

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(2) is not binding precedent of the Board.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. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte CHARLES E. DUNNING  
and  
RUDOLPH W. SCHUTZ

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Appeal No. 97-1151  
Application 08/380,824<sup>1</sup>

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ON BRIEF

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Before COHEN, MEISTER and ABRAMS, Administrative Patent Judges.

COHEN, Administrative Patent Judge.

DECISION ON APPEAL

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<sup>1</sup> Application for patent filed January 30, 1995.

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This is an appeal from the final rejection of claims 3 through 5, 7, 8, and 10. These claims constitute all of the claims remaining in the application.

Appellants' disclosed invention pertains to an apparatus for holding and dispensing a coreless roll of toilet tissue. An understanding of the invention can be derived from a reading of exemplary claim 10, a copy of which appears in the APPENDIX to the brief (Paper No. 7).

As evidence of obviousness, the examiner has applied the documents listed below:

Avery	2,419,809	Apr. 29, 1947
Hertz	2,606,724	Aug. 12, 1952

The following rejections are before us for review.

Claims 10, 3 through 5, 7, and 8 stand rejected under 35 U.S.C. § 103 as being unpatentable over Avery in view of Hertz.

The full text of the examiner's rejection and response to the argument presented by appellants appears in

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the answer (Paper No. 8), while the complete statement of appellants' argument can be found in the brief (Paper No. 7).<sup>2</sup>

In the brief (page 6), appellants indicate that the rejected claims do not stand or fall together.

#### OPINION

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

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<sup>2</sup> In response to an ORDER FOR COMPLIANCE (Paper No.9), appellants submitted a paper labeled "SUPPLEMENTAL REPLY BRIEF" (Paper No. 10) providing information omitted from the brief filed August 8, 1996 (Paper No. 7).

<sup>3</sup> In our evaluation of the applied patents, we have considered all of the disclosure thereof 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, 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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We reverse the rejection of claims 10, 3 through 5, 7, and 8 under 35 U.S.C. § 103 as being unpatentable over Avery in view of Hertz.

At the outset, we point out that we fully comprehend the examiner's assessment and application of the relied upon teachings of the Avery and Hertz patents. However, for the reasons set forth infra, we do not conclude that the claimed invention would have been obvious based upon the evidence before us, as did the examiner.

Independent claim 10 is drawn to an apparatus which comprises, in combination, inter alia, a wall mounted dispenser, with two spaced side supports, normally employed to support and dispense a conventional roll of toilet tissue having a central core, a receptacle having a receptacle interior in the form of an open-topped trough for accommodating a coreless roll of toilet tissue, first and second projections on outer receptacle side surfaces with at least one of the projections being movable

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relative to the receptacle, the receptacle being rotatably connected to the wall mounted dispenser by the first and second projections and movable between a first position with the open-topped trough being substantially unexposed and a second position with the open-topped trough being substantially exposed to allow insertion of a coreless roll of toilet tissue.

Consistent with the underlying disclosure, claim 10 clearly requires a rotatable receptacle for accommodating a coreless roll of toilet tissue.

Turning to the Avery patent (Figure 1), we find that the cavity 11 of the label dispenser provides the receptacle for receiving and supporting a supply roll 15 of tape 17 and labels 18 (column 3, lines 5 through 8). A rotatable cover 20, mounted for rotation by rivets 23 (Figure 2) can be turned to

permit a new supply roll to be dropped into the receptacle (Figure 3) and thereafter returned to its closed position (column 3, line 75 to column 4, line 13).

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As is evident from our review of the Avery document, supra, this patent clearly fails to provide a rotatable receptacle with at least one of first and second projections being movable relative to the receptacle, the receptacle accommodating a coreless roll of toilet tissue, as required by claim 10.

The toilet paper roll cover concealer and holder of Hertz (Figure 4) may fairly be viewed as a non-rotatable receptacle for a paper roll, with the receptacle having depressible pin projections 14 (Figure 6) to be sprung into openings 12, 13 within a wall recess 11 (Figure 3).

Simply stated, it is the view of this panel of the board that a collective evaluation of the respective teachings of Avery and Hertz would not have provided a sound basis for one having ordinary skill in the art to so reconfigure the label dispenser of Avery as to address the particular features of the apparatus of claim 10 as set forth, supra, absent impermissible

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hindsight reliance upon appellants' own teaching. It is for this reason that the rejection on appeal must be reversed.

The decision of the examiner is reversed.

REVERSED

	IRWIN CHARLES COHEN	)	
	Administrative Patent Judge	)	
		)	
		)	
		)	BOARD OF
PATENT		)	
	JAMES M. MEISTER	)	APPEALS AND
	Administrative Patent Judge	)	
INTERFERENCES		)	
		)	
		)	
	NEAL E. ABRAMS	)	
	Administrative Patent Judge	)	

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