

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 33

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte RONALD C. ANDERSON and DAVID A. MEYERS

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Appeal No. 96-2623  
Application No. 08/240,095<sup>1</sup>

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ON BRIEF

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Before ABRAMS, McQUADE, 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 and 5. Claims 6 through 12 have been allowed. Claims 2 and 3 have been objected to for depending from a rejectable base claim. Claim 13 has been canceled.

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<sup>1</sup> Application for patent filed May 9, 1994. According to the appellants, the application is a continuation of Application No. 07/689,024, filed September 16, 1991, now abandoned.

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We AFFIRM-IN-PART and enter a new ground of rejection pursuant to 37 CFR § 1.196(b).

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BACKGROUND

The appellants' invention relates to a cap sealing machine. A copy of appealed claims 1, 4 and 5, as they appear in the appellants' brief, is attached to this decision.

The prior art references of record relied upon by the examiner as evidence of obviousness under 35 U.S.C. § 103 are:

Stiff	3,567,560	March 2, 1971
Johnston	3,878,015	Apr. 15, 1975

In addition to the foregoing references, this Board will rely on the fact that the use of a vertical adjusting screw for raising and lowering an object is old and well known in the mechanical arts.

Claims 1, 4 and 5 stand rejected under 35 U.S.C. § 103 as being unpatentable over Stiff in view of Johnston.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the § 103 rejection, we make reference to the examiner's answer (Paper No. 28, mailed January 17, 1996) and the supplemental examiner's answer (Paper No. 30, mailed March 5, 1996) for the examiner's complete

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reasoning in support of the rejection, and to the appellants' brief (Paper No. 27, filed November 24, 1995) and reply brief (Paper No. 29, filed February 21, 1996) 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 evidence adduced by the examiner is sufficient to establish a case of obviousness only with respect to claims 1 and 4. Accordingly, we will sustain the examiner's rejection of claims 1 and 4 under 35 U.S.C. § 103. We will not sustain the examiner's rejection of claim 5 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

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is established by presenting evidence that the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed combination or other modification. See In re Lintner, 9 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972). Furthermore, the conclusion that the claimed subject matter is prima facie obvious must be supported by evidence, as shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led that individual 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). Rejections based on § 103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. See In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 177 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968). Our reviewing court has repeatedly cautioned against employing hindsight by using the appellant's disclosure as a blueprint to reconstruct the claimed invention from the

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isolated teachings of the prior art. See, e.g., Grain Processing Corp. v. American Maize-Products Co., 840 F.2d 902, 907, 5 USPQ2d 1788, 1792 (Fed. Cir. 1988).

With this as background, we analyze the prior art applied by the examiner in the rejection of the claims on appeal.

Stiff teaches the use of a letter pressing device designed for applying letters, numerals and personalized monograms upon garments such as baseball caps and athletic uniforms. The letter pressing device 1 includes a sole plate 40, a heating element 52 mounted on the upper surface of the sole plate and a pressure head 50. As illustrated in Figures I, IV and V, the sole plate 40 has a curved lower surface 46, having a concave curvature corresponding to that of the convex upper surface 48 of pressure head 50.<sup>2</sup> Additionally, the letter pressing device 1 incorporates means for automatically aligning the pressure head with the curved lower surface of the sole plate.<sup>3</sup> This includes the pressure head having a bored hole 88 centrally located in the lower side thereof for receiving the upper end of pin 90. As

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<sup>2</sup> See column 3, lines 58-63, of Stiff.

<sup>3</sup> See column 2, lines 6-9, of Stiff.

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shown in Figure VI, the diameter of the hole 88 is greater than that of pin 90.<sup>4</sup> The letter pressing device 1 also includes a collar 108 slidably disposed on a tubular member 94 and has a hold-down member or hanger 110 welded or otherwise rigidly secured thereto. A set screw 112 extends through the wall of collar 108 and engages tubular member 94 to adjustably secure collar 108 relative thereto. The collar 108 and hanger 110 may be adjusted by loosening set screw 112 to maintain a cap 114 in a taut condition on the pressure head 50.<sup>5</sup>

Johnston teaches the use of a method of molding curved veneer laminated stock. Johnston's method utilizes press platens 8 and 9. The curved pressing surfaces 13 and 12 of the press platens 8 and 9 do not conform to one another when the surfaces are in their closed position, as shown in Figure 6. However, when the pressing surfaces are in their ultimate pressure position, as shown in Figure 5, all points on pressing surface 13 are equal distance from corresponding opposite points on pressing surface 12. Furthermore, curved consolidated composite 1 has a

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<sup>4</sup> See column 4, lines 25-29, of Stiff.

<sup>5</sup> See column 4, lines 56-62, and column 5, lines 4-20, of Stiff.

thickness that is predetermined so that surface 12 is spaced apart from surface 13 a distance equal to that distance necessary to space apart press platen 8 where all points on pressing surface 13 are equal distances from corresponding opposite points on pressing surface 12. Such a pressing position causes an equal distribution of pressure over the entire composite 1.<sup>6</sup>

The examiner first determined that Stiff disclosed all the subject matter of the appealed claims except Stiff does not specify the radius of curvature for the curved surfaces of the upper and lower platens (i.e., Stiff's surface 46 of sole plate 40 and surface 48 of pressure head 50). The examiner then determined that it would have been obvious to one having ordinary skill in the art to provide the concave pressing surface (i.e., surface 46) of the upper platen of Stiff with a larger radius of curvature than that of the convex lower platen in view of the teaching of Johnston that an even distribution of pressure across the laminate is achieved thereby.

With respect to independent claim 1, the appellants argue that (1) Johnston is non-analogous art, (2) there is no teaching,

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<sup>6</sup> See column 3, line 66 to column 4, line 17, of Johnston.

suggestion, or motivation to modify Stiff by the teachings of Johnston, and (3) the declaration of Roger Bialic establishes that the claims of the present application have met with great commercial success in the marketplace.<sup>7</sup>

We find that Johnston is analogous art. The test for non-analogous art is first whether the art is within the field of the inventor's endeavor and, if not, whether it is reasonably pertinent to the problem with which the inventor was involved. In re Wood, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979). A reference is reasonably pertinent if, even though it may be in a different field of endeavor, it logically would have commended itself to an inventor's attention in considering his problem because of the matter with which it deals. In re Clay, 966 F.2d 656, 659, 23 USPQ2d 1058, 1061 (Fed. Cir. 1992). In the present instance, one problem faced by the appellants was how to apply equal pressure across a cap and indicia by the pressing surfaces of the platens in the closed position.<sup>8</sup> In that an objective of Johnston is the application of equal pressure across a laminate

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<sup>7</sup> We will address arguments (1) and (2) in this section of our opinion. The appellants' argument (3) will be addressed in a later section of this opinion.

<sup>8</sup> See page 3, lines 5-11, of the appellants' specification.

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by the equal spacing of the pressing surfaces of the platens in the pressing position, it falls at least into the latter category of the Wood test, and logically would have commended itself to an artisan's attention in considering the problem. Thus, we conclude that Johnston is analogous art.

The appellants' argument that there is no teaching, suggestion, or motivation to modify Stiff by the teachings of Johnston is unpersuasive for the following reasons. First, in our opinion Stiff's teaching that the curved lower surface 46 of the sole plate 40 has a concave curvature corresponding to that of the convex upper surface 48 of pressure head 50<sup>9</sup> would have motivated an artisan to determine the relationship between the radius of curvature of the concave surface and the radius of curvature of the convex surface. That is, the artisan would have been motivated to determine if the radius of curvature of the concave surface 46 is less than, equal to, or greater than the radius of curvature of the convex surface 48. This is due to the fact that an artisan is 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)) and skill is

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<sup>9</sup> See column 3, lines 58-63, of Stiff.

presumed on the part of those practicing in the art (see In re Sovish, 769 F.2d 738, 743, 226 USPQ 771, 774 (Fed. Cir. 1985)). Second, it would have been apparent to an artisan that the radius of curvature of Johnston's concave pressing surface 12 is greater than the radius of curvature of Johnston's convex pressing surface 13 since all points on the concave pressing surface 12 are equal distance from corresponding opposite points on the convex pressing surface 13.<sup>10</sup> Third, it is our opinion that Johnston's teaching that the radius of curvature of Johnston's concave pressing surface 12 is greater than the radius of curvature of Johnston's convex pressing surface 13 would have been ample suggestion and motivation to an artisan to apply that teaching to the concave and convex pressing surfaces of Stiff. In that regard, it is our opinion that based on the teachings of Johnston, an artisan would have decided that Stiff's teaching that the concave surface 46 corresponds to the convex surface 48 means that the radius of curvature of the concave surface would have been slightly greater than the radius of curvature of the convex surface. Lastly, while the appellants have pointed to the

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<sup>10</sup> That is, if the convex pressing surface 13 had a radius of curvature of  $R'$  and all points on the concave pressing surface 12 are spaced a distance  $D'$  from corresponding opposite points on the convex pressing surface 13, then the concave pressing surface 12 must have a radius of curvature of  $R'+D'$ .

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deficiencies of each reference on an individual basis, we note that nonobviousness cannot be established by attacking the references individually when the rejection is predicated upon a combination of prior art disclosures. See In re Merck & Co. Inc., 800 F.2d 1091, 1097, 231 USPQ 375, 380 (Fed. Cir. 1986).

In light of the foregoing, we believe that the teachings of the applied prior art are sufficient to establish a prima facie case of obviousness with respect to claim 1.

With respect to dependent claim 4, the appellants argue that the recited self-alignment means is not disclosed in Stiff or Johnston. The appellants point out that as particularly defined in the specification at page 9, lines 16-19, the fit of the unthreaded end of the screw 38 in the bottom of the lower platen 14 allows for a slight amount of play whereby the lower platen virtually floats on the lower support arm 35. The appellants contrast this to "Stiff's spring support for the head that allows only adjustment along the axis of the spring in resistance to the lowering of the upper platen due to the cams rotated by the lever" (brief, p. 9).

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Claim 4 is directed to a combination of elements wherein one element is expressed in means-plus-function format. As recently explained in In re Donaldson, 16 F.3d 1189, 1193, 29 USPQ2d 1845, 1848-49 (Fed. Cir. 1994), the PTO is not exempt from following the statutory mandate of 35 U.S.C. § 112, paragraph 6, which reads:

An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

It is our opinion that the recited means for supporting the lower platen for self-alignment to the upper platen when the platens are in the closed position reads directly on Stiff's device. Stiff's letter pressing device 1 incorporates means for automatically aligning the pressure head with the curved lower surface of the sole plate.<sup>11</sup> This includes the pressure head having a bored hole 88 centrally located in the lower side thereof for receiving the upper end of pin 90. As shown in Figure VI, the diameter of the hole 88 is greater than that of

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<sup>11</sup> See column 2, lines 6-9, of Stiff.

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pin 90.<sup>12</sup> Thus, the fit of the upper end of the pin 90 in the bottom bored hole 88 of the pressure head 50 (i.e., lower platen) allows for a slight amount of play whereby the pressure head virtually floats on the pin 90. Accordingly, it is our opinion that Stiff's structure (i.e., enlarged hole 88 surrounding pin 90) for performing the function recited by the self-alignment means is the same as the appellants' disclosed structure.

In light of the foregoing, we believe that the teachings of the applied prior art are sufficient to establish a prima facie case of obviousness with respect to claim 4.

With respect to dependent claim 5, the appellants argue that the recited vertical adjusting screw for raising and lowering the lower platen is not taught by Stiff. We agree.

The examiner did not find this argument persuasive "since Stiff discloses an adjustment screw 112 to vertically adjust the upper platen."<sup>13</sup> However, as disclosed in Stiff, the set screw

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<sup>12</sup> See column 4, lines 25-29, of Stiff.

<sup>13</sup> The examiner cites to column 5, lines 7-9, of Stiff for support.

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112 permits the collar 108 and the hanger 110 to be adjusted vertically along tubular member 94 to maintain cap 114 in a taut condition. The set screw 112 does not vertically adjust the position of the pressure head 50. The vertical position of Stiff's pressure head is adjustable by (1) the arrangement of slot 90 in pin 90, openings 98 in tubular member 94 and pin 100, (2) the action of compression spring 104, and (3) the number of washers 106 present between the spring 104 and the lower surface of the pressure head 50. However, no vertical adjusting screw for raising and lowering Stiff's pressure head is present.

In light of the foregoing, we will not sustain the standing § 103 rejection of claim 5.

Under the provisions of 37 CFR § 1.196(b), we enter the following new ground of rejection:

Claim 5 is rejected under 35 U.S.C. § 103 as being unpatentable over Stiff in view of Johnston and old and well known prior art.

The teachings of Stiff and Johnston are set forth in the discussion of parent claim 1 above. Additionally, the use of a

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vertical adjusting screw for raising and lowering an object is old and well known in the mechanical arts, for example, a vertical adjusting screw is often used for raising and lowering the height of the seat cushion of a desk chair.

For the reasons set forth supra with respect to parent claim 1, it is our opinion that based on the teachings of Johnston, an artisan would have found it prima facie obvious that Stiff's teaching that the concave surface 46 corresponds to the convex surface 48 means that the radius of curvature of the concave surface would have been slightly greater than the radius of curvature of the convex surface. Additionally, it is our opinion that it would have been obvious to one skilled in the art at the time of the appellants' invention to modify Skiff's device to include a vertical adjusting screw for raising and lowering the height of his pressing head (e.g., lower platen) since a vertical adjusting screw for raising and lowering an object is an old and well known means of adjusting the height of an object and Stiff provides alternative means for adjusting the height of his pressing head discussed supra. The suggestion and motivation for this modification comes not from the appellants' disclosure but comes from the teachings of Skiff to provide means to vertically

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adjust the pressing head and the fact that utilizing a vertical adjusting screw for raising and lowering an object was well known in the art. In our view, the substitution of one well known vertical adjustment means for another known vertical adjustment means would have been prima facie obvious to a person of ordinary skill in this art.

#### CONSIDERATION OF EVIDENCE OF NONOBVIOUSNESS

Having arrived at the conclusion that the teachings of the prior art are sufficient to establish a prima facie case of obviousness, we recognize that the evidence of nonobviousness submitted by the appellants must be considered en route to a determination of obviousness/nonobviousness under 35 U.S.C.

§ 103. See Stratoflex Inc. v. Aeroquip Corp., 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983). Accordingly, we consider anew the issue of obviousness under 35 U.S.C. § 103, carefully evaluating therewith the objective evidence of nonobviousness and argument supplied by the appellants. See In re Oetiker, 977 F.2d 1443, 1445-46, 24 USPQ2d 1443, 1444-45 (Fed. Cir. 1992); In re Piasecki, 745 F.2d 1468, 223 USPQ 785 (Fed. Cir. 1984).

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In this case the appellants have submitted rebuttal evidence in the form of a declaration of Roger Bialic (Paper No. 17, filed August 1, 1994). The Bialic declaration attests that (1) he is Vice-President/Finance of Stahl's Inc. (the assignee of the present application), (2) he is familiar with and has reviewed the claims of this application, (3) Stahl's Inc. is the world's largest manufacturer of heat applied lettering and since about 1983, a leader in supplying apparatus for heat applied lettering, (4) about 1989, the appellants began to develop heat applied transfer presses because the heat applied lettering presses available at the time did not meet Stahl's needs, (5) Stahl's request to other manufacturers to improve their heat applied transfer presses were ignored, and (6) the combination of features claimed in claims 1-12 of this application has led to considerable commercial success as sales have averaged about \$400,000 annually.

After carefully evaluating the objective evidence of nonobviousness supplied by the appellants in the Bialic declaration, we have considered anew the issue of obviousness under 35 U.S.C. § 103. However, after considering all the evidence and argument of record, it is our opinion that the

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claims under rejection under 35 U.S.C. § 103 are unpatentable under 35 U.S.C. § 103.

We do not believe that the declaration establishes commercial success of the claimed invention. In that regard, the declaration provides no data concerning whether the average annual sales of \$400,000 of the product incorporating the features of claims 1-12 represent a substantial share in this market. Our reviewing court has noted in the past that evidence related solely to the number of units sold provides a very weak showing of commercial success, if any. See In re Huang, 100 F.3d 135, 137, 40 USPQ2d 1685, 1689 (Fed. Cir. 1996); Cable Elec. Prods., Inc. v. Genmark, Inc., 770 F.2d 1015, 1026-27, 226 USPQ 881, 888 (Fed. Cir. 1985) (finding that sales of 5 million units represent a minimal showing of commercial success because "[w]ithout further economic evidence . . . it would be improper to infer that the reported sales represent a substantial share of any definable market"); see also In re Baxter Travenol Lab., 952 F.2d 388, 392, 21 USPQ2d 1281, 1285 (Fed. Cir. 1991) ("[I]nformation solely on numbers of units sold is insufficient to establish commercial success."); Kansas Jack, Inc. v. Kuhn, 719 F.2d 1144, 1151, 219 USPQ 857, 861 (Fed. Cir. 1983)

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(determination of obviousness not erroneous where evidence of commercial success consisted solely of number of units sold and where no evidence of nexus). On the basis of the limited information provided by the declarant, we conclude that the bare statement in the Bialic declaration that there was annual sales of about \$400,000 fail to establish commercial success.

Even assuming that the appellants had sufficiently demonstrated commercial success, that success is relevant in the obviousness context only if it is established that the sales were a direct result of the unique characteristics of the claimed invention, as opposed to other economic and commercial factors unrelated to the quality of the claimed subject matter. See Cable Elec., 770 F.2d at 1027, 226 USPQ at 888. In other words, a nexus is required between the sales and the merits of the claimed invention. In ex parte proceedings before the Patent and Trademark Office, an applicant must show that the claimed features were responsible for the commercial success of an article if the evidence of nonobviousness is to be accorded substantial weight. Merely showing that there was commercial success of an article which embodied the invention is not sufficient. Ex parte Remark, 15 USPQ2d 1498, 1502-03 (Bd. Pat.

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App. & Inter. 1990). Compare Demaco Corp. v. F. Von Langsdorff Licensing Ltd., 851 F.2d 1387, 7 USPQ2d 1222 (Fed. Cir.), cert. denied, 488 U.S. 956 (1988). See also Pentec, Inc. v. Graphic Controls Corp., 776 F.2d 309, 227 USPQ 766 (Fed. Cir. 1985) (commercial success may have been attributable to extensive advertising and position as a market leader before the introduction of the patented product); In re Fielder, 471 F.2d 640, 176 USPQ 300 (CCPA 1973) (success of invention could be due to recent changes in related technology or consumer demand; here success of claimed voting ballot could be due to the contemporary drive toward greater use of automated data processing techniques).

The declaration contains only an assertion that the products sold incorporated the combination of features defined in claims 1-12. This alone is insufficient to establish the required nexus. Claims are not technical descriptions of the disclosed inventions but are legal documents like the descriptions of lands by metes and bounds in a deed which define the area conveyed but do not describe the land. Because of this characteristic of claims, the commercial success of a machine "claimed" may be due entirely to claimed subject matter not recited in the claims

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under appeal (i.e., the subject matter of claims 2, 3 and 6-12) or improvements or modifications made by others to the invention disclosed in the application for patent. Such success is not pertinent to the nonobviousness of the advantages inherent in what is specifically disclosed in the application are not to be considered in determining nonobviousness. In re Vamco Machine and Tool, Inc., 752 F.2d 1564, 1577, 224 USPQ 617, 625 (Fed. Cir. 1985). Furthermore, the appellants failed to submit any factual evidence that would demonstrate the nexus between the sales and the claimed invention - for example, an affidavit from the purchaser explaining that the product was purchased due to the claimed features recited claims 1, 4 and 5. In the present case, the sales may have been due to lower manufacturing costs, the market position of Stahl's Inc., prior relations between Stahl's Inc. and other companies, or features of the product attractive to the other companies but unrelated to the claimed subject matter under appeal. In sum, the appellants simply have not carried their burden to establish that a nexus existed between any commercial success and the features claimed in the appealed claims.

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We also do not consider the declaration to have presented sufficient evidence that the appellants' invention fills a long felt need. Establishing a long felt need requires objective evidence that an art recognized problem existed in the art for a long period of time without solution. Thus, the need must have been a persistent one that was recognized by those of ordinary skill in the art. See In re Gershon, 372 F.2d 535, 539, 152 USPQ 602, 605 (CCPA 1967). The declaration does not establish that a long felt need existed since the declaration fails to provide any evidence that an art recognized problem existed in the art for a long period of time without solution.

In the final analysis, evidence of nonobviousness, although being a factor that certainly must be considered, is not necessarily controlling. Newell Companies, Inc. v. Kenney Manufacturing Co., 864 F.2d 757, 768, 9 USPQ2d 1417, 1426 (Fed. Cir. 1988).

In view of the foregoing, we are satisfied that when all the evidence and arguments are considered, the totality of the rebuttal evidence and arguments cannot be accorded substantial weight, so that, on balance, it fails to outweigh the evidence of

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obviousness as in EWP Corp. v. Reliance Universal, Inc., 755 F.2d 898, 225 USPQ 20 (Fed. Cir. 1985).

#### CONCLUSION

To summarize, the decision of the examiner to reject claims 1 and 4 under 35 U.S.C. § 103 is affirmed; the decision of the examiner to reject claim 5 under 35 U.S.C. § 103 is reversed; and a new rejection of claim 5 under 35 U.S.C. § 103 has been added pursuant to provisions of 37 CFR § 1.196(b).

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 hereof. 37 CFR § 1.197.

With respect to the new rejection under 37 CFR § 1.196(b), should the appellants elect the alternate option under that rule to prosecute further before the Primary Examiner 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. In the event the appellants elect this alternate option, in order to

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preserve the right to seek review under 35 U.S.C. §§ 141 or 145 with respect to the affirmed rejection, the effective date of the affirmance is deferred until conclusion of the prosecution before the examiner unless, as a mere incident to the limited prosecution, the affirmed rejection is overcome.

If the appellants elect prosecution before the examiner and this does not result in allowance of the application, abandonment or a second appeal, this case should be returned to us for final action on the affirmed rejection, including any timely request for reconsideration thereof.

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

AFFIRMED-IN-PART; 1.196(b)

NEAL E. ABRAMS	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
JOHN P. McQUADE	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
JEFFREY V. NASE	)	
Administrative Patent Judge	)	

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RALPH M. BURTON  
BROOKS & KUSHMAN  
1000 TOWN CENTER  
TWENTY-SECOND FLOOR  
SOUTHFIELD, MI 48075

APPENDIX

1. In apparatus for thermally bonding heat applied transfer indicia to caps, the apparatus having relatively movable upper and lower platens manually movable between open and closed positions, each platen having a generally complementary pressing surface, the invention characterized by the upper platen pressing surface being of a concave shape and the lower platen pressing surface being of a convex shape with the radius of curvature of the upper platen pressing surface being greater than the radius of curvature of the lower platen pressing surface, whereby equal pressure is applied across the pressing surfaces to a cap and the heat applied transfer indicia disposed between the platen pressing surfaces when the plates are in the closed position.

4. The invention defined by claim 1 wherein means are provided for supporting the lower platen for self-alignment to the upper platen when the platens are in the closed position.

5. The invention defined by claim 4 wherein said means includes a vertical adjusting screw for raising and lowering the lower platen.

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APJ NASE

APJ ABRAMS

APJ McQUADE

DECISION: **AFFIRMED-IN-PART;**  
**1.196(b)**

Prepared By: Delores A. Lowe

**DRAFT TYPED:** 01 Jul 97  
1st Rev. 22 Jul 97  
2nd Rev. 24 Jul 97

**FINAL TYPED:**

**3 MAN Conf.**