subject matter on appeal and reads as follows:

19. A package for a product, comprising:

a product;

a support member supporting the product;

a first film sealed to the support member, said first film having at least one opening therein;

a second film sealed to the first film such that said second film covers said at least one opening in said first film, said second film having a gas transmission rate of at least about 50,000 cc/m²/24 hrs./atm. at 73°F, said product being enclosed within said support member by said first and second films;

a third, substantially gas-impermeable film for enclosing the first and second films;

whereby removal of the third, impermeable film Mows for a flow of gases through said second film and said at least one opening, into and out of the package.

The prior art references relied upon by the examiner are:

Graney	5,132,151	Jul. 21, 1992
Watanabe et al. (Watanabe)	5,241,149	Aug. 31, 1993
Gorlich	5,348,752	Sep. 20, 1994

Claims 19, 20, 22, 23, 25 and 26 stand rejected under 35 U.S.C. § 103 as unpatentable over the combined disclosures

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of Gorlich and Graney. Claim 27 stands rejected under 35 U.S.C. § 103 as unpatentable over the combined disclosures of Gorlich, Graney and Watanabe.

We have carefully reviewed the claims, specification and applied prior art, including all of the arguments advanced by both the examiner and the appellants in support of their respective positions. This review leads us to conclude that the examiner's Section 103 rejections are not well founded. Accordingly, we will not sustain the examiner's Section 103 rejections for essentially those reasons set forth in the Brief and the Reply Brief. We only add the following for emphasis and completeness.

The examiner finds (Answer, page 4) that:

Gorlich teaches the use of a permeable/non-permeable barrier for food packaging, such as meat, whereby the outer non-permeable layer can be removed to allow gases to penetrate the permeable layer. (Abstract).

The examiner recognizes that Gorlich does not mention employing three layers of films to enclose a tray, with the first one being a perforated film.

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To remedy this deficiency, the examiner relies on the disclosure of Graney. See the Answer, page 4. The examiner finds (Answer, pages 4 and 5) that:

Graney teaches the packaging of microwaveable products whereby the multilayer package is first covered with a perforated layer 12 (that allows pressure to dissipate during microwaving) and then with a peelable second layer 13 (that is removed before the product at some point before the package is placed in a microwave oven). (Col. 1, lines 42-50). Specifically, this perforated layer allows for the release of steam and to prevent "material from leaving the container and splattering the interior of the microwave oven" (col. 3, lines 44-50).

The examiner's finding, however, does not provide a sufficient suggestion or motivation to employ the perforated film taught in Graney in the package of the type described in Gorlich. Specifically, the examiner has not pointed to any suggestion in the applied prior art to demonstrate that the employment of the perforated film used in a microwave food packaging is useful for the non-microwave packaging of the type described in Gorlich.²

² The examiner relies on Watanabe for teaching "the use of [a] permeable material to produce an oxygen scavenging packet...placed in packaged food."

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Accordingly, we reverse the examiner's decision rejecting all of the claims on appeal under 35 U.S.C. § 103.

REVERSED

CHUNG K. PAK)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
PAUL LIEBERMAN)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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JEFFREY T. SMITH)	
Administrative Patent Judge)	

CKP:vsh

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