

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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

Appeal No. 1999-2813
Application No. 08/886,255

ON BRIEF

Before COHEN, FRANKFORT, and NASE, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 4 to 6, 8 to 12, 14 and 21, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellants' invention relates to a linerless label dispenser. A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims (the applied prior art) are:

Molins 1929	1,738,076	Dec. 3,
Sue 1987	4,699,034	Oct. 13,
Krasuski et al. 1989 (Krasuski)	4,840,696	June 20,
Fukano et al. 1992 (Fukano)	5,134,915	Aug. 4,
Michalovic 1994	5,375,752	Dec. 27,
Boreali et al. 1, 1996 (Boreali) 1995)	5,560,293	Oct. (filed June 7,

Claims 1, 4 to 6, 8, 11, 12, 14 and 21 stand rejected under 35 U.S.C. § 103 as being unpatentable over Boreali in view of Krasuski, Molins, Sue and Michalovic.

Claims 9 and 10 stand rejected under 35 U.S.C. § 103 as being unpatentable over Boreali in view of Krasuski, Molins, Sue and Michalovic as applied above, and further in view of Fukano.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer (Paper No. 25, mailed February 16, 1999) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 24, filed November 30, 1998) and reply brief (Paper No. 26, filed April 16, 1999) 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, and to the respective positions articulated by the appellants and the examiner. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the examiner is

insufficient to establish a prima facie case of obviousness with respect to the claims under appeal. Accordingly, we will not sustain the examiner's rejection of claims 1, 4 to 6, 8 to 12, 14 and 21 under 35 U.S.C. § 103. Our reasoning for this determination follows.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of obviousness is established by presenting evidence that would have led one of ordinary skill in the art to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988) and In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).

The appellants argue (brief, pp. 5-10, and reply brief, pp. 1-3) that the applied prior art does not suggest the claimed subject matter of claim 1 (the only independent claim on appeal). We agree.

All the claims under appeal require the linerless label dispenser to include a surface on the downstream side of the print head and on the upstream side of the stationary anvil blade. The claims on appeal require that surface to (1) have an adhesive-release material thereon, (2) be disposed at an upwardly directed angle of between about 20-35 degrees with respect to a horizontal direction so that the labels printed by the print head move upwardly at an angle from the print head to the rotary cutter (which cooperates with the stationary anvil blade), and (3) have a plurality of upwardly extending extensions thereon for decreasing frictional resistance of the surface to the labels. However, it is our view that these limitations are not suggested by the applied prior art. Boreali teaches a linerless label dispenser which includes a surface (i.e., stripper blade/bridge 42) on the downstream side of the print head 18 and on the

upstream side of the stationary anvil blade 61 having an adhesive-release material thereon (i.e., plasma coated surface 50). Krasuski teaches a label dispenser which includes a surface (i.e., slope 7) which serves to guide the continuous tape of labels at an upwardly directed angle to the cutter 11 (which includes a fixed blade 19 and a rotary blade 18). Molins teaches a machine for cutting a moving web into strips which moves the web 4 downwardly in a vertical plane between a pair of guide members 10 and 11 to the cutting mechanism (fixed blade 14 and rotary blade 15). Molins further teaches to provide the guide members 10 and 11 with vertical ribs 12 and 13 to give a transverse scallop to the web in order to increase the vertical rigidity of the web.

In our view, the suggestion for modifying Boreali by the teachings of Krasuski and Molins in the manner proposed by the examiner to meet all of the above-noted limitations comes not from the combined teachings of the applied prior art but stems from hindsight knowledge derived from the appellants' own

disclosure.¹ The use of such hindsight knowledge to support
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¹ We have also reviewed the references to Sue, Michalovic and Fukano but find nothing therein which makes up for the deficiencies of Boreali, Krasuski and Molins discussed above.

obviousness rejection under 35 U.S.C. § 103 is, of course, impermissible. See, for example, W. L. Gore and Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). It follows that we cannot sustain the examiner's rejections of claims 1, 4 to 6, 8 to 12, 14 and 21.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1, 4 to 6, 8 to 12, 14 and 21 under 35 U.S.C. § 103 is reversed.

REVERSED

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

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