

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte SCOTT A. FATH  
and CLAUDETTE M. CALDER

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Appeal No. 2002-1944  
Application 09/176,608

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ON BRIEF

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Before FRANKFORT, MCQUADE, and NASE, Administrative Patent Judges.

MCQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Scott A. Fath et al. appeal from the final rejection (Paper No. 17) of claims 18 through 20, all of the claims pending in the application.

This the second appeal to this Board involving the application. The first appeal (Appeal No. 2000-2039) resulted in a decision (Paper No. 12) sustaining all of the examiner's rejections.

THE INVENTION

The invention relates to a container blank particularly suited for making a cigarette pack. Representative claim 18 reads as follows:

18. A blank for use in forming a container consisting of a body forming portion and a lid forming portion, the body forming portion including a back panel integrally connected to a left side panel and a right side panel, and the lid forming portion including a back panel integrally connected to a left side panel and a right side panel, the left and right side panels of the lid forming portion including left and right dust flaps connected thereto, the left side panel and left dust flap of the lid forming portion extending outwardly from the back panel of the lid forming portion, and the right side panel and right dust flap of the lid forming portion extending outwardly from the back panel of the lid forming portion, an integral horizontally disposed hinge line between the back panel of the body forming portion and the back panel of the lid forming portion, and diagonal cut lines one between the left side panels and the other between the right side panels, each cut line extending to the hinge line and including a lone uncut portion about midway along its length in the range of .020 to .065 inches to thereby strengthen and stabilize the left and right side panels of the lid forming portion and the dust flaps associated therewith.

THE PRIOR ART

The items relied on by the examiner as evidence of obviousness are:

Gorton	3,078,030	Feb. 19, 1963
Focke et al. (Focke)	5,575,386	Nov. 19, 1996

The prior art cigarette box blank shown in Figure 1 of the appellants' drawings and described on pages 5 through 7 of the appellants' specification (the admitted prior art)

THE REJECTION

Claims 18 through 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the admitted prior art in view of Gorton or Focke.

Attention is directed to the brief (Paper No. 19) and answer (Paper No. 20) for the respective positions of the appellants and examiner regarding the merits of this rejection.

DISCUSSION

I. Grouping of claims

In the brief, the appellants state that "each claim is separately patentable and each should be considered on its own merits" (page 3), but they fail to explain why dependent claims 19 and 20 are separately patentable from independent claim 18. Therefore, pursuant to 37 CFR § 1.192(c)(7), we shall decide the appeal on the basis of claim 18 alone, with claims 19 and 20 standing or falling therewith.

II. The merits

The appellants do not dispute the examiner's palpably sound determination (see page 3 in the answer) that the admitted prior art meets all of the limitations in claim 18 except for the one requiring each of the diagonal cut lines to include "a lone uncut portion about midway along its length in the range of .020 to

.065 inches to thereby strengthen and stabilize the left and right side panels of the lid forming portion and the dust flaps associated therewith." Although the admitted prior art container blank 10 has diagonal cut lines 54, 56, these cut lines do not include any uncut portions. To cure this shortcoming, the examiner turns to Gorton and Focke.

Gorton discloses a box having a reclosable top, e.g., a "flip-top" cigarette box. Figures 1 through 3 depict an embodiment comprising a main box portion 20 and a reclosable top portion 22 connected by a scored hinge line 24. When the box is formed, the top portion 22 and main box portion 20 are additionally connected by diagonal "cut" lines of perforations 36, 36a extending along each side of the box to the hinge line 24. The uncut portions between the perforations break when the box is first opened. Figures 4 through 7 show the single integral blank from which the box is formed including the lines of perforations 36, 36a. Gorton teaches that these perforation lines function to initially hold the box closed without the need for any outside wrappings or seals (see column 1, lines 31 through 37; column 3, lines 21 through 31; and column 5, lines 41 through 50 and 70 through 73).

Focke discloses a hinge-lid cigarette box comprising a box part 10 and a lid 11 pivotally connected by a hinge line 22. When the box is formed, the lid 11 and box part 10 are additionally joined by connecting webs 38, 39 on diagonal "cut" lines or joints 24 extending along each side of the box to the hinge line 22. One of the connecting webs 38 lies at the front of the cut line the other 39 at the center of the line (see Figure 2 and column 2, lines 56 through 65). When the lid is first opened, these connecting webs are severed. Figure 3 shows the single integral blank from which the box is formed including the connecting webs 38, 39. Focke teaches that these webs function to initially hold the box closed without the need for any outside wrapping (see column 1, lines 26 through 46) and to indicate any unauthorized opening of the box (see column 3, lines 11 through 13).

The examiner's conclusion (see pages 3 through 5 in the answer) that the combined teachings of the admitted prior art and either Gorton or Focke would have rendered the subject matter recited in claim 18 obvious within the meaning of § 103(a) is well founded.

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Both Gorton and Focke teach that diagonal cut lines having uncut portions are advantageous in that the uncut portions initially hold the box closed without the need for extraneous securing means, and Focke teaches that the uncut portions are additionally advantageous in that they can indicate, if prematurely broken, unauthorized opening of the box. Either of these reference disclosures would have furnished the artisan with ample suggestion or motivation to provide the diagonal cut lines of the admitted prior art container blank with one or more uncut portions to attain the noted benefits.

As for the uncut portion details specified in claim 18 (a lone uncut portion in the range of .020 to .065 inches about midway along the length of each cut line), it is well settled that the discovery of an optimum value of a variable in a known process is normally obvious, there being exceptions where the parameter optimized was not recognized as being a result-effective variable or where the results of optimizing the variable are unexpectedly good. In re Antonie, 559 F.2d 618, 620, 195 USPQ 6, 8-9 (CCPA 1977). Here, one of ordinary skill in the art would have readily appreciated, as a simple matter of common sense, that the number, location and length of uncut portions in a diagonal cut line of the sort disclosed by either

Gorton or Focke are result-effective variables affecting the strength of the breakable or severable connection between the main and reclosable top portions of the box. The appellants have not argued or advanced any evidence to the contrary or to the effect that a lone uncut portion in the range of .020 to .065 inches located about midway along the length of a diagonal cut line provides unexpectedly good results. Furthermore, the recitation in claim 18 of a lone uncut portion about midway along the length of each cut line is broad enough to read on the connecting web or uncut portion 39 at the center of each of Focke's cut lines, there being nothing in the claim which excludes or is otherwise inconsistent with Focke's other connecting portions 38.

The appellants' position that the examiner's conclusion of obviousness is unsound (see pages 4 through 6 in the brief) rests solely on the argument that the collective teachings of the applied prior art would not have suggested modifying the admitted prior art container blank in view of either Gorton or Focke for the specific purpose of strengthening and stabilizing the lid portion side panels 46, 48, and associated dust flaps 50, 52, of the admitted prior art blank against damage during the formation of the blanks into containers. While it may be true that the

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applied prior art does not expressly address this particular problem, the law does not require that references be combined for the reasons contemplated by inventors as long as some motivation or suggestion to combine them is provided by the prior art taken as a whole. In re Beattie, 974 F.2d 1309, 1312, 24 USPQ2d 1040, 1042 (Fed. Cir. 1992). As indicated above, the teachings of the applied prior art do provide the requisite motivation or suggestion to furnish the admitted prior art blank with uncut portions as recited in claim 18, albeit for reasons differing from the one argued by the appellants. Such uncut portions would inherently strengthen and stabilize the left and right side panels of the lid forming portion and the dust flaps associated therewith as recited in claim 18.

Thus, the combined teachings of the admitted prior art and either Gorton or Focke justify the examiner's determination that the differences between the subject matter recited in claim 18 and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art. We shall therefore sustain the standing 35 U.S.C. § 103(a) rejection of claim 18, and claims 19 and 20 which stand or fall therewith, as being

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unpatentable over the admitted prior art in view of either Gorton or Focke.

SUMMARY

The decision of the examiner to reject claims 18 through 20 is affirmed.

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

AFFIRMED

CHARLES E. FRANKFORT	)	
Administrative Patent Judge	)	
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	)	APPEALS AND
JOHN P. MCQUADE	)	
Administrative Patent Judge	)	INTERFERENCES
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JEFFREY V. NASE	)	
Administrative Patent Judge	)	

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