THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 28

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GEOFFREY B. MAY, BRIAN F. DAVIS,
and WLADYSLAW L. NOWAK

Appeal No. 1998-1825
Application 08/658,014

ON BRIEF

Before COHEN, FRANKFORT, and STAAB, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 8-13, which are all of the claims remaining in this application. Claims 1-7 have been canceled.

Appellants' invention is directed to an apparatus for producing packaging material which has an adhered teartape disposed thereon which facilitates the opening of packages wrapped in the packaging material, such as packs of cigarettes and confectionery, and the like. The apparatus includes a means for moving the packaging material and a dispenser for supplying the teartape. The dispenser supplies the teartape through a series of rollers 15 and 17 mounted on a first fixed guide arm 13 and a second compensating guide arm 14, wherein the teartape is led along a guide path through the rollers to a location where the teartape is adhered to the packaging material (i.e., at roller 50). As the teartape is drawn from the reel 3 by the packaging material 51, the compensating arm 14 moves in accordance with the tension of the teartape. In the event that the speed of the packaging material 51 moves slower than the speed of the tape in the guide path, the decrease in tension on the tape allows the compensating arm to pivot downwardly about pin 16 under the influence of the tension spring 19 to extend the length of the tape path, which increases the tension on the teartape. The compensating arm

14 also permits the brake pad 8 to engage spindle 2, which supports the teartape reel, hence the speed of the tape is thereby also decreased. In the event that the speed of the packaging material 51 is greater than that of the teartape, the tension in the tape path increases and causes the compensating arm 14 to pivot upwardly against the action of the spring 19 to reduce the length of the tape in the tape path, which decreases the tension on the tape. The compensating arm 14, then causes the brake pad 8 to become disengaged from the spindle 2, whereby the torque motor 10 can increase the speed of rotation of the spindle, and hence increase the speed of the tape in the tape path.

Claim 8 is representative of the subject matter before us on appeal and a copy of that claim is attached to this decision.

The prior art references of record relied upon by the examiner in rejecting claims 8-13 are:

Huck 3,097,844 Jul. 16, 1963

Martin	3,618,870	Nov. 9, 1971
Slezak	3,899,143	Aug. 12, 1975
Keilhack et al. (Keilhack)	3,934,837	Jan. 27, 1976
Asar Madhu P. et al. (Asar)	4,317,695	Mar. 2, 1982

Claims 8, 11 and 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Huck in view of Asar.

Claims 9 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Huck in view of Asar as applied to claim 8 above, and further in view of Martin or Slezak.

Claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Huck in view of Asar and Martin or Slezak as applied to claim 9 above, and further in view of Keilhack.

Rather than attempt to reiterate the examiner's full statement with regard to the above noted rejections and conflicting viewpoints advanced by the examiner and appellants regarding the rejections, we make reference to the final rejection (Paper No. 22, mailed January 21, 1997) and the examiner's answer (Paper No. 27, mailed December 29, 1997) for the reasoning in support of the rejections, and to appellants' brief (Paper No. 26, filed September 25, 1997) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellants' specification and claims, to the applied prior art references, and to the respective positions as set forth by the appellants and the examiner.

Before addressing the examiner's rejection specifically, we note that on page 4 of the brief, appellants indicate that "[c]laims 8, 11 and 12 stand or fall together. Claims 9 and

13 stand or fall together. Claim 10 stands alone." In accordance with 37 CFR 1.192(c)(7), we have selected claims 8, 9 and 10 for consideration in this appeal and will decide the issues on appeal based on these claims alone.

With regard to the examiner's rejection of claim 8 under 35 U.S.C. § 103(a) based on Huck in view of Asar, we find that the examiner has failed to establish a prima facie case of obviousness.

Huck discloses an apparatus for registering continuous webs of sheet material (W_1, W_2, W_3 and W_4) wherein the plurality of webs are brought together at a station located past rollers (30) in accurate register, each with one another. Each of the webs is mounted on a separate roller (11). The web is unwound and travels to rollers (22) and (23), respectively. After passing roller (23), the web is guided around rollers (26-30) to the station where it is collated with other webs which have followed similar paths.

> [F]loating roller 23 is effective to detect any deviation from a predetermined value of tension in the unwound web W_1 and is correspondingly displaced

> clockwise or counterclockwise about the axis of rockable shaft 25 . . . Thus, when the tension in the web W_1 exceeds the predetermined value, the speed of movement of belt 66 is increased and correspondingly increases the speed at which the web is unwound from the supply roll 11, thereby restoring the desired value of web tension. On the other hand, when an insufficient tension is detected by floating roller 23, the speed of movement of belt 66 is decreased and correspondingly decreases the speed at which the web W_1 is unwound from roll 11 until the desired value of tension is restored in the web (col. 6, lines 19-39).

Scanning head (95) and selector switch (99) compare signals from respective register marks (R) on each web such that when the register mark (R) of each web is ahead of its correct position, reversible motor (90) is rotated to effectively displace the register mark (R) in the direction opposite to the travel of the web. If the register mark is detected as lagging behind its correctly registered position, the motor (90) is turned in the opposite direction in order to restore the web to its proper position. When the web register control acts to advance the web in response to register error, there is a resulting increase in tension in the web between the drive rollers (28 and 29) and supply roll (11) and this increase is detected by floating roller (23) to cause an

increase in speed at which the web is unwound from roll (11). Conversely, the floating roller (23) causes a decrease in the speed at which the web is unwound from the supply roll (11) when the web control retards the web in response to a detected register error (col. 9, lines 58-74).

Asar discloses a taping apparatus for applying sections of plastic tape (36) to a strip stock of thin plastic film (12). A supply reel (13) of film (12) is provided, wherein the film is led through rollers (37, 38 and 41). A spring-biased dancer arm (42) mounted to roll (41) pivots to shorten or lengthen the film loop (12a) depending on the tension exerted on the film. The film is then advanced to a taping station (25) where tape (36) is fed transversely to the direction in which the film travels by an applicator mechanism (28 and 29), which secures a predetermined length of tape (36) to an adjacent side of the film (12) while momentarily stopped. The film, with spaced tapes secured thereto, is further advanced to a take-up reel (14), which is incrementally driven by motor 16. Asar further discloses "an optional dynamic brake (or brake-functioning motor)

32, . . . coupled to the pay-off reel 13" (col. 4, lines 26-28). Both the drive motor (16) of take-up reel (14) and the dynamic brake (32) coupled to pay-off reel (13) may be operated in response to signals supplied from a control circuit 33 (col. 4, lines 26-30).

It is the examiner's position that Huck "substantially describes the claimed invention except for a braking means, separate from the drive motor, for reducing the speed of rotation of the reel in dependence on a reduction on web tension" (answer, pg. 4). The examiner applies Asar to teach that the rotation of a supply reel (13) is controlled by a brake (32). The examiner also points out that Asar additionally teaches guide means (37, 38 and 41) and a spring biased dancer arm (42) which adjusts in response to a change in web tension, and concludes that "[i]t would have been obvious to one of ordinary skill to have provided a supply reel brake [of Asar] with the apparatus taught by Huck, since Huck teaches controlling the rate of rotation of a supply reel to compensate for tension variations, and Asar recognizes the desirability of employing a reel brake to control supply reel

rotation to compensate for changes in downstream web tension" (answer, pg. 4). The examiner also states that "both Huck and Asar are concerned with controlling the rate of rotation of a supply reel in response to tension variation" (answer, pg. 8). We do not agree with the examiner's position.

In the first place, we note that neither Huck nor Asar is directed to an apparatus for producing packaging material having teartape adhered thereto, wherein the teartape is an oriented plastic material base film coated with a pressure sensitive adhesive composition, and wherein the apparatus comprises a means for moving the packaging material, and a dispenser for applying the teartape at a controlled tension to a location where the teartape is adhered to the moving packaging material. Moreover, we observe that neither Huck nor Asar discloses a brake means for reducing the speed of rotation of a supply reel **in dependence on reduction in tension of a teartape** (emphasis ours). The apparatus of Huck does not disclose or require a brake since the belt (66) controls the rate at which the web is unwound from the supply

roll (11). No brake *per se* is needed due to the interrelated mechanisms that control the drive, supply and tension of the web in Huck. Also, we understand the floating roller (23) of this patent to be a tension adjustment mechanism, as opposed to a tension responsive mechanism (col. 9, lines 58-74). Therefore, the examiner turns to Asar for the teaching of a brake means. However, the brake (32) of Asar is disclosed as operating in response to signals supplied from a control circuit (33), wherein the "brake . . . coupled to the pay-off reel . . . facilitate[s] control over film tension, as well as rapid stopping of the film" (col. 9, lines 47-51). This statement by Asar clearly teaches that the tension in plastic film (12) is in dependence on the brake, as opposed to the operation of the brake being in dependence on the tension as stated in appellants' claim 8 on appeal. In other words, in the device of Asar, the brake controls the tension, instead of the tension controlling the brake. Even when an optional feed-back loop is used to determine the angular position of the dancer arm, the feedback from the dancer arm "would allow the braking motor to more closely track the instantaneous speed of the drive motor and, thus provide more responsive and

uniform control over film tension" (col. 9, line 68-col. 10, line 3). This statement by Asar further indicates that tension is dependent on the brake, as opposed to the

operation of the brake being dependent on the tension of the plastic film.

Given the foregoing discussion, we agree with the appellants' argument that the apparatus for producing packaging material having adhered a teartape thereto of appellants' claim 8 would not have been obvious to one of ordinary skill in the art based upon the teachings of Huck and Asar. In determining the differences between the prior art and the claims, the question under § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious, Stratoflex, Inc. V. Aeroquip Corp., 713 F.2d 1530, 1537, 218 USPQ 871, 877 (Fed. Cir. 1983). In our view, the claimed invention as a whole has not been evaluated by the examiner. Therefore, we conclude that the examiner used impermissible hindsight in combining Huck and Asar to arrive at appellants'

claim 8 on appeal.

We also do not agree with the examiner's assertion that appellants' recitation in the claims on appeal of "'support means for receiving a reel of teartape so that the reel can rotate as the tape is drawn from the reel by said moving packaging material' relates to an intended method of using the apparatus" (answer, pg. 7). The prior art must be capable of performing this "means-plus-function" statement. We do not find any capability in Huck or Asar, separately or combined, which allows the supply reel to be rotated through the movement of another web as appellants' "means-plus-function" limitation dictates.

For the above reasons, we will not sustain the examiner's rejection on independent claim 8 on appeal under 35 U.S.C. § 103(a) based on Huck in view of Asar.

As to claims 9 and 10, which depend directly and indirectly from independent claim 8, we have reviewed the patents to Martin, Slezak and Keilhack, additionally applied

in the rejection of these claims, but find nothing therein which makes up for the deficiencies of Huck in view of Asar noted above. Accordingly, the standing § 103(a) rejection of these claims also cannot be sustained.

With regard to independent claims 11 and 12, we note that these claims are directed to an apparatus for producing filmic packaging material having a teartape adhered thereto (claim 11), and a dispenser for supplying a teartape (claim 12). Both of these claims include limitations like those found in claim 8 discussed above, i.e., a support means for receiving a reel of the teartape so that the reel can rotate as tape is drawn from the reel by said moving packaging material, and a brake means provided to reduce the speed of rotation of the reel depending on the tension of the tape. It follows from our treatment of those limitations in claim 8 that we will also not sustain the examiner's rejection of claims 11 and 12 under 35 U.S.C. § 103(a) based on Huck and Asar.

Claim 13 is dependent from claim 12 and includes all of the limitations thereof. Accordingly, the standing § 103(a)

rejection of this claims also cannot be sustained.

Therefore, the decision of the examiner to reject claims 8-13 under 35 U.S.C. § 103(a) is reversed.

REVERSED

IRWIN CHARLES COHEN Administrative Patent Judge	)	
CHARLES E. FRANKFORT Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES

Appeal No. 1998-1825
Application No. 08/658,014

)
LAWRENCE J. STAAB)
Administrative Patent Judge)

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CLAIM 8

An apparatus for producing packaging material having adhered thereto a teartape comprising an oriented thermoplastic plastic material base film coated with a pressure sensitive adhesive composition by means of which the teartape is adhered to the packaging material which apparatus comprises: (a) means for moving the packaging material and (b) a dispenser for supplying the teartape at a controlled tension to a location where the teartape is to be adhered to the moving packaging material, which dispenser comprises a frame carrying:

(1) a support means for receiving a reel of the teartape so that the reel can rotate as tape is drawn from the reel by said moving packaging material,

(2) a guide means defining a tape path from the reel to said location,

(3) a brake means for reducing the speed of rotation of the reel in dependence on a reduction in tension of the teartape passing along said path, and

(4) a drive motor for the reel for increasing the speed of rotation of the reel in dependence on an increase in tension of the tape passing along said path.