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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JEAN-PASCAL ZAMBAUX and DANIEL MASSEAU

Appeal 2019-001680
Application 13/813,182
Technology Center 3700

Before JENNIFER D. BAHR, WILLIAM A. CAPP and
LEE L. STEPINA, *Administrative Patent Judges*.

CAPP, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Jean-Pascal Zambaux and Daniel Masseau (hereinafter collectively Appellant)¹ seeks our review under 35 U.S.C. § 134(a) of the final rejection of claims 15–22, 25–27, and 30–33. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ We use the word “Appellant” to refer to “Applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies Pall Life Sciences Belgium as the real party in interest. Appeal Br. 2.

THE INVENTION

Appellant's invention relates to product packaging. Spec. 1.
Claim 15, reproduced below, is illustrative of the subject matter on appeal.

15. A disposable vacuum packaged article comprising:
a plurality of containers; and
a flexible bag including an evacuated interior compartment,
said bag being formed of a material resistant to a temperature of
at least 225° C, said material supporting the plurality of
containers in the evacuated interior compartment.

THE REJECTIONS

The Examiner relies upon the following as evidence in support of the
rejections:

Norton	US 5,735,609	Apr. 7, 1998
Zambaux	US 2005/0050854 A1	Mar. 10, 2005
VanderBush '802	US 2009/0100802 A1	Apr. 23, 2009
Lin	US 2009/0117323 A1	May 7, 2009
VanderBush '977	US 2009/0288977 A1	Nov. 26, 2009

The following rejections are before us for review:

1. Claims 15–22, 25–27, and 30–33 are rejected under 35 U.S.C. § 112(a) for failing to comply with the written description requirement.
2. Claims 15–22 are rejected under 35 U.S.C. § 112(a) for failing to comply with the enablement requirement.
3. Claims 15–22, 25–27, and 30–33 are rejected under 35 U.S.C. § 112(b) as indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor(s) regard as the invention.
4. Claim 25–27, 30, 31, and 33 are rejected under U.S.C. 102(b) or (e) as anticipated by VanderBush '802.
5. Claim 25–27, 30, 31, and 33 are rejected under U.S.C. 102(b) or (e) as anticipated by VanderBush '977.

6. Claims 15–22 are rejected under 35 U.S.C. § 103 as being unpatentable over VanderBush '802.

7. Claims 15–22 are rejected under 35 U.S.C. § 103 as being unpatentable over VanderBush '977.

8. Claim 32 is rejected under 35 U.S.C. § 103 as being unpatentable over VanderBush '802.

9. Claim 32 is rejected under 35 U.S.C. § 103 as being unpatentable over VanderBush '977.^{2, 3, 4, 5}

OPINION

Section 112 Written Description

The written description requirement of 35 U.S.C. § 112, ¶ 1 provides, in pertinent part, that “[t]he specification shall contain a written description of the invention.” That requirement is satisfied when an inventor “convey[s] with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention,’ and demonstrate[s] that by disclosure in the specification of the patent.” *Centocor Ortho Biotech, Inc. v. Abbott Labs.*, 636 F.3d 1341, 1348 (Fed. Cir. 2011) (quoting *Carnegie Mellon Univ. v. Hoffmann–La Roche Inc.*, 541 F.3d 1115, 1122 (Fed. Cir. 2008)).

² The Examiner relies on Norton as disclosing heat sterilization of medical equipment using a polymeric bag constructed from TYVEK.

³ The Examiner relies on Zambaux as disclosing a bag made from PEEK material that can sustain temperatures of 250° C for at least 60 minutes.

⁴ The Examiner relies on Lin as teaching microwave heating of food to a high temperature using a bag constructed o PEEK.

⁵ The Examiner relies on Held as teaching microwave heating of medical instruments in a pouch to sterilize the same.

The essence of the written description requirement is that a patent applicant, as part of the bargain with the public, must describe his or her invention so that the public will know what it is and that he or she has truly made the claimed invention.

Nuvo Pharmaceuticals (Ireland) Designated Activity Co. v. Dr Reddy's Labs Inc., 923 F.3d 1368, 1377 (Fed. Cir. 2019) quoting *AbbVie Deutschland GmbH & Co. v. Janssen Biotech, Inc.*, 759 F.3d 1285, 1298 (Fed. Cir. 2014).

Claims 15–22

Independent claim 15 contains the following limitation: “*the bag being formed of a material resistant to a temperature of at least 225 degrees C.*” Claims App. The Examiner determines that such limitation is not sufficiently described in the Specification to demonstrate that the inventor(s) had possession of the claimed invention as of the filing date. Final Action 9. Claims 16–22, which depend, directly or indirectly, from claim 15, are rejected on account of their dependency. Claims App.

Appellant argues that the temperature limitation at issue was present in original claim 1, as well as in the Specification as filed. Appeal Br. 7. Appellant argues that the invention uses “existing materials” described in the Specification to form a packaging resistant to a particular temperature. *Id.* Appellant characterizes the use of such existing materials as a “mature technology.” *Id.*

Appellant appears to concede that the Specification does not explain “how” the package or film is made resistant to 225 degrees Celsius but, nevertheless, contends that “how to make” an invention is not the province of the written description requirement. *Id.*

Appellant is not claiming how to make the material resistant above a particular temperature via a method . . . a skilled artisan would understand how to select a suitable known material

based on it being described in the specification or “conventional in the relevant art.”

Id. at 8.

In response, the Examiner emphasizes that what is missing from the written description is a teaching of how Appellant got the otherwise conventional material to have the claimed temperature resistance. Ans. 7. The Examiner reiterates that Appellant does not teach how one of ordinary skill in the art would make the materials taught in the Specification resistant to '225 degrees Celsius and above.

If such bags are conventional, [Appellant] should have clearly admitted this on the record and there would be no issue. If on the other hand such bags are not conventional, it is clearly incumbent upon the applicant to say how the temperature resistance was achieved by [Appellant].

Id.

In reply, Appellant admits that it is not claiming how to make the material resistant above a particular temperature, but simply reciting a bag with the claimed temperature resistant property. Reply Br. 2.

Appellant’s Specification states that:

[T]he invention covers also the use of several polymeric materials in order to associate their properties and to improve the properties of the packaging. Among the preferred polymers, one or more polymers are used selected among: PE (Polyethylene), PP (Polypropylene), PFA (Perfluoroalkoxy), Polyaryletherketone, PEP (fluoro ethylene propylene), PEEK (Poly(ether ketone)) (PEEK MT or ST), PAI (polyamide imide), PI (Polyimide), PPSU (Polyphenylene sulfon), PES (Polyether sulfon), PPP (Polyparaphenylene), POM (Polyoxymethylene), and the analog polymers.

Spec. 4.

At the outset, we note that the mere fact that claim language appears in the Specification does not necessarily mean that the written description requirement is met. *Enzo Biochem, Inc. v. Gen-Probe Inc.*, 323 F.3d 956, 968 (Fed. Cir. 2002). The Federal Circuit maintains that “the appearance of mere indistinct words in a specification or a claim, even an original claim, does not necessarily satisfy” § 112(a) because it may not both put others on notice of the scope of the claimed invention and demonstrate possession of that invention. *Id.* at 968–69; *see also Nuvo Pharma*, 923 F.3d at 1380.

However, we disagree with the Examiner’s assessment that Appellant has not sufficiently described the invention of claim 15 to demonstrate that it possessed the invention. *Nuvo Pharma*, 923 F.3d at 1380–81. Under the facts and circumstances of this case, we credit Appellant’s characterization of the invention as merely using “existing materials” in a “mature technology” such that no further written description is necessary to demonstrate possession of the invention by the inventor or to place the invention in the possession of the public.

Consequently, we do not sustain the Examiner’s Section 112, written description, rejection of claims 15–22.

Claims 25–27

Claim 25 is an independent claim and claims 26 and 27 depend therefrom. Claims App. The Examiner determines that the following limitation in claim 25 lacks written description support: “*wherein no tray within the interior compartment supports the plurality of containers from the bottom.*” Final Action 14–15.

Appellant argues that Figure 7 illustrates the lack of a tray as claimed. Appeal Br. 8. Appellant also directs our attention to page 5, lines 15–16 of the Specification as disclosing a package with no support or tray. *Id.* at 9.

In response, the Examiner questions whether the disclosure on page 5 of the Specification applies to the elected embodiment of Figure 7. Ans. 8.

The claims are subject to restriction and election of species. In the circumstances, appellant cannot just point to some teaching in what would normally constitute a Brief Description of the Invention section of the application and suggest that the teaching therein pertains to Fig 7.

Id.

In reply, Appellant argues that the Examiner fails to rebut Appellant's main point that Figure 7 shows the lack of a tray supporting the containers from the bottom. Reply Br. 2.

Appellant's Specification teaches that:

According to another implementation mode, the invention does not comprise a tray or support, or separating elements. In other words, the interior space of the packaging according to the invention contains only, for instance, the products, the recipients, the flasks or vials to be packaged.

Spec. pp. 5–6. We determine that Appellant's disclosure, at pages 5 and 6 of the Specification, either alone or in conjunction with the depiction of the invention in Figure 7, is sufficient to satisfy the written description requirement.

Accordingly, we do not sustain the Examiner's Section 112, written description rejection of claims 25–27.

Claims 30–33

Claim 30 is an independent claim and claims 31–33 depend, directly or indirectly, therefrom. Claims App. The Examiner determines that the

“buffer volume” limitation in claim 30 lacks written description support.

Final Action 15.

Appellant argues that the following language from the Specification adequately discloses and describes the buffer volume limitation:

[T]he interior space comprises a buffer volume or “dead” volume which limits the forces exercised on the closing means when the volume of the interior space increases. Typically, during the sterilization and/or depyrogenation procedure, the rise in temperature causes a volume increase of the interior space. The buffer volume serves therefore as expansion zone of the gas present in the interior space. A typical buffer zone comprises an extension of several centimeters of the thermoplastic film not facing the packaged elements, typically 5 to 10 cm.

Spec. 9, Appeal Br. 11

In response, the Examiner argues that it is unclear from the Specification which embodiment of the invention that above quoted passage is referring to. Ans. 12.

Appellant’s Specification includes a description of Figure 5 as showing a variant of the buffer volume 570. Spec. 9. Appellant’s Specification then describes Figure 7 such that numbered features may be identified by adding 700 to the references of Figures 1 and 2. *Id.* Figure 7 depicts an enumerated element 770; however, there is no corresponding element “70” in either Figure 1 or 2. See Figs. 1, 2, and 7. Notwithstanding, it is our opinion that a person of ordinary skill in the art would readily deduce from the Specification and the drawings, taken as a whole, that element 770 corresponds to the claimed “buffer volume.”

Accordingly, we do not sustain the Examiner’s Section 112 written description rejection of claims 30–33.

Non-enablement of Claims 15–22

Claim 15

The Examiner determines that Appellant does not provide an adequate enabling disclosure for the limitation: “the bag being formed of a material resistant to a temperature of at least 225 degrees C.” Final Action 17. The Examiner finds that Appellant provides no direction as to how the bag is formed or how the material from which the bag is formed is obtained. *Id.* at 18. The Examiner further notes the lack of working examples in Appellant’s disclosure. *Id.*

Appellant argues that no undue experimentation is required for a skilled artisan to make and use the claimed invention. Appeal Br. 12. Appellant argues that it specifically describes the materials used in forming the claimed bag. *Id.* In so doing, Appellant appears to concede the Examiner’s point that such materials are “conventional.” *Id.*

Enablement is a legal determination of whether a patent enables one skilled in the art to make and use the claimed invention. *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1384 (Fed. Cir. 1986). To be enabling, a patent's specification must “teach those skilled in the art how to make and use the full scope of the claimed invention without ‘undue experimentation.’” *ALZA Corp. v. Andrx Pharm., LLC*, 603 F.3d 935, 940 (Fed. Cir. 2010). However, it is well settled that a patent need not teach, and preferably omits, what is well known in the art. *Streck, Inc. v. Research & Diagnostic Sys., Inc.*, 665 F.3d 1269, 1288 (Fed. Cir. 2012).

In the instant case, the art cited by the Examiner, both as to the two VanderBush references as well as to the supplemental, non-applied references cited on pages 25 and 26 of the Final Action, amply demonstrates

that a person of ordinary skill in the art already knew how to make polymeric bags for medical containers at the time of the invention. Taking into consideration that Appellant's bag is made from existing, conventional materials, we deem Appellant's disclosure to be sufficiently enabling for purposes of Section 112.

Accordingly, we do not sustain the Examiner's Section 112 non-enablement rejection of claims 15–22.

Indefiniteness of Claims 15–22, 25–27, and 30-33

Claims 15–22

The Examiner considers that the phrase in claim 15 - “*supporting the plurality of containers*” – renders the claim indefinite. Final Action 19.

A claim is properly rejected as indefinite under 35 U.S.C. § 112 if, after applying the broadest reasonable interpretation in light of the specification, the metes and bounds of a claim are not clear because the claim “contains words or phrases whose meaning is unclear.” *In re Packard*, 751 F.3d 1307, 1310, 1314 (Fed. Cir. 2014) (per curiam) (approving, for pre-issuance claims, the standard from MPEP § 2173.05(e)); *see also Ex parte McAward*, Appeal 2015-006416, 2017 WL 3669566, at *5 (PTAB Aug. 25, 2017) (precedential) (adopting the approach for assessing indefiniteness approved by the Federal Circuit in *Packard*). The test for definiteness under 35 U.S.C. § 112, is whether “those skilled in the art would understand what is claimed when the claim is read in light of the specification.” *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576 (Fed. Cir. 1986) (citations omitted).

Having read the “*supporting . . . containers*” phrase of claim 15 in light of the context of claim 15 and the accompanying Specification and

drawings, we are of the opinion that claim 15 is sufficiently definite and, therefore, do not sustain the Section 112 indefiniteness rejection of claim 15. Claims 16–22 appear to be rejected solely on the basis of their dependency and, therefore, stand with claim 15.

Claims 25–27

The Examiner determines that the following limitation from independent claim 25 - “*no tray within the interior compartment supports the plurality of containers from the bottom*” – renders the claim indefinite. Final Action 20.

After reading the claim in light of the Specification, we disagree that the claim is indefinite and, therefore, do not sustain the Examiner’s Section 112 indefiniteness rejection of claims 25–27.

Claims 30–33

The Examiner indicates that these claims are rejected under Section 112 as indefinite, but fails to specify why. Final Action 19–20. We do not sustain the Examiner’s Section 112 indefiniteness rejection of claims 30–33.

*Anticipation of Claim 25–27, 30, 31, and 33
by VanderBush ’802*

Claim 25

The Examiner finds that VanderBush ’802 discloses all of the limitations of claim 25. Final Action 24. In particular, the Examiner finds that VanderBush ’802 satisfies the “no tray” limitation. *Id.* Specifically, the Examiner finds that in: “Fig 6 it is element 45 that supports the syringes, not tray 14’ and the syringes are not supported from their bottoms.” *Id.*

Appellant argues that the meaning of “bottom” is “supporting part.” Appeal Br. 17. Using such construction, Appellant argues that nesting plate 45 supports syringes 16 “from the bottom.” *Id.*

The dispute between Appellant and the Examiner is a matter of claim construction. During examination of a patent application, pending claims are given their broadest reasonable construction consistent with the specification. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). Under the broadest reasonable interpretation standard, claim terms are given their ordinary and customary meaning as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). Construing claims broadly during prosecution is not unfair to the applicant, because the applicant has the opportunity to amend the claims to obtain more precise claim coverage. *Am. Acad.* 367 F.3d at 1364.

A person of ordinary skill in the art would understand that, using its ordinary and customary meaning, the “bottom” is the lowermost portion or surface of an object, such that when the object is placed on the ground or some other structure, it is the “bottom” of the object that makes contact with and engages the ground or other structure. A person of ordinary skill in the art would thus distinguish the “bottom” of an object from structure that permits the object to be suspended or “hang” from an upper or intermediate portion of the object. Furthermore, in context, “the bottom” in claim 25 is the lowermost portion or surface of the containers. In other words, claim 25 contains a negative limitation requiring that the containers are not supported from their bottom surface or portion. Claims App.

We have reviewed the Figure 6 embodiment of VanderBush '802. As can be readily seen from viewing the drawing, there is no structure beneath syringes 16 on which the syringes are resting. Rather, they are suspended or “hang” from nesting plate 45. VanderBush '802, ¶ 64, Fig. 6.

The Examiner’s finding that nesting plate 45 does not support the containers “from the bottom” is supported by a preponderance of the evidence. Accordingly, sustain the Examiner’s anticipation rejection of claim 25.

Claim 26

Claim 26 depends from claim 25 and adds the limitation: “wherein the interior compartment comprises a buffer volume to limit forces on a closure for the bag when the volume of the interior compartment increases.” Claims App. Appellant argues that VanderBush '802’s disclosure that film 12 is in facing engagement with portions of vials 16 and tray 14 is incompatible with it having a buffer volume. Appeal Br. 17.

In response, the Examiner acknowledges that a portion of an evacuated bag can be in facing engagement with the contents thereof. Ans. 30. The Examiner points out that such does not negate the fact that other portions can be spaced from the tray. *Id.*

Appellant’s argument does not apprise us of Examiner error. We agree with the Examiner that Appellant’s argument that VanderBush’s film is engaged with “portions” of vials 16 and tray 14 does not establish that there is no buffer volume in the evacuated bag. In that regard, we note that VanderBush teaches that the pressure in the internal cavity is reduced to a predetermined vacuum pressure. VanderBush '802 ¶ 53. We can reasonably infer from “predetermined vacuum pressure” that some amount

of gas remains inside of bag 12. Furthermore, the packaging assembly is often transported as air cargo and is, therefore, subjected to reduced air pressure. VanderBush '802, ¶ 56. The volume of gas remaining inside of the bag after evacuation at normal atmospheric pressure would naturally expand when subjected to reduced external atmospheric pressure during air transport. Accommodation of such expansion inside of the bag constitutes a buffer volume. Thus, Appellant's argument that VanderBush '802 lacks a buffer volume is not supported by the evidentiary record before us.

We sustain the Examiner's anticipation rejection of claim 26.

Claim 27, 30, 31, and 33

Appellant does not argue for the separate patentability of these claims. We sustain the Examiner's anticipation rejection of claims 27, 30, 31, and 33. *See* 37 C.F.R. § 41.37(c)(1)(iv) (failure to separately argue claims).

*Unpatentability of Claims 15–22
over VanderBush '802*

Claim 15

The Examiner finds that VanderBush '802 discloses the invention substantially as claimed except for the heat limitation. Final Action 20–22. In particular, the Examiner finds that VanderBush '802 discloses a vacuum bag that can be sterilized, depyrogenated and sealed. *Id.* at 21. The Examiner concludes that it would have been obvious to a person of ordinary skill in the art at the time of the invention to make the bag of VanderBush from a material that is resistant to the claimed temperature. *Id.* at 23. According to the Examiner, a person of ordinary skill in the art would have done this to facilitate in situ heat sterilization of glass containers. *Id.*

Appellant argues that the Examiner's rejection lacks any reason or rational underpinning. Appeal Br. 15. Furthermore, Appellant argues that the rejection fails to consider the invention "as a whole." *Id.* In that regard, Appellant argues that claim 15 requires that the material of the bag support the plurality of containers in the evacuated interior compartment. *Id.* Appellant argues that, in VanderBush, it is tray 14, not the film, that supports the containers. *Id.* at 16.

In response, the Examiner refers back to the findings of fact in the Final Action. Ans. 25. The Examiner then notes that Appellant essentially concedes that all of the polymeric materials used to construct Appellant's bag are "conventional." *Id.* The Examiner concludes that it would have been obvious to construct the VanderBush bag from a "conventional" material resistant to a temperature of '225 degrees C as listed on page 4 of Appellant's Specification. *Id.* 26.

In reply, Appellant argues that the Examiner fails to provide an articulated reason as to why the bags and trays in VanderBush '802 would be constructed from a heat resistant material. Reply Br. 5. Appellant reiterates its earlier argument that the rejection fails to address the assertion that VanderBush's containers are supported by a tray. *Id.*

Appellant's arguments are not persuasive. With respect to the Section 112 rejections, Appellant essentially concedes that the polymeric materials listed on page 4 of the Specification are conventional such that no further elaboration is required to provide written description support for the temperature limitation in claim 15. Thus, the temperature limitation issue boils down to mere selection of a known material based on its suitability for its intended use. *See Sinclair & Carroll Co. v. Interchemical Corp.*, 325

U.S. 327, 335 (1945) (explaining that selecting a known compound to meet known requirements is not invention).

Appellant’s “articulated reasoning” argument is likewise unpersuasive. In the rejection, the Examiner reasons that providing the claimed temperature resistance would have facilitated in situ heat sterilization of glass containers. Final Action 23. This is adequate rationale to support the rejection. *See In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)(requiring an obviousness conclusion to be based on explicit articulated reasoning with rational underpinning) cited with approval in *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007).

Finally, Appellant’s “no tray” argument is unconvincing. Appellant’s claim 15 uses a comprising transition. “In the patent claim context the term ‘comprising’ is well understood to mean ‘including but not limited to.’” *CIAS, Inc. v. Alliance Gaming Corp.*, 504 F.3d 1356, 1360 (Fed. Cir. 2007). The fact that VanderBush ’802 also uses a tray to support the containers does not negate that fact that such containers are also, at least in part, supported by the bottom layer of the bag. *See VanderBush ’802*, Figs. 1–7.

In view of the foregoing, we sustain the Examiner’s unpatentability rejection of claim 15 over VanderBush ’802.

Claim 20

Claim 20 depends from claim 15 and adds the limitation: “wherein the at least one container includes a bottom surface in contact with the inner surface of the bag.” Claims App. Appellant argues that the bottom surfaces of VanderBush’s containers rest on tray 14, not the bag. Appeal Br. 16.

In response, the Examiner states, in essence, that claim 20 and any supporting disclosure in the Specification is broad enough to encompass a

situation in which the bag of VanderBush and its contents are turned upside down. Ans. 28.

VanderBush discloses a plurality of containers 16 that are placed on tray 14 such that tray 14 then slides into bag 12. VanderBush '802, Fig. 1. VanderBush's packaging system is for transporting medical containers. *Id.* ¶ 7. Such transportation may include air transportation. *Id.* ¶ 56. In our opinion, a person of ordinary skill in the art having reviewed VanderBush '802 would likely understand that the package could be turned upside down at some point during transport without destroying either the package or its contents. When turned upside down, a surface of the containers would rest on and receive support from an interior surface of the bag. When upside down, the position of the top and bottom of the containers would be reversed such that the "top" could be properly understood to be the "bottom."

Taking the foregoing into account, the Examiner's findings of fact are supported by a preponderance of the evidence. We sustain the Examiner's unpatentability rejection of claim 20 over VanderBush '802.

Claims 16–19, 21, and 22

Appellant does not argue for the separate patentability of claims 16–19, 21, and 22. The Examiner's unpatentability rejection thereof is hereby sustained. *See* 37 C.F.R. § 41.37(c)(1)(iv) (failure to separately argue claims).

*Unpatentability of Claim 32
over VanderBush '802*

Claim 32 depends directly from claim 31 and indirectly from claim 30. Claims App. Claim 31 adds the limitation: "wherein the buffer volume is formed by an extension of the bag between the closure and the

article.” Claim 32 adds the limitation: “wherein the extension is between 5 and 10 cm.” Claims App. The Examiner concludes that it would have been obvious to provide an extension with the claimed dimensions as a matter of design choice. Final Action 25.

Appellant argues that there is no extension of the bag between the closure and article as claimed, and, therefore, the dimension of this extension would not have been a matter of design choice. Appeal Br. 16. In response, the Examiner states that VanderBush shows an extension between the containers and the closure at the ends of the bag. Ans. 29.

Figure 8 of VanderBush '802 shows bag 12 on the left side of the drawing and an open end 12b on the right side of the drawing. The center portion of the drawing depicts a narrowing of bag 12 to open end 12b. *Id.* The open end 12b is sealed at or near sealing jaws 26 and clamp jaws 22. *Id.* ¶ 53. Tear notch 18 is provided to facilitate opening the package after it has been sealed. *Id.* Fig. 8. In our opinion, open end 12b satisfies the claim 31 limitation of an extension of the bag between the closure and the article. *Id.*

We are, therefore, not apprised of error and sustain the Examiner’s unpatentability rejection of claim 32 over VanderBush '802.

*Alternative Grounds of Rejection
over VanderBush '977*

VanderBush '977 is a continuation-in-part of the application for VanderBush '802. The two references share common inventorship. The two references share identical drawings. *See* Figs. 1–13.⁶ The disclosure of VanderBush '977 is substantially similar to that of VanderBush '802 and may be treated as identical for purposes of the instant appeal.

⁶ The later reference, VanderBush '977, adds Figures 14a–d.

We sustain the Examiner's prior art rejections over the VanderBush '977 reference for the same reasons discussed above with respect to the VanderBush '802 reference.

CONCLUSION

In summary:

Claims Rejected	Basis	Reference(s)	Aff'd	Rev'd
15-22, 25-27 30-33	§ 112			15-22, 25-27 30-33
15-22	§ 103	VanderBush '802	15-22	
15-22	§ 103	VanderBush '977	15-22	
25-27, 30, 31, 33	§ 102	VanderBush '802	25-27, 30, 31, 33	
25-27, 30, 31, 33	§ 102	VanderBush '977	25-27, 30, 31, 33	
32	§ 103	VanderBush '802	32	
32	§ 103	VanderBush '977	32	
Summary			15-22, 25-27 30-33	

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

AFFIRMED