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EXAMINER

POON, ROBERT

ART UNIT	PAPER NUMBER
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHRISTINA NICOLE LOPICCOLO,
PATRICK SHAFIQUE KHATTAK, and
JACOB EDMUND RUBIN

Appeal 2015-000591
Application 13/300,880
Technology Center 3700

Before: CHARLES N. GREENHUT, LYNNE H. BROWNE, and
THOMAS F. SMEGAL, *Administrative Patent Judges.*

GREENHUT, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from a rejection of claims 1, 5–9, 11–14 and 17–22. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

CLAIMED SUBJECT MATTER

The claims are directed to an environmental waste reducing carton.

Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A multi-walled container comprising a top, bottom, a side wall, and a removable portion defined by a perforated tear outline disposed in at least one of said top, bottom, and side wall and at least partially covering a dispensing opening, said container containing disposable sheets, within an inner portion thereof wherein said disposable sheets are selected from the group consisting of wipes, facial tissue, bath tissue, paper toweling, and combinations thereof, said dispensing opening facilitating dispensing of said disposable sheets, said removable portion having indicia imprinted thereupon, said indicia being disposed upon said removable portion disposed within said inner portion to face said disposable sheets, said removable portion and said indicia reducing the environmental impact of disposal of said removable portion when said removable portion is removed from said multi-walled container.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Yocum	US 6,027,018	Feb. 22, 2000
Zwick	US 7,934,597 B2	May 3, 2011

REJECTION

Claims 1, 5–9, 11–14, 17–22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Zwick and Yocum.

OPINION

Appellants argue independent claims 1, 9, 14, and 22, as a group, on the basis that Yocum is non-analogous art. App. Br. 4–5. The Figure 16–20

embodiment of Yocum, relied on by the Examiner, bears sufficient structural and functional similarity to Zwick's (see Fig. 3) and Appellants' (Figs. 1–4) devices so as to reasonably be considered analogous art under the field-of-endeavor prong of that test. *In re Bigio*, 381 F. 3d 1320, 1326 (Fed. Cir. 2004). Appellants' argument concerning the Figure 1 embodiment of Yocum being specifically designed to contain fries fails to address the Examiner's rejection based on the Figure 16–20 embodiment, which is more structurally similar to Appellants' tissue box. Given that both Yocum and the instant invention are structurally similar containers (*see* Yocum 1:6–8; Spec. 1), we cannot agree with Appellants that the use of different materials or surface protections to contain food or grease contains such a structural or functional deviation so as to render Yocum's box outside the so-called analogous arts. The structural and functional similarities outweigh the differences.

Appellants additionally argue with respect to claim 22 that the references do not provide the recited “special surface treatment.” App. Br. 6–7. Appellants and the Examiner seem to ultimately agree that the product-by-process nature of the limitation, if any, is not necessarily controlling. App. Br. 6; Ans. 6. The Examiner points to the portion of the Specification quoted by Appellants, noting that “another printing” is one of the examples included in the Specification as a “special surface treatment.” The Examiner's position that the phrase “FREE DRINK” constitutes such a printing and therefore is reasonably regarded as a “special surface treatment” in light of the Specification (Ans. 6) is reasonable and uncontroverted.

Appeal 2015-000591
Application 13/300,880

DECISION

The Examiner's rejection of claims 1, 5–9, 11–14, 17–22 under 35 U.S.C. § 103(a) as being unpatentable over Zwick and Yocum is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED