

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL P. GORLICH

Appeal No. 96-2297
Application 08/117,446¹

ON BRIEF

Before STONER, Chief Administrative Patent Judge, and COHEN and STAAB, Administrative Patent Judges.

COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 3, all of the claims in the application.

¹ Application for patent filed September 7, 1993.

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Appellant's invention pertains to a method of packaging red meat products. A basic understanding of the invention can be derived from a reading of exemplary claim 1, a copy of which appears below.

1. A method of packaging red meat products, comprising the steps of:
 - a. placing a meat product on a package tray;
 - b. creating a relatively low oxygen content environment around the meat product on the tray;
 - c. covering the meat product on the tray to maintain the low oxygen content environment around the meat product;
 - d. uncovering the meat product in the tray when it is ready for blooming;
 - e. exposing the meat product on the tray to an increased oxygen content atmosphere; and
 - f. re-covering the bloomed meat product on the tray.

As evidence of obviousness, the examiner has relied upon the references listed below:

Hirsch et al. 1977 (Hirsch)	4,055,672	Oct. 25,
Sanborn, Jr. 1984 (Sanborn)	4,437,293	Mar. 20,

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The following rejection is the sole rejection before us for review.

Claims 1 through 3 stand rejected under 35 U.S.C. § 103 as being unpatentable over Hirsch in view of Sanborn.

The full text of the examiner's rejection and response to the argument presented by appellant appears in the office action dated October 27, 1994 and the main and supplemental answers (Paper Nos. 5, 12 and 14), while the complete statement of appellant's argument can be found in the main and reply briefs (Paper Nos. 11 and 13).²

In the main brief (page 7), appellant indicates that claims 1 through 3 can be grouped together as one set. In light of this statement, we select claim 1 for review, and claims 2 and 3 shall stand or fall therewith. See 37 CFR § 1.192(c)(7).

² A "SUPPLEMENT TO THE APPEAL BRIEF" (Paper No. 16) added omitted matters.

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OPINION

In reaching our conclusion on the obviousness issue raised in this appeal, this panel of the board has carefully considered appellant's specification and claims, the applied references,³ and the respective viewpoints of appellant and the examiner. As a consequence of our review, we make the determination which follows.

We cannot sustain the examiner's rejection of appellant's claims under 35 U.S.C. § 103.

³ In our evaluation of the applied references, we have considered all of the disclosure of each reference for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings of each reference, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

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As we readily discern from a review of claim 1, a method of packaging red meat products is claimed that requires, inter alia, the step of re-covering bloomed meat product on a tray.

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We turn now to the examiner's evidence of obviousness.

Like the examiner (Paper No. 5), a reading of the Hirsch document reveals to us that the steps of appellant's claimed method of packaging red meat products is addressed thereby but for the claimed re-covering step.

To overcome this deficiency, the examiner proffers the patent to Sanborn.

We find that the patent to Sanborn teaches a reclosable package (Figures 8 and 10) for food products (cured or sliced processed meats and cheeses) where the package is evacuated and/or gas flushed and hermetically sealed. Once the package is torn open and the outer hermetic seal is removed, a closure strip can be manually opened and closed or resealed (column 7, line 7 through 16).

Based upon the teachings of the two patents before us, and the examiner's applied rationale for combining same, we do not

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perceive a reasonable basis for concluding that appellant's particular method would have been obvious. More specifically, we are of the opinion that the applied patents (in particular, the Sanborn patent) simply would not have motivated one of ordinary skill to alter the disclosed method of Hirsch to include a reclosable step to re-cover a red meat product after blooming effects have occurred to "positively maintain and prolong freshness of the meat product" (answer, page 2), the rationale advanced by the examiner. The Sanborn disclosure is not related to a method pertaining to the packaging of red meat that is intended to be bloomed. Additionally, it appears to us that an alteration of the Hirsch method, as proposed, would appear to run counter to the patentee's objective (column 2, lines 15 through 24) of having the exposed gas permeable film layer effect an "integral, sealed protective package [that] will still surround the product after removal of the outer gas impermeable layer, thereby continuing to provide full protection against contamination". For these reasons, the examiner's rejection cannot be supported.

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NEW GROUND OF REJECTION

Under the authority of 37 CFR § 1.196(b), this panel of the board introduces the following new ground of rejection.

Claims 1 through 3 are rejected under 35 U.S.C. § 103 as being unpatentable over Hirsch.

The steps of appellant's method of packaging red meat products, as set forth in claim 1, is responded to by the teaching of Hirsch (Figures 1 and 2) with the exception of the recitation of paragraph f. of the claim specifying a "re-covering of the bloomed meat product on the tray".

At this point, we note that an obviousness question cannot be approached on the basis that artisans having ordinary skill would have known only what they read in references, because such artisans must be presumed to know something about the art apart from what the references disclose. See In re Jacoby, 309 F.2d 513, 516, 135 USPQ 317, 319 (CCPA 1962). Further, a conclusion of obviousness may be

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made from common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference. See In re Bozek, 416 F.2d 1385, 1390, 163 USPQ 545, 549 (CCPA 1969).

With the above in mind, we recognize the following practice. Supermarket or retail outlet consumers, at the time of appellant's invention (circa 1993), would have expected packaged meat product, as displayed in a retail outlet, to be placed in a plastic bag (the bag being closed off with a closure tie) when the display packaging showed signs of leakage or the packaged product was surrounded with a significant amount of visible liquid; additionally, of course, the retail outlet would have been expected to place the purchased packaged meat in a plastic or paper bag at the checkout counter. In each of the above circumstances wherein already packaged meat is placed into a bag, it can fairly be said that the packaged meat product and tray would have been covered thereby.

In applying the test for obviousness,⁴ we reach the conclusion that it would have been obvious to one having ordinary skill in the art to effect re-covering of the bloomed meat product on a tray that is produced according to the packaging method disclosed by Hirsch by following the known practice of inserting same in a bag. In our opinion, the incentive for this re-covering of the previously covered package of Hirsch would have simply been for the expected benefit of, for example, addressing a package leakage problem, avoiding a possible leakage problem, or for carrying a purchased product to one's home. Accordingly, we conclude that the method of appellant's claim 1 would have been obvious. As to the method step set forth in claim 2, we are of the view that this step would have been fairly suggested by the indication by Hirsch of the desirability of "thorough circulation" (column 6, lines 46 through 51). Relative to

⁴ The test for obviousness is what the combined teachings of references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

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claim 3, placing the package of Hirsch in a plastic bag, as above, responds to the broadly recited method step of overwrapping a meat product and tray.

Any request for reconsideration or modification of this decision by the Board of Patent Appeals and Interferences based upon the same record must be filed within one month from the date of the decision. 37 CFR § 1.197. Should appellant elect to have further prosecution before the examiner in response to the new rejection under 37 CFR § 1.196(b) by way of amendment or showing of facts, or both, not previously of record, a shortened statutory period for making such response is hereby set to expire two months from the date of this decision.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

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In summary, this panel of the board has reversed the rejection of claims 1 through 3 under 35 U.S.C. § 103 as being unpatentable over Hirsch in view of Sanborn. Additionally, we have introduced a new ground of rejection pursuant to 37 CFR § 1.196(b).

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The decision of the examiner is reversed.

REVERSED

37 CFR 1.196(b)

	BRUCE H. STONER, JR.)	
	Chief Administrative Patent Judge)	
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	IRWIN CHARLES COHEN)	BOARD OF
PATENT	Administrative Patent Judge)	APPEALS
)	AND
)	
INTERFERENCES))
)	
	LAWRENCE J. STAAB)	
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)	

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