

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte TARTAN PAPER PRODUCTS

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Appeal No. 1999-1957  
Reexamination Control No. 90/004,784<sup>1</sup>

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ON BRIEF

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Before STONER, Chief Administrative Patent Judge, COHEN 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 9 through 14. Claims 1 through 8 have been canceled.

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<sup>1</sup> Reexamination for U.S. Patent No. 5,551,570, issued September 3, 1996. U.S. Patent No. 5,551,570 issued from Application No. 08/191,030, filed February 4, 1994. Request for reexamination filed October 3, 1997.

Appeal No. 1999-1957  
Reexamination Control No. 90/004,784

We REVERSE.

BACKGROUND

The appellant's invention relates to a kit adapted to provide decorative packaging for use with a basket or container that is operative to receive objects whereby the objects may be packaged for viewing and presentation. An understanding of the invention can be derived from a reading of exemplary claims 9 and 14 (the independent claims on appeal), which are reproduced in the opinion section below.

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

Knuetter 1942	2,283,069	May 12,
Schmidt 1971	3,558,039	Jan. 26,

*Bartholomew B.'s Easter'88* Catalog, Bleyer Industries Inc.,  
1988, pp. 6, 7 and 12 (Bleyer's Catalog).

In addition, the examiner also relied upon the admitted prior art shown in Figure 3 of the patent presently under reexamination (Figure 3 admitted prior art).

Claims 9, 13 and 14 stand rejected under 35 U.S.C. § 103 as being unpatentable over page 6 of Bleyer's Catalog in view of page 12 of Bleyer's Catalog and in view of page 7 of Bleyer's Catalog.<sup>2</sup>

Claim 10 stands rejected under 35 U.S.C. § 103 as being unpatentable over page 6 of Bleyer's Catalog in view of page 12 of Bleyer's Catalog as applied to claim 9 and further in view of page 7 of Bleyer's Catalog and in view of Knuetter.

Claim 11 stands rejected under 35 U.S.C. § 103 as being unpatentable over page 6 of Bleyer's Catalog in view of page 12 of Bleyer's Catalog as applied to claim 9 and further in view of the Figure 3 admitted prior art.

Claim 12 stands rejected under 35 U.S.C. § 103 as being unpatentable over page 6 of Bleyer's Catalog in view of page

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<sup>2</sup> From our reading of this rejection it does not appear that the examiner actually relied on page 7 of Bleyer's Catalog.

12 of Bleyer's Catalog as applied to claim 9 and further in view of Schmidt.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the final rejection (Paper No. 14, mailed July 21, 1998) and the examiner's answer (Paper No. 19, mailed February 5, 1999) for the examiner's complete reasoning in support of the rejections, and to the appellant's brief (Paper No. 17, filed November 23, 1998) and reply brief (Paper No. 20, filed April 5, 1999) for the appellant's arguments thereagainst.

#### OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

Claim 9 reads as follows:

A kit adapted to provide decorative packaging for use with a basket that is operative to receive objects whereby said objects may be packaged for viewing and presentation, comprising:

(a) a basket adapted to receive and support objects placed therein and having a bottom wall of a selected geometric shape, a surrounding sidewall extending upwardly to terminate in a rim defining an opening for said container [sic, basket], and a handle extending between opposed portions of said rim in an arch-like manner so as to have a medial handle portion oriented above said rim and positioned in opposed relation to the bottom of said container [sic, basket];

(b) a flexible bag having a pair of side panels joined along lateral side edges thereof, an open mouth and a bottom panel enclosing a bottom end of said bag opposite the mouth, said bag formed of a relatively clear material and sized and adapted so that said bottom wall may be positioned against the bottom panel when in the open state with said side panels extending upwardly beyond the medial portion of said handle to define a top margin for said bag;

(c) a fastener operative to encircle the top margin of said bag when said basket is placed therein and thereby operative to form a closure for the mouth of said bag that is supported by the medial portion of said handle while drawing said side panels tautly about said basket and said handle; and

(d) a packet, said bag being received in said packet, said packet being secured to said basket.

Claim 14 reads as follows:

A kit adapted to provide decorative packaging for use with a container of objects whereby said objects may be packaged for viewing and presentation, comprising:

(a) a container adapted to receive and support objects placed therein and having a bottom wall of a selected geometric shape, a surrounding sidewall extending upwardly to

terminate in a rim defining an opening for said container, and a handle extending between opposed portions of said rim in an arch-like manner so as to have a medial handle portion oriented above said rim and positioned in opposed relation to the bottom of said container;

(b) a flexible bag having a pair of side panels joined along lateral side edges thereof, an open mouth and a bottom panel enclosing a bottom end of said bag opposite the mouth, said bag formed of a relatively clear material and sized and adapted so that said bottom wall may be positioned against the bottom panel when in the open state with said side panels extending upwardly beyond the medial portion of said handle to define a top margin for said bag;

(c) a fastener operative to encircle the top margin of said bag when said container is placed therein and thereby operative to form a closure for the mouth of said bag that is supported by the medial portion of said handle while drawing said side panels tautly about said container and said handle; and

(d) a packet sized and adapted to receive said bag and said fastener, said packet being secured to said handle.

The examiner determined (final rejection, pp. 2-3) that the Easter Basket Kit set forth on page 6 of Bleyer's Catalog disclosed all the claimed limitations of claims 9 and 14 except for the basket/container having a bottom wall. The examiner then concluded that providing the basket/container with a bottom wall would have been obvious in view of the basket/containers disclosed on page 12 of Bleyer's Catalog.<sup>3</sup>

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<sup>3</sup> The appellant has not contested the obviousness of this  
(continued...)

The appellant argues that the rejection of claims 9 and 14 is inappropriate since all the limitations thereof are not suggested by the applied prior art. The appellant disagrees with the examiner's determination that the Easter Basket Kit set forth on page 6 of Bleyer's Catalog discloses all of the limitations of claims 9 and 14 except for the basket/container having a bottom wall. Specifically, the appellant argues (brief, pp. 15-17) that the packet limitation recited in paragraph (d) of claims 9 and 14 is not met by the Easter Basket Kit set forth on page 6 of Bleyer's Catalog since the shrink-wrapped basket disclosed on page 6 of Bleyer's Catalog does not include a **packet secured to** the basket (claim 9) or handle (claim 14).

The examiner responded to this argument of the appellant by asserting that

the snugness of the shrink-wrap would amount to a fastening of the shrink-wrap to the basket of Bleyer because the definition of "to fasten" includes "to fix and "to attach."

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<sup>3</sup>(...continued)  
modification.

We agree with the appellant that the shrink-wrapped basket disclosed on page 6 of Bleyer's Catalog does not include a **packet secured to** the basket or handle as set forth in claims 9 and 14. It is axiomatic that claims in reexamination proceedings are to be given their broadest reasonable interpretation consistent with the specification. In re Yamamoto, 740 F.2d 1569, 1571, 222 USPQ 934, 936 (Fed. Cir. 1984). When so read, "packet" means a small thin package<sup>4</sup> and "secured" means to make firm or tight; fasten.<sup>5</sup> The shrink-wrap disclosed by the Easter Basket Kit set forth on page 6 of Bleyer's Catalog is not in our opinion a small thin package fastened firmly or tightly to the basket or the handle and thus the shrink-wrap is not a **packet secured to** the basket or handle.

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<sup>4</sup> See Webster's Third New International Dictionary, (1971).

<sup>5</sup> See The American Heritage Dictionary, Second College Edition, (1982).

Since all the limitations of claims 9 and 14, and claims 10 to 13 dependent thereon, are not suggested by the applied prior art for the reasons stated above, the decision of the examiner to reject claims 9 to 14 under 35 U.S.C. § is reversed.<sup>6</sup>

CONCLUSION

To summarize, the decision of the examiner to reject claims 9 through 14 under 35 U.S.C. § 103 is reversed.

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<sup>6</sup> We have also reviewed the additional prior art applied in the rejection of claims 10, 11 and 12 but find nothing therein which makes up for the deficiencies above.

REVERSED

BRUCE H. STONER, JR.	)	
Chief Administrative Patent Judge	)	
)	)	
	)	
	)	
	)	BOARD OF PATENT
IRWIN CHARLES COHEN	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
JEFFREY V. NASE	)	
Administrative Patent Judge	)	

Appeal No. 1999-1957  
Reexamination Control No. 90/004,784

Page 12

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APPEAL NO. 1999-1957 - JUDGE NASE  
REEXAMINATION CONTROL NO. 90/004,784

APJ NASE

CAPJ STONER

APJ COHEN

DECISION: **REVERSED**

Prepared By: Gloria Henderson

**DRAFT TYPED:** 24 Jun 99

**FINAL TYPED:**