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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MARTIN STENBERG, JAN LUNDGREN, and
MÅRTEN RITTFELDT

Appeal 2018-007873
Application 15/039,431
Technology Center 3600

Before STEFAN STAICOVICI, LYNNE H. BROWNE, and
ANNETTE R. REIMERS, *Administrative Patent Judges*.

BROWNE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the rejection of claims 1–10¹ and 15–24. Appellants’ representative presented oral arguments on November 6, 2018. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

¹ Although claim 11 is listed on the Office Action Summary form PTOL-326 dated November 24, 2017, this claim is not included in any of the rejections articulated in this Office Action, as confirmed by the Examiner in the Answer. *See* Ans. 3. The Examiner indicates that claim 11 is allowable. *Id.*

CLAIMED SUBJECT MATTER

Sole independent claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A dispenser for interfolded napkins, comprising:
 - an inner container having:
 - a bottom wall extending in a horizontal plane, side walls extending from the bottom wall in a vertical direction perpendicular thereto, and a dispensing opening opposite the bottom wall, the side walls of the inner container surrounding a supporting surface for supporting a stack of interfolded napkins; and
 - an outer sleeve comprising:
 - at least one open end being arranged to receive the inner container such that the inner container is insertable into the outer sleeve along an insertion direction extending in parallel to said horizontal plane, and a dispensing mouth that forms an open end towards said open end of the outer sleeve, wherein the dispensing opening and the dispensing mouth both extend along said insertion direction, wherein an area of the dispensing opening is larger than the dispensing mouth, and wherein, when the inner container is located in the outer sleeve, the supporting surface is biased towards the dispensing opening of the inner container and vertically movable inside the inner container between a lower position adjacent the bottom wall of the inner container, and an upper position adjacent the dispensing opening of the inner container, and at a distance from an inner periphery of the outer sleeve, forming a space between the upper position and the dispensing mouth, and wherein, at least in a region adjacent the open end of the dispensing mouth, an outer contour of upper ends of the side walls of the inner container deviates from the inner periphery of the outer sleeve, forming an access opening to the space between the upper position and the dispensing mouth, when the inner container is located inside the outer sleeve.

REFERENCES

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

| | | |
|------------|--------------------|----------------|
| Tuttle | US 2,849,153 | Aug. 26, 1958 |
| Grondin | US 3,168,275 | Feb. 2, 1965 |
| Bodek | US 3,840,146 | Oct. 8, 1974 |
| Wieser | US 7,178,689 B2 | Feb. 20, 2007 |
| Zeiron | US 7,661,553 B2 | Feb. 16, 2010 |
| Kleinhuber | US 2011/0315707 A1 | Dec. 29, 2011 |
| Bae | KR 2010/0099457 A | Sept. 13, 2010 |

REJECTIONS

- I. Claims 1, 3–7, 9, 10, and 22–24 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Grondin, Kleinhuber, Wieser, and Bae.
- II. Claim 8 stands rejected under 35 U.S.C. § 103(a) as being over Grondin, Kleinhuber, Wieser, Bae, and Tuttle.
- III. Claims 2, 15, and 16 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Grondin, Kleinhuber, Wieser, Bae, and Bodek.
- IV. Claims 17–21 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Grondin, Kleinhuber, Wieser, Bae, and Zeiron.

DISCUSSION

The Examiner finds that Grondin, Kleinhuber, Wieser, and Bae disclose or suggest all of the limitations of claim 1. Final Act. 2–6. In particular, the Examiner finds that “Kleinhuber discloses an inner container.” *Id.* at 4 (citing Fig. 4). The Examiner finds that Kleinhuber’s

inner container has an “outer contour of the upper ends of the side walls of the inner container [that] deviates from the inner periphery of the sleeve forming an access opening to the space between the upper position and the dispensing mouth.” *Id.* (parenthetical information omitted).

Appellants contend that the Examiner’s finding is in error. *See* Appeal Br. 9–10. Specifically, Appellants note that in Figure 4 Kleinhuber “shows the inner core, represented by feature 3, having a lid, represented by feature 34, and ‘basis,’ represented by feature 32” and that Kleinhuber’s “lid carries a locking member, represented by feature 340, in the form of an overlapping portion that overlaps with the complementary portion of the ‘basis.’” *Id.* (citations omitted). Given these observations, Appellants argue that Kleinhuber’s lid snaps “into the ‘basis’ and has nothing to do with ease or difficulty of grasping the inner container.” *Id.* at 10 (citing Kleinhuber ¶ 62).

Kleinhuber states that Figure 4 “is a perspective view of the inner core . . . with the lid lifted.” Kleinhuber ¶ 36. Comparison of Kleinhuber’s Figure 4 with Kleinhuber’s Figure 3, which “is a perspective view of the inner core . . . in a closed state” (*id.* ¶ 35), shows that although Kleinhuber has an outer contour that “deviates from the inner periphery of the outer sleeve,” this deviation does not form an access opening as required by claim 1. Thus, the Examiner’s finding is in error.

Neither Wieser nor Bae cure this deficiency. Accordingly, we do not sustain the Examiner’s decision rejecting claim 1, and claims 3–7, 9, 10, and 22–24, which depend therefrom.

Rejections II–IV: Obviousness of Claims 2, 8, and 15–21

Rejections II–IV rely on the same erroneous finding as Rejection I. Tuttle, Bodek, and Zeiron do not cure this deficiency in the Examiner’s

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finding. Thus, we do not sustain the Examiner's decision rejecting claims 2, 8, and 15–21 for the same reason we do not sustain the Examiner's decision rejecting claim 1.

DECISION

The Examiner's rejections under 35 U.S.C. § 103(a) of claims 1–10 and 15–24 are REVERSED.

REVERSED