

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. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DOUGLAS WHITAKER and SVEN DOBLER

Appeal No. 2001-0346
Application No. 08/887,648

ON BRIEF

Before CALVERT, STAAB, 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 5, 13 and 18, which are all of the claims pending in this application.¹

We REVERSE and REMAND.

¹ We note that the appellants' amendment filed on October 19, 1998 (Paper No. 9) has not been clerically entered.

BACKGROUND

The appellants' invention relates to fragrance samplers provided in magazines and the like (specification, p. 2). A copy of the claims under appeal is set forth in the opinion section of this decision.

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

Bootman et al. (Bootman) 21, 1995	5,391,420	Feb.
Charbonneau 1995	5,419,958	May 30,

Claims 5, 13 and 18 stand rejected under 35 U.S.C. § 103 as being unpatentable over Charbonneau in view of Bootman.

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. 17, mailed June 18, 1999) for the examiner's complete reasoning in support of the rejection, and to the brief (Paper No. 16,

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filed April 29, 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 references, 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 rejection of the claims under appeal as set forth by the examiner is insufficient to establish a prima facie case of obviousness. Accordingly, we will not sustain the examiner's rejection of claims 5, 13 and 18 under 35 U.S.C.

§ 103. Our reasoning for this determination follows.

Claims 18, 5 and 13 read as follows:

18. A pull-apart film laminate fragrance sampler including a carrier, a fold line formed in said carrier, whereby said fold line divides the carrier into a first half and a second half, one of a film barrier and coating applied to one of the first and second halves of the carrier adjacent its fold line for reception of the fragrance sampler and to prevent its migration and wicking into the said carrier, the fold line dividing said barrier into a first said portion and a second portion, said fragrance sampler comprising a sustained liquid fragrance sampler that does not dry and which is applied to one of said first and second portions of the applied barrier, wherein said carrier and barrier are

folded over upon themselves along said fold line to define a pocket in which said sustained liquid fragrance sample is situated, said first and second portions of the barrier being one of heat, adhesive, and cohesively sealed around said fragrance sample to hold said first and second portions of said barrier together and to substantially prevent the premature release of said liquid fragrance from said sample, until said carrier is pulled open to provide for release of the liquid fragrance from the carrier.

5. The pull-apart film laminate fragrance sampler of claim 18 wherein the film is a saran coated polyester.

13. A method of forming a fragrance sampler containing a sample of liquid fragrance, which will substantially prevent the premature release of said fragrance from said sampler; said method including:

- providing a carrier;
- applying a film barrier to said carrier;
- depositing a liquid fragrance sample on a first portion said barrier, the liquid fragrance sample having a perimeter smaller than the perimeter of the barrier, such that there is a margin between the edge of the fragrance sample and the edge of the barrier;
- folding the carrier and barrier over upon each other; and,
- cohesively sealing the barrier to itself to form an enclosed pocket which encapsulates the sample, said sealing being accomplished without the use of pressure sensitive materials.

In the rejection before us in this appeal, the examiner determined (answer, p. 3) that Charbonneau discloses a fragrance sampler comprising a paper substrate 12, adhesive 58, volatile liquid containment treatment which defines

barrier 54, and capsules 60. The examiner also determined that Bootman discloses using Saran® film for a barrier in a fragrance sampler to better protect the user from unwanted fragrance release. The examiner ascertained (answer, p. 3) that "Charbonneau discloses most of the elements of the claims, except for a film and cohesive sealing as recited in claims 13 and 18." The examiner then concluded (answer, pp. 3-4) that it would have been obvious in view of Bootman to substitute a film for the volatile barrier of Charbonneau and to use other desired sealing means such as cohesive as an alternative method to seal the barrier to itself.

In our view, the examiner did not correctly ascertain the differences between the prior art and the claims at issue. In that regard, Charbonneau teaches (column 6, lines 14-18) that the adhesive that may be used to adhere the treated paper sheet(s) together (e.g., adhesive 58) to form the enclosed cavity may be selected from any of the adhesives known in the art, including pressure-sensitive adhesives, hot melt adhesives, contact adhesives, or the like. Thus, the

cohesively sealing limitations of claims 13 and 18² are met by Charbonneau. Charbonneau also teaches (column 3, line 62, to column 6, line 13) that the volatile liquid containment treatment 54 is a polyvinyl alcohol containing a crosslinking agent which is coated and dried onto the paper substrate sheet 52. In our view, this forms "a film barrier." Thus, the film limitations of claims 13 and 18³ are met by Charbonneau.

Based on our analysis and review of Charbonneau and claims 13 and 18, it is our opinion that the only difference is the limitation that "a liquid fragrance" is utilized rather

² In claim 13 the limitation is "cohesively sealing the barrier to itself to form an enclosed pocket which encapsulates the sample, said sealing being accomplished without the use of pressure sensitive materials." In claim 18 the limitation is "said first and second portions of the barrier being one of heat, adhesive, and cohesively sealed around said fragrance sample to hold said first and second portions of said barrier together and to substantially prevent the premature release of said liquid fragrance from said sample, until said carrier is pulled open to provide for release of the liquid fragrance from the carrier."

³ In claim 13 the limitation is "applying a film barrier to said carrier." In claim 18 the limitation is "one of a film barrier and coating applied to one of the first and second halves of the carrier adjacent its fold line for reception of the fragrance sampler and to prevent its migration and wicking into the said carrier."

than a microencapsulated liquid fragrance. In that regard, we agree with the appellants' specification (p. 6) which indicates that a liquid fragrance is different from a microencapsulated liquid fragrance.

Since the examiner has not determined that this difference would have been obvious at the time the invention was made to a person of ordinary skill in the art, we must reverse the decision of the examiner to reject claims 5, 13 and 18 under 35 U.S.C. § 103.

REMAND

We remand the application to the examiner to further determine if the subject matter of claims 5, 13 and 18 would have been obvious under 35 U.S.C. § 103 over the prior art of record. Specifically, the examiner should determine whether or not it would have been obvious at the time the invention was made to a person of ordinary skill in the art to have substituted "a liquid fragrance" for Charbonneau's microencapsulated fragrance.

CONCLUSION

To summarize, the decision of the examiner to reject claims 5, 13 and 18 under 35 U.S.C. § 103 is reversed. In addition, the application has been remanded to the examiner for further action.

This application, by virtue of its "special" status, requires immediate action, see MPEP § 708.01 (Seventh Edition, Rev. 1, Feb. 2000).

REVERSED and REMANDED

IAN A. CALVERT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
LAWRENCE J. STAAB)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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