

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 28

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES T. STOUT

Appeal No. 1997-1878
Application 08/372,532

ON BRIEF

Before CALVERT, Administrative Patent Judge, McCANDLISH, Senior Administrative Patent Judge and BAHR, Administrative Patent Judge.

CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 2, 4, 5 and 8. Of the other claims remaining in the application, claims 9 and 10 have been allowed, and claims 3 and 7 are indicated as allowable, subject to being rewritten

Appeal No. 1997-1878
Application 08/372,532

in independent form.

The claims on appeal are drawn to an article carrier, and are reproduced in the appendix of appellant's brief.^{1, 2}

The references applied in the final rejection are:

Holley, Jr.	4,588,084	May 13, 1986
Stout et al. (Stout)	5,333,734	Aug. 2, 1994
Skillen (Canada)	877,792	Aug. 10, 1971

The appealed claims stand finally rejected under 35 U.S.C. 103(a) as unpatentable over the following combinations of references:³

- (1) Claims 1 and 2, Holley in view of Stout;
- (2) Claims 4, 5 and 8, Holley in view of Stout and Skillen.

¹All references herein to appellant's brief are to the amended brief filed on Dec. 3, 1999.

² In reviewing the application, it appears that the right-hand ends of hand holes 148a, 148b, 149a and 149b in Fig. 3 should be open. Also, on page 5 of the specification, "22" in lines 14 and 15 should be --24--, and "24" (first occurrence) in line 16 should be --22--.

³A further rejection of claims 4, 5 and 8 under 35 U.S.C. 112, second paragraph, has, as stated by the examiner in Paper No. 27 (Dec. 21, 1999), been overcome by the amendment filed on Oct. 7, 1999.

Comparing the carrier disclosed by Holley with the apparatus recited in claim 1, Holley discloses a sleeve (Fig. 2) formed by a plurality of panels 1, 6, 7, 24, 25, 42, 43 foldably joined to one another.⁴ Holley further discloses an end closure for each end of the sleeve, at least one end closure being a composite wall having a plurality of overlapping flaps (e.g., 3, 11, 15, 29, 33, 55, 67) foldably joined respectively to the plurality of panels. However, Holley's flaps do not have any finger-receiving hand-hole apertures extending through them, nor, it follows, do they have any score lines extending from a region of the hand-hole apertures, as called for by claim 1. Instead, in Holley's carrier, the hand-hole apertures 48, 49 and score lines 50, 51, 52, 53 are in top panel 43, which constitutes one of the panels forming the sleeve.

As we understand the examiner's position, it is that the recited end closures for each end of the sleeve are readable on Holley's panels 42, 43 containing hand-holes 48, 49,

⁴Webster's Third New Int'l. Dictionary (1993) defines "sleeve" as "an open-ended flat or tubular packaging or cover (light bulbs in a sleeve)."

because these panels are at each end of the series of panels 1, 6, 7, 24, 25 of which the sleeve is constituted, and are adhered together to form the sleeve. We do not consider this position to be well taken, because in the first place, the claim requires a sleeve, and the Holley carrier does not become a sleeve, i.e., a tubular packaging or cover,⁵ until panels 42, 43 are adhered together and the carrier takes the form shown in Fig. 2. That being the case, panels 42, 43 are not end closures for each end of the sleeve, as required by claim 1, but rather they are part of the side wall of the sleeve itself. We find no teaching in Holley, or in either of Stout or Skillen, which would suggest placing hand-hole apertures and at least one score line as defined in claim 1 in the end closure flaps of Holley, as for example, in flaps 3, 55, etc. Absent any such teaching or suggestion, the rejections of claims 1, 2, 4, 5 and 8 cannot be sustained.

⁵ See the definition of "sleeve" in footnote 4, *supra*.

Appeal No. 1997-1878
Application 08/372,532

Conclusion

The examiner's decision to reject claims 1, 2, 4, 5 and 8
is reversed.

REVERSED

IAN A. CALVERT)
Administrative Patent Judge)
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) BOARD OF PATENT
HARRISON E. McCANDLISH)
Senior Administrative Patent Judge) APPEALS
AND)
) INTERFERENCES
)

Appeal No. 1997-1878
Application 08/372,532

JENNIFER D. BAHR)
Administrative Patent Judge)

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