

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. 10

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

***Ex parte*** RICHARD L. CLEMENTS

---

Appeal No. 2001-2225  
Application No. 09/265,647

---

ON BRIEF

---

Before ABRAMS, PATE and McQUADE, ***Administrative Patent Judges.***

PATE, ***Administrative Patent Judge.***

***DECISION ON APPEAL***

This is an appeal from the final rejection of claims 1-11 and 23-33. These are the only claims remaining in the application.

Appeal No. 2001-2225  
Application 09/265,647

The claimed invention is a disposable bag and fasteners for lining the interior of a parts washer. After a mechanic washes parts, the liner can be removed to dispose of the debris washed off the parts.

The claimed subject matter may be further understood with reference to the appealed claims appended to appellant's Brief.

**THE REFERENCES**

The references of record relied upon by the examiner as evidence of anticipation and obviousness are:

Kugler	3,437,258	Apr. 8, 1969
Lee	3,890,988	June 24, 1975
McAdams	4,603,558	Aug. 5, 1986

**THE REJECTIONS**

Claims 1-3, 6, 23-25, and 28 stand rejected under 35 U.S.C. § 102 as anticipated by McAdams.

Claims 1-4, 6-11, 23-26, and 28-33 stand rejected under 35 U.S.C. § 103 as unpatentable over Lee in view of McAdams.

Appeal No. 2001-2225  
Application 09/265,647

Claims 5 and 27 stand rejected under 35 U.S.C. § 103 as unpatentable over Lee in view of McAdams, and further in view of Kugler.

Claims 8-11 and 30-33 stand rejected under 35 U.S.C. § 103 as unpatentable over Lee.

For the full details of these rejections, reference is made to the Final Rejection, Paper No. 5.

For a response to these rejections by the appellant, reference is made to the Appeal Brief, Paper No. 8.

#### **OPINION**

We have carefully reviewed the claims on appeal in light of the arguments of the appellant and the examiner. As a result of this review we have determined that claims 1-3, and 6 lack novelty over the applied prior art, and that claims 7-11 are **prima facie** obvious in view thereof. Appellant has not rebutted this **prima facie** obviousness with addition evidence. Accordingly, the rejections of claim 1-3 and 6-11 are affirmed. It is our further finding that claims 23-25 and 28 are not anticipated by the applied prior art. We have also concluded

Appeal No. 2001-2225  
Application 09/265,647

that the applied prior art does not establish a case of **prima facie** obviousness with respect to claims 4, 5 and 23-33. The rejections of these claims are not affirmed. Our reasons follow.

The following represents our findings as to the scope and content of the prior art and the difference between the prior art and the claimed invention. McAdams discloses a flexible plastic bag kit for installation in a freezer. McAdams attaches the bag by use of a plurality of magnetic strips 11 placed in a hem 7, one strip for each edge of the container 1. The flexible bag may be disposable or reusable. This bag anticipates appellant's claims 1-3 and 6.

Appellant argues that McAdams does not show a magnetic strip adapted to hold a first portion of the bag to the hinged lid of a parts washer. Appellant does not state why the strip of McAdams could not so function. In our view, it is clear that the magnetic strip is adapted to hold an edge of a bag to any flat iron-containing surface. This is all the claims require. The claims certainly are silent with respect to protecting a hinge. Note further that it is the magnetic strip that is claimed as adapted to hold a bag to the cover. Claim 1 does not include a

Appeal No. 2001-2225  
Application 09/265,647

limitation on the flexible bag itself with respect to any cover. We further note that appellant has not included any argument respecting holes 4 in the sidewalls of McAdams.

With respect to the rejection of claims 23-25 and 28 as anticipated by McAdams, we note that these claims are directed to the combination of a parts washer and a flexible bag. McAdams does not show a parts washer in combination with a flexible bag.

With respect to the obviousness rejection of claims 7-11, we affirm the rejections of these claims based not on the combined teachings of Lee and McAdams but on the teachings of McAdams alone for claim 7 and McAdams and the examiner's official notice regarding written instructions for claims 8-11. First, for claim 7, McAdams discloses that his bag can be disposable. This represents a clear recognition in the art that a kit such as disclosed by McAdams should include several replacement flexible bags for consumer convenience when replacing the disposable bags. Therefore, the obviousness rejection of claim 7 as unpatentable over the combined teachings of Lee and McAdams is affirmed based on the teaching of McAdams alone.

Appeal No. 2001-2225  
Application 09/265,647

Similarly, we affirm the rejection of claims 8-11 based on the teachings of the kit of McAdams and the examiner's official notice that written instructions are a ubiquitous feature of consumer products. The exact instructions included with the kit as to directions for use do not serve to limit the parts of the kit themselves and cannot serve to patentably distinguish over the kit of McAdams. These argued limitations represent method steps in the use of the flexible bag of the kit and do not impart patentability to the kit claimed as an article.

Turning to the rejection of claims 4, 5 and 23-33, we agree with appellant's argument on pages 5 and 6 of the brief that it would not have been obvious to combine the teachings of Lee and McAdams. We are of the view that the only suggestion for the combination comes from an impermissible hindsight review of appellant's disclosure.

Appeal No. 2001-2225  
Application 09/265,647

**Summary**

The rejections of claims 1-3, and 6-11 are affirmed.

The rejections of claims 4, 5 and 23-33 are reversed.

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

**AFFIRMED-IN-PART**

NEAL E. ABRAMS	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
WILLIAM F. PATE, III	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
JOHN P. McQUADE	)	
Administrative Patent Judge	)	

WFP:psb

Appeal No. 2001-2225  
Application 09/265,647

Steven M. Koehler  
Westman Champlin & Kelly  
Suite 1600 - International Centre  
900 Second Avenue South  
Minneapolis, MN 55402-3319