

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. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN E. TRAISE

Appeal No. 1999-1317
Application No. 08/632,216

HEARD: November 16, 2000

Before CALVERT, ABRAMS and McQUADE, Administrative Patent Judges.¹

McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

John E. Traise appeals from the final rejection of claims 1 through 9, 12 through 18, 20 and 21. Claims 10, 11 and 19, the only other claims pending in the application, stand objected to as depending from rejected base claims.

¹ Administrative Patent Judge Lazarus, who sat on the panel at the oral hearing, has retired. He has been replaced on the panel by Administrative Patent Judge Calvert. See In re Bose Corp., 772 F.2d 866, 227 USPQ 1 (Fed. Cir. 1985).

THE INVENTION

The invention relates to "a placer mechanism and method for a web of linerless labels for accurately and efficiently placing individual labels on a conveyed product"

(specification, page 1). Representative claims 1 and 12 read as follows:

1. A placer mechanism for a web of linerless labels for placing individual labels on a product, the placer mechanism comprising:

a separator that separates the individual labels from the web of linerless labels; a buffer disposed between the separator and the product, said buffer receiving the individual labels; and

a buffer suspension assembly movably supporting said buffer so that said buffer is positionable to deliver the individual labels to the products.

12. A method of placing individual labels on a product with a placer mechanism from a web of linerless labels, the method comprising:

(a) separating the individual labels from the web of linerless labels; then

(b) transferring the individual labels to a buffer; and

(c) positioning the buffer to deliver the individual labels to the product.

THE EVIDENCE

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

Hirano et al. (Hirano) 1971	3,587,376	Jun. 28,
Kish 14, 1977	4,029,537	Jun.
Malthouse et al. (Malthouse) 6, 1982	4,323,416	Apr.
Hoffmann et al. (Hoffmann) 1985	4,552,608	Nov. 12,
Kimball et al. (Kimball) 20, 1986	4,589,943	May
Boreali 1996	5,573,621	Nov. 12,
Fayolle 1981 French Patent Document ²	2,464,195	Mar. 6,

THE REJECTIONS

Claims 1 through 3 stand rejected under 35 U.S.C. § 102(a) as being anticipated by Fayolle.

Claims 1 through 6 and 12 through 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Fayolle in view of Kish and either Hirano or Boreali.

² An English language translation of this reference, prepared by the United States Patent and Trademark Office, is appended hereto.

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Claims 7, 17 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Fayolle in view of Kish, either Hirano or Boreali, and Malthouse.

Claims 8, 9 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Fayolle in view of Kish, either Hirano or Boreali, and Hoffmann.

Claim 21 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Fayolle in view of Kish, either Hirano or Boreali, Hoffmann and Kimball.

Attention is directed to the appellant's main and reply briefs (Paper Nos. 9 and 12) and to the examiner's answer (Paper No. 10) for the respective positions of the appellant and the examiner with regard to the merits of these rejections.

DISCUSSION

I. The 35 U.S.C. § 102(a) rejection of claims 1 through 3

Fayolle discloses a device for applying labels to articles 3 moving past the device on a conveyor belt 19. The device includes a label magazine or supply roll 2 of self-

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adhesive labels 29 disposed on a support liner 30, a head 28 for printing information on the labels, an anvil 31 having a sharp edge for separating the labels 29 from the liner 30, a pivotally mounted arm 4 having a vacuum drum/flange 9, 10 on its free end for picking up a label after its separation from the liner, a jack 18 for moving the arm toward the conveyor belt such that the drum/flange 9, 10 contacts and applies the label to an article, and a spring 16 for moving the arm back toward the anvil whereby the drum/flange can pick up another label.

Anticipation is established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). It is not necessary that the reference teach what the subject application teaches, but only that the claim read on something disclosed in the reference, i.e., that all of the limitations in the claim be found in or

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fully met by the reference. Kalman v. Kimberly Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

In reading claim 1 on the Fayolle device, the examiner (see pages 3 and 4 in the answer) has determined that the claim limitations pertaining to the "separator," "buffer" and "buffer suspension assembly" are met by Fayolle's anvil 31, vacuum drum/flange 9, 10 and jack 18, respectively. As correctly pointed out by the appellant, however, the Fayolle device is not disclosed for use with linerless labels. Although claim 1 does not include the web of linerless labels as part of the placer mechanism recited therein, it does define the "separator" element in terms of its capability to separate individual labels from a web of linerless labels. There is nothing intrinsically wrong with defining something by what it does rather than by what it is. In re Swinehart, 439 F.2d 210, 213, 169 USPQ 226, 228 (CCPA 1971). Fayolle's "separator," anvil 30, functions through its sharp edge to separate individual labels from a support liner. It is not apparent, nor has the examiner cogently explained, how this structure might be capable under principles of inherency of

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separating individual labels from a web of linerless labels as required by claim 1. Hence, the examiner's finding that Fayolle discloses each and every element of the mechanism recited in claim 1 is not well taken.

Accordingly, we shall not sustain the standing 35 U.S.C. § 102(a) rejection of claim 1, or of claims 2 and 3 which depend therefrom, as being anticipated by Fayolle.

II. The 35 U.S.C. § 103(a) rejections of claims 1 through 9, 12 through 18, 20 and 21

Fayolle is the primary reference applied in support of each of the examiner's § 103(a) rejections. For the reasons expressed above, the label applying device disclosed by Fayolle does not meet the limitation in independent claim 1 requiring "a separator that separates the individual labels from the web of linerless labels." Similarly, the label applying method taught by Fayolle does not meet the corresponding limitation in independent claim 12 requiring the step of "separating the individual labels from the web of linerless labels". The examiner's reliance on Kish to overcome these deficiencies is unsound.

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Kish discloses a label applicator comprising a roll 10 of tape 11 of integral labels, feed rolls 13, 14, a reciprocable label cutting knife 15, drive rolls 16, 17, a label guide plate 20, an idler roll 21, a label applicator drum 22, label moistening means 23, and a planar support member 25, these components being arranged as shown in Figure 1. The tape of labels apparently is linerless. In use,

[e]ach successive label cut from tape 11 by the knife 15 and delivered to a first position between the drum 22 and roll 21 is adapted to be retained by a partial vacuum existing at the outer cylindrical periphery of the drum so as to be arcuately transported by the drum past a suitable label moistening means 23 to a second position from which they may be progressively rolled or pressed onto the upper surface of an envelope 24 or other document that is moved along the planer support member 25 and passed [sic] the lower side of the drum 22 by suitable feed roll means 26 [column 1, line 68, through column 2, line 10].

According to the examiner, it would have been obvious to one having ordinary skill in the art "to substitute linerless label stock for [Fayolle's] . . . because Kish shows that vacuum drum labeling is conventional with linerless label stock" (answer, pages 4 and 5).

As pointed out above, however, it is not apparent, nor has the examiner cogently explained, how the label applying

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device disclosed by Fayolle could be used with a web of linerless labels. It is also not evident why the combined teachings of Fayolle and Kish would have suggested the extensive modifications of the Fayolle device, and the method embodied thereby, necessary to accommodate linerless labels.

Since this flaw in the basic Fayolle-Kish combination finds no cure in the examiner's additional application of Hirano, Boreali, Malthouse, Hoffmann and/or Kimball, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of claims 1 and 12, and dependent claims 2 through 6 and 13 through 16, as being unpatentable over Fayolle in view of Kish and either Hirano or Boreali, the standing 35 U.S.C. § 103(a) rejection of dependent claims 7, 17 and 18 as being unpatentable over Fayolle in view of Kish, either Hirano or Boreali, and Malthouse, the standing 35 U.S.C. § 103(a) rejection of dependent claims 8, 9 and 20 as being unpatentable over Fayolle in view of Kish, either Hirano or Boreali, and Hoffmann, or the standing 35 U.S.C. § 103(a) rejection of dependent claim 21 as being unpatentable over

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Fayolle in view of Kish, either Hirano or Boreali, Hoffmann
and Kimball.

SUMMARY

The decision of the examiner to reject claims 1 through
9, 12 through 18, 20 and 21 is reversed.

REVERSED

IAN A. CALVERT)
Administrative Patent Judge)
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)	BOARD OF PATENT
NEAL E. ABRAMS)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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REVERSED

Prepared: October 23, 2002