

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ERKKI KOSKINEN  
And TOM STENMARK

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Appeal No. 1998-2113  
Application No. 08/685,478

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ON BRIEF

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Before McCANDLISH, Senior Administrative Patent Judge, and  
NASE and GONZALES, Administrative Patent Judges.

McCANDLISH, Senior Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the examiners' final rejection of claims 1 through 22. No other claims are pending in the application.

Appellants' invention relates to a method for packaging bulk goods into an intermediate bulk container<sup>1</sup> (claims 1-14, 21 and 22) and to an intermediate bulk container for bulk goods<sup>2</sup> (claims 15-20).

According to appealed claim 15, the bulk container comprises an inner package made of a non-self-supporting flexible resilient material for receiving the bulk goods (e.g., granular materials), a reinforcement structure in the interior of the inner package for providing the inner package with a parallelepiped shape upon filling the inner package with the bulk goods, and an outer plastic package surrounding the filled inner package to provide stability.

As disclosed, the inner package is in the form of a sack or flexible bag (11) and the outer package may be of various constructions as shown in the embodiments of Figures 1-5 of appellants' drawings. The reinforcement structure (designated at 19a-19g in the illustrated embodiments) appears from the drawings to be in the form of strips or sheets. In the embodiments shown in Figures 1-5 of the drawings the inner package or bag is placed on a

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<sup>1</sup> An "intermediate bulk container" is defined on page 1 of appellants' specification.

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base (14) such as a pallet. Claim 15, however, is not limited to a base of any kind.

A copy of the appealed claims is appended to appellants= brief.

The following references are relied upon by the examiner as evidence of obviousness in support of his rejection under 35 U.S.C. ' 103:

Burleson et al.	3,670,880	Jun. 20, 1972
Handelsondern (Netherlands Patent Application) <sup>2</sup>	8900271	Sept. 3, 1990

In addition to the foregoing references, the examiner has cited as Anew prior art@ the Yourgalite et al. patent No. 5,005,335 (see page 3 of the answer). This reference, however, is not included in the statement of the rejection of the claims.

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<sup>2</sup> Translation attached.

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The following rejection is before us for review:

Claims 1 through 22 stand rejected under 35 U.S.C. ' 103 as being unpatentable over the Netherlands reference in view of the Burleson reference.

According to the examiner's findings (see page 2 of the final office action (Paper No. 8) mailed April 24, 1997), the Netherlands reference discloses a bulk container in the form of a flexible sack having an interior reinforcing structure in the form of flexible strips 4 connected to interior faces of the sack to provide the sack with a parallelepiped shape upon filling the sack with granular material. The examiner concedes that the Netherlands reference lacks a teaching of an outer package. He states, however, that it is well known in the art to double wrap products [thus providing an outer package around an inner package] to provide more stability as taught by Burleson et al. (answer, page 4). He thus concludes that it would have made it obvious to provide an outer package around the sack of the Netherlands reference.

Appellants do not take issue with the examiner's findings regarding the Netherlands reference as outlined

supra. Instead, appellants' main argument supporting patentability of the appealed claims is that one skilled in the art would not have been motivated to provide the sack of the Netherlands reference with an outer package because the sack of the Netherlands reference does not require any reinforcement or supplemental stability-providing structure, i.e., a plastic material wrapped around the same, and one of ordinary skill in the art would certainly not needlessly provide the same (brief, page 8). Details regarding this argument are set forth on pages 7 and 8 of appellants' brief.

Reference is made to appellants' brief for further details of their arguments supporting patentability of the appealed claims and to the examiner's answer for further details of his rejection. Inasmuch as appellants have stated on page 4 of their brief that appealed claims 1-6, 8-18, 20 and 22 stand or fall together and have argued these claims as a group, we will select claim 15 as being representative of this group. As a result, the remaining claims in this group shall stand or fall with the representative claim. See 37 CFR ' 1.192(c)(7) as

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amended effective April 21, 1995. See also In re Young, 927 F.2d 588, 590, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Wood, 582 F.2d 638, 642, 199 USPQ 137, 140 (CCPA 1978).

The only difference between the subject matter of claim 15 and the Netherlands reference resides in the provision of ~~A~~an outer package for surrounding said parallelepiped-shaped, filled inner package and made of plastic material to provide stability@ (claim 15, lines 8-9). Appellants do not argue otherwise.

The Burleson patent teaches the art to place an outer plastic package (24) around bags or sacks containing bulk goods to provide weather resistant protection (see lines 8-11 of Burleson's abstract) as well as providing strength and toughness (see column 2, lines 8-11, of the Burleson specification). The additional protection afforded by Burleson outer package (24) thus serves to stabilize the condition of the inner sacks containing the bulk goods.

Appellants have proffered no evidence to support their argument that the sack of the Netherlands reference would not benefit from the additional thickness afforded by

Burleson's outer package. Indeed, appellants do not expressly challenge the examiner's finding that Burleson's outer package (24) provides "more stability" for the packaged goods as stated on page 4 of the answer. Even appellants' admitted prior art (see the paragraph bridging pages 1 and 2 of appellants' specification) recognizes the desirability of providing an outer package in the form of a box around an inner sack containing the bulk goods. The foregoing prior art teachings discussed supra, appellants' arguments notwithstanding, would have been ample motivation for one of ordinary skill in the art to provide an outer plastic package around the sack disclosed in the Netherlands reference for reasons stated supra, namely to provide additional protection for stabilizing the condition of the sack containing the bulk goods.

In view of the foregoing, we are satisfied that the combined teachings of the applied references would have suggested the subject matter of claim 15 to one of ordinary skill in the art to warrant a conclusion of obviousness under the test set forth in In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). Accordingly, we will sustain the ' 103 rejection of claim 15, and we will also

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sustain the ' 103 rejection of claims 1-6, 8-14, 16-18, 20 and 22 which, as noted supra, stand or fall with claim 15.

On page 4 of their brief, appellants have stated that appealed claims 19 and 21 stand or fall together.

Accordingly, we will select claim 19 (which depends from claim 15) as being representative of this group, with the result that the remaining claim (namely claim 21) in this group shall stand or fall with claim 19. See 37 CFR

' 1.192(c)(7) as amended effective April 21, 1995. See also In re Young, 927 F.2d at 590, 18 USPQ2d at 1091 and In re Wood, 582 F.2d at 642, 199 USPQ at 140.

Claim 19 recites that A said reinforcement structure is . . . attached at least to opposed interior faces of said inner package such that bulging of said inner package upon said inner package being filled with bulk goods is prevented.@ Appellants do not dispute that the internal reinforcement structure in the sack of the Netherlands reference prevents bulging in the sense disclosed in appellants= specification. Instead, appellants argue that the internal reinforcement structure in the sack of the Netherlands reference connects A only adjacent sides of the

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container and not opposed sides@ (brief, page 10). This argument is not persuasive.

Claim 19 does not recite that individual elements or strips of the reinforcing structure are each attached at opposite ends to opposed interior faces of the inner package. Instead, this claim refers to the reinforcing structure, generally. When this claim language is given its broadest reasonable interpretation (See In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989)), it does not distinguish from the arrangement of the internal reinforcing structure shown in Figure 2 of the Netherlands reference. In this regard, two diagonally opposed reinforcing strips, such as the strips in the lower right hand corner and the upper left hand corner in Figure 2 of the Netherlands reference, collectively define a reinforcing structure that attaches to opposed walls of the sack. In particular, the wall structure defining the lower right hand corner of the sack opposes the wall structure defining the upper left hand corner of the sack. For these reasons, we will sustain the ' 103 rejection of claim 19, and we will also sustain the ' 103 rejection of claim 21 which, as noted supra, stands or falls with claim 19.

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With regard to claim 7, the examiner relies on the Yourgalite patent for a teaching of wrapping a foil around a package. Reliance on this patent, however, is improper because it has not been included in the statement of the rejection. See In re Hoch, 428 F.2d 1341, 1342 n.3, 166 USPQ 406, 407 n.3 (CCPA 1970). For our review of the rejection of claim 7, we shall therefore confine ourselves to the prior art set forth in the statement of the rejection, namely the Netherlands reference and the Burleson reference. Neither of these references teaches nor suggests the claimed concept of winding a tightening foil band around an inner package and at least a portion of a base for the inner package. Accordingly, we must reverse the ' 103 rejection of claim 7.

The examiner's decision rejecting the appealed claims is affirmed with respect to claims 1 through 6 and 8 through 22, but is reversed with respect to claim 7.

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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

HARRISON E. McCANDLISH	)	
Senior Administrative Patent Judge)	)	
	)	
	)	
	)	BOARD OF PATENT
JEFFREY V. NASE	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
JOHN F. GONZALES	)	
Administrative Patent Judge	)	

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