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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MATTI KOSKINEN

Appeal 2018-007405
Application 13/642,926
Technology Center 1700

Before RAE LYNN P. GUEST, JAMES C. HOUSEL, and
GRACE KARAFFA OBERMANN, *Administrative Patent Judges*.

OBERMANN, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134, Appellant¹ appeals from the Examiner's decision to reject claims 1–4 and 7–10. Appeal Br. 4–15. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Spotless Tea Bag OY. Appeal Br. 2.

STATEMENT OF THE CASE

Appellant's invention relates to a package for a beverage preparation, comprising a water permeable filter bag for solid raw material for a beverage, packed in an openable protective package enclosing the bag. Spec. ¶ 1:5–7.² For example, Appellant's invention includes packages of tea bags. *Id.* at 1:18–20, 4:28–30.

Appellant explains that after removing a conventional filter bag from a cup containing hot water, the bag causes a mess and is not easy to insert back into the package because the bag has swollen due to absorbed water. *Id.* at 1:24–2:2. Appellant seeks to address this problem and provide a package that is easy to use, does not take up a lot of space, does not require a lot of packaging material, and allows for using tea bags neatly. *Id.* at 3:8–12. Another aspect of Appellant's protective package is that it is fully sealed to act as a protection for the aroma. *Id.* at 4:30–32.

Claim 1 is illustrative of the subject matter and states:

1. A package comprising:

a water permeable polyhedral filter bag containing solid raw material for a beverage packed in said filter bag;

an openable protective package made of a package material, enclosing the bag packed in said protective package and being *fully sealed aroma-tight in closed position*; said protective package having a front wall, a rear wall, side edges, a lower edge, an upper edge, and a bottom, said front wall and rear wall joining together at their both vertical edges which form the side edges of the protective package and the front wall and the rear wall being seamed together at their upper edges, said protective package being openable by forming an opening between the front wall and the rear wall by tearing the package

² Citations are to the Specification filed on August 16, 2017.

open at a pre-marked location close to the upper edge of the package,

both the front wall and the rear wall ending at their respective separate supporting edges at the bottom, the lower edge of the package in flat, closed position consisting of said separate supporting edges, which can be brought apart to form an expanded bottom structure which keeps the package upright supported by said supporting edges brought apart, and the opening formed for taking out the bag being widenable by pressing the vertical edges closer to each other for placing the bag back into the package, the package material of the protective package forming a bottom that is liquid tight throughout at least between the supporting edges,

the package having rectangular form where the vertical edges of the package form shorter sides and the bottom and the opening of the package are formed along longer sides, and

both separate supporting edges at the bottom being constituted of folds defined by folding lines, where the package material is sealed together on a short length on both sides of each folding line.

Appeal Br. 17 (Claims App.) (emphasis added). As shown by the italicized language, claim 1 requires that the package be “fully sealed aroma-tight in closed position.” *Id.*

OPINION

The Examiner rejects claims 1–4 and 7–10 as obvious over Yoshizawa³ in view of Teepack,⁴ Takahashi,⁵ and Appellant’s Admission of the Prior Art, as further evidenced by Pyramid Tea Bags,⁶ The New York Times,⁷ and Boles.⁸ Final Action 2–7. Appellant argues these claims as a group. Appeal Br. 6–15. We select claim 1 as representative of the group. *See* 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner’s analysis begins with the package of Yoshizawa and considers modifications according to the teachings of other references, including Teepack. *See, e.g.*, Final Action 4 (¶ 7), 5 (¶ 9); Ans. 3–6. As indicated above, claim 1 requires a protective package that is “fully sealed aroma-tight in closed position” – a feature not present in the unmodified package of Yoshizawa. Appeal Br. 17 (Claims App. ¶ 2). The Examiner’s rejection rests on a theory that the ordinarily skilled artisan would have been led to modify Yoshizawa’s package in view of Teepack to include that

³ JP 03-4574 (published Jan. 17, 1991). Our citations to Yoshizawa are to the English language translation of Yoshizawa entered into the record on December 17, 2015.

⁴ DE 296 09 717 U1 (published Aug. 14, 1996). Our citations to Teepack are to the English language translation of Teepack entered into the record on December 17, 2015.

⁵ US 2005/0069230 A1 (published Mar. 31, 2005).

⁶ *Pyramid Tea Bags*, Jaytea, <http://www.jaytea.com/pyramid-tea-bags> (2009).

⁷ Florence Fabricant, *Tea’s Got a Brand New Bag*, N.Y. Times (Sept. 13, 2006), <http://www.nytimes.com/2006/09/13/dining/13tea.html>.

⁸ David Boles, *Burned Tea Thumbs: Lipton Pyramid Tea Bags*, David Boles, Blogs (Oct. 14, 2006), <http://bolesblogs.com/2006/10/14/burned-tea-thumbs-lipton-pyramid-tea-bags>.

claimed feature. Final Act. 3 (citing Teepack 4, Figs. 1–2); Ans. 5. Teepack teaches sealing the external edges of packaging for a tea bag to obtain “a liquid-impermeable and airtight material.” Teepack 4. The Examiner concludes that it would have been obvious to modify Yoshizawa’s package to include Teepack’s airtight sealing of the edges for the purpose of protecting aroma. Final Act. 3–4.

Appellant responds that fully sealing, in aroma-tight fashion, Yoshizawa’s package would disable the flap and detachable tag portions of Yoshizawa’s design. Appeal Br. 6–7 (bridging paragraph). Specifically, Appellant points out that Yoshizawa discloses a package that includes detachable tag C as an element of the package. *Id.* at 6. Further, Yoshizawa illustrates that, in order to access the detachable tag, one must lift a flap, which also is formed as part of the packaging material. *See* Yoshizawa 12, Fig. 2 (illustrating detachable tag C, located beneath the flap, and formed as part of the package). In Appellant’s view, modifying Yoshizawa by sealing the upper edge portion would disable the use of the flap. Appeal Br. 6–7.

The Examiner does not respond directly to Appellant’s main point; namely, that the structure of Yoshizawa’s package is not amenable to the proposed modification, because fully sealing the edges of Yoshizawa’s package in an air tight manner would diminish, if not destroy, the functionality of Yoshizawa’s flap and tag portions. Instead, the Examiner responds by asserting three counterarguments. First, the Examiner asserts that the comprising language of claim 1 does not preclude the presence of a detachable tag as part of the protective package. Ans. 3. Although this may be true, the Examiner does not address how Yoshizawa’s package, having a detachable tag as an element, can be modified to be fully sealed along the

edges in a manner that is aroma-tight. The Examiner acknowledges that a configuration that falls within the scope of claim 1 may or may not contain a detachable tag as taught by Yoshizawa. The Examiner, however, does not explain why an ordinarily skilled artisan would have been led to modify Yoshizawa to provide an airtight seal in light of Yoshizawa's further teaching of a detachable tag as part of the package. Teepack does not illustrate a detachable tag as part of the package. *See* Teepack 10, Figs. 1–2. The Examiner does not argue that one would have modified Yoshizawa's package to remove the detachable tag, but relies instead on a modification that would appear to render useless the detachable tag.

Second, the Examiner asserts that Appellant discloses that the claimed protective package would be fully sealed and also comprise a flap. Ans. 4. That assertion is presented in response to Appellant's suggestion that the flap portion of Yoshizawa's package cannot be fully sealed and remain operable. Appeal Br. 6–7. Appellant points out that Yoshizawa forms detachable tag C as part of the protective package. *Id.* In our view, the relevant issue is not whether a protective package can be fully sealed and also contain a flap, but whether an ordinary artisan would have modified Yoshizawa's protective package—which contains, in addition to a flap, a detachable tag formed as part of the protective package and underneath the flap—to become fully sealed in an airtight manner. That Yoshizawa's protective package *can* be fully sealed and also contain a flap does not address the question *why* one would have made that modification in view of the combined flap and detachable tag structure. The Examiner does not explain adequately why an ordinarily skilled artisan would have modified

Yoshizawa's package, in light of the functionality of the tab, which is included as a feature of Yoshizawa's packaging material. *Id.*

Third, the Examiner asserts that if Yoshizawa had unequivocally disclosed forming a fully sealed, aroma-tight protective package, then an obviousness rejection would not have been necessary and the claims would have been rejected as anticipated. Ans. 4. Although the Examiner is correct that the rejection is based on a combination of references, and not on Yoshizawa alone, the Examiner still must articulate rational reasons how and why an ordinarily skilled artisan would have combined the teachings of the asserted references with a reasonable expectation of success. On that point, Appellant responds to the rejection by arguing that the flap and detachable tag preclude modifying the package of Yoshizawa to include the fully sealed airtight edges of Teepack. We agree with Appellant that the Examiner's response does not take account adequately of the structure of Yoshizawa's package; in particular, the flap that opens to expose a detachable tag as part of the package. Appeal Br. 6–7. The Examiner, in fact, fails to respond to Appellant's argument on that point. Accordingly, the Examiner does not articulate with sufficient clarity a reason for the proposed modification to Yoshizawa's package.

The Examiner does not rely on the other applied prior art to remedy the above-discussed deficiency in the modification of Yoshizawa's package.

CONCLUSION

We reverse the Examiner's decision to reject claims 1–4 and 7–10.

Appeal 2018-007405
Application 13/642,926

Claims Rejected	35 U.S.C. §	References/Basis	Affirmed	Reversed
1-4, 7-10	103	Yoshizawa, Teepack, Takahashi, Appellant's Admission of Prior Art, Pyramid Tea Bags, The New York Times, and Boles		1-4, 7-10

REVERSED