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| WHYTE HIRSCHBOECK DUDEK S C INTELLECTUAL PROPERTY DEPARTMENT 555 EAST WELLS STREET, SUITE 1900 MILWAUKEE, WI 53202 | | | CHANG, VICTOR S | |
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte FILIP M. STEYAERT

Appeal 2011-013399
Application 11/124,664
Technology Center 1700

Before TERRY J. OWENS, ROMULO H. DELMENDO, and
BEVERLY A. FRANKLIN, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1, 6-9, 11, 12, 17, 25 and 27-34. Claims 2-5, 10, 16, 24 and 26, which are all of the other pending claims, stand withdrawn from consideration by the Examiner. We have jurisdiction under 35 U.S.C. § 6(b).

The Invention

The Appellant claims a label media. Claim 28 is illustrative:

28. A label media, comprising:

a plurality of compressible labels removably situated on a carrier strip with a space between at least two adjacent labels;

each label having a printable surface and a thickness of greater than 300 microns, and comprising a polymeric film of at least about 100 microns thick attached to foam by an adhesive, the adhesive in intimate contact with a first facial surface of the polymeric film and a first facial surface of the foam, and the foam having a thickness greater than the thickness of either the polymeric film or the adhesive; and

the label media adapted for being fed through and printed by a printer comprising a printing station at which an image can be transferred to the printable surface of a label;

whereby the space between said adjacent labels is such that the printing station of the printer maintains a positive frictional engagement with the carrier strip and contact with the printable surface of at least one of said adjacent labels as one label leaves the printing station and another label enters the printing station.

The References

| | | |
|--------|--------------------|---------------|
| Benim | US 2003/0003249 A1 | Jan. 2, 2003 |
| Sinato | US 2003/0051382 A1 | Mar. 20, 2003 |

The Rejection

Claims 1, 6-9, 11, 12, 17, 25 and 27-34 stand rejected under 35 U.S.C. § 103 over Benim in view of Sinato.

OPINION

We reverse the rejection.

Benim discloses an insulating label stock (5) comprising a thermal insulating layer (30), which can be a foam, bonded to a face material (10, 20) (¶¶ 0002, 0023; Fig. 1). The label stock is in the form of a roll which is cut into individual lengths to make labels (¶ 0021).

Sinato discloses a tape having removable adhesive-bonded labels (20) on a backing (10) and, to reduce longitudinal stresses on the labels which cause the labels to slide over the backing when the tape is wound to or unwound from a core, at least one adhesively-bonded continuous or discontinuous strip (30, 30a, 30b) on the backing extending in the tape's longitudinal direction (¶¶ 0013-15; Figs. 1-4). The at least one strip "makes it possible to increase the thickness of that portion of tape which does not have a label or the portion formed only by the backing, to thereby reduce the longitudinal stresses exerted on the labels by distributing the stresses over the at least one strip" (¶ 0016).

The Examiner argues that it would have been prima facie obvious to one of ordinary skill in the art to form Benim's insulated label stock as a plurality of labels on a carrier strip having thereon Sinato's at least one longitudinal strip to obtain the benefit of reducing stress on the labels when the carrier strip having the labels thereon is wound to or unwound from a core (Ans. 6). The Examiner argues that "[a]bsent any reason why Benim's roll cannot be likewise modified, nor is any teaching by Benim that the label stock would fail if it is pre-cut to intended shape for end use, nothing prevents an ordinary skill in the art [sic] from modifying Benim's roll of

thick adhesive labels as a plurality of labels arranged on a carrier strip with a space between adjacent labels, motivated by the desire to obtain the beneficial effects taught by Sinato” (Ans. 9).

The Examiner has not established that there is a problem with Benim’s insulating label stock sliding over a release liner (28) (§ 0031). The Examiner appears to be arguing that one of ordinary skill in the art would have modified Benim’s insulating label stock to be in the form of individual labels to create a slippage problem to be solved using Sinato’s longitudinal strips (30). The Examiner has not established that modifying Benim’s insulating label stock for that purpose would have been apparent to one of ordinary skill in the art in view of the applied references. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). Thus, it appears that the Examiner’s reason for modifying Benim is based upon impermissible hindsight in view of the Appellant’s disclosure. *See In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967) (“A rejection based on section 103 clearly must rest on a factual basis, and these facts must be interpreted without hindsight reconstruction of the invention from the prior art”).

Accordingly, we reverse the Examiner’s rejection.

DECISION/ORDER

The rejection of claims 1, 6-9, 11, 12, 17, 25 and 27-34 under 35 U.S.C. § 103 over Benim in view of Sinato is reversed.

It is ordered that the Examiner’s decision is reversed.

REVERSED

Appeal 2011-013399
Application 11/124,664

tc/sld