

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. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte YOSHITSUGU TAKI, TAKAO HIRAMOTO
and YOSHIHISA TAKAYAMA

Appeal No. 2003-0752
Application No. 09/915,393

ON BRIEF

Before ABRAMS, STAAB, and BAHR, Administrative Patent Judges.
ABRAMS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claim 2, which is the only claim pending in this application.

We REVERSE.

BACKGROUND

The appellants' invention relates to a tape cassette. The claim on appeal has been reproduced below.

The single prior art reference of record relied upon by the examiner in rejecting the appealed claim is:

Olsen	3,655,145	Apr. 11, 1972
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Claim 2 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Olsen.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejection, we make reference to the Answer (Paper No. 10) for the examiner's complete reasoning in support of the rejections, and to the Brief (Paper No. 9) and Reply Brief (Paper No. 11) for the appellants' arguments thereagainst.

OPINION

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

The appellants' invention is directed to a tape cassette comprising a cartridge having a tape wound on a reel, wherein the end of the tape is pushed out of the

cartridge as a result of rotation of the reel in one direction. Claim 2 sets forth the invention in the following manner:

2. A tape cassette comprising

a cartridge; and

one tape reel provided in the cartridge, with a recording medium in the form of a tape being wound upon the tape reel;

wherein a leader tape that is more rigid than the recording medium in the form of a tape is connected to an unwinding end of the recording medium in the form of a tape, and is sent out from the cartridge as a result of rotation of the tape reel in one direction; and

wherein a leader tape guide wall attached to said cartridge is formed along substantially an entire circumferential periphery of the tape reel excluding a portion thereof located in correspondence with a tape draw-out opening so as to enclose at least a portion of the tape reel.

The claim stands rejected as being anticipated by Olsen which, of course, requires that Olsen disclose, expressly or under the principles of inherency, each and every element of the claim. See, for example, RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.). The appellants urge that this is not the case, and we agree. Our reasoning follows.

Claim 2 requires, inter alia, a leader tape that is more rigid than the recording medium tape and which “is sent out from the cartridge as a result of rotation of the tape reel in one direction.” Contrary to the position taken by the examiner, in the light of the

explanation of the invention provided in the specification and the arguments made by the appellants in the Briefs, we interpret this language to be a structural limitation requiring that the leader be of such rigidity as to be capable of being pushed out of the cartridge as the reel is rotated (specification, page 27 and Figure 10; Brief, page 5; Reply Brief, pages 3 and 4).

Olsen discloses a cartridge in which there is positioned a flexible tape 14 to the end of which is attached a leader 74. Olsen explains that leader 74 “may be of flexible plastic fabrication, but preferably, is more rigid than web 14.” There is no teaching in the reference that leader 74 is sufficiently rigid as to be capable of being pushed from the cartridge. Moreover, such a degree of rigidity apparently is not necessary to the Olsen invention, for if the leader need only be “flexible,” it is not required to be capable of being “sent out” from the cartridge as a result of rotation of the reel, and the presumption thus arises that the leader is not capable of being pushed from the cartridge by rotation of the reel. In this regard, the function of the leader is described only as being “for facilitating threading” (column 1, lines 33 and 34), and the reel drive spindle is described as providing torque only in the rewinding direction (column 2, lines 38 and 39). Thus, it appears to us that in Olsen the leader is pulled from the cartridge, and there is no evidence provided, nor reason to assume, that it is capable of functioning in the manner prescribed in claim 2.

It is our view that Olsen does not disclose or teach a leader having the structural characteristics and the capabilities required by claim 2. Thus, the reference is not anticipatory, and we will not sustain the rejection.

The decision of the examiner is reversed.

NEAL E. ABRAMS)	
Administrative Patent Judge)	
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LAWRENCE J. STAAB)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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JENNIFER D. BAHR)	
Administrative Patent Judge)	

NEA/lbg

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APJ ABRAMS

APJ STAAB

APJ BAHR

DECISION: **REVERSED**

Prepared By: Lesley Brooks Gordon

OB/HD

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DRAFT TYPED: 13 May 04

FINAL TYPED: