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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* JUAN CARLOS TINOCO

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Appeal 2019-002898  
Application 14/928,123  
Technology Center 3700

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Before CHARLES N. GREENHUT, BRETT C. MARTIN, and  
LEE L. STEPINA, *Administrative Patent Judges*.

STEPINA, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 1–7, 18, and 20. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> 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 LaserSharp FlexPak Services, LLC. Appeal Br. 2.

### CLAIMED SUBJECT MATTER

The claims are directed to sealable packages that can be used to hold food and other items. Spec. ¶ 1.

Claim 1, reproduced below with emphasis added, is illustrative of the claimed subject matter.

1. A microwavable package, comprising a package, formed of a packaging film having an outer surface facing an outside of the package and an inner surface facing an inside of the package, said package having a vent area defining at least one venting mechanism, *where the venting mechanism is laser scored on the inner surface to define a perimeter of the venting mechanism, where the perimeter is not scored on the outer surface and where the outer surface is a continuous surface in the area of the perimeter*, and the vent area having a central area defined inside the perimeter, the central area having an outer surface facing the outside of the package, and the central area being connected to the packaging film and integral with the packaging film;

a pressure sensitive adhesive label, covering at least the vent area, said pressure sensitive adhesive label adhered to the outer surface, and the pressure sensitive adhesive adhered to the outer surface of the central area,

and said pressure sensitive adhesive label having a first width along the vent area, and having a tab having a second width narrower than the first width, said tab for allowing a user to peel the adhesive label off from the packaging film, and where the pressure sensitive adhesive label includes adhesive on a back surface of the label that adheres to the outer surface and to the outer surface of the central area,

and where the adhesive on the back surface of the pressure sensitive adhesive label adheres to the area of the outer surface opposite the laser scored perimeter on the inner surface,

and wherein the pressure sensitive adhesive label is removed from the vent area to separate the central area from the packaging film to open said at least one laser scored venting mechanism in said package, wherein the pressure sensitive

adhesive label surrounds the vent area, and where the packaging film remains hermetically sealed in the venting area when the pressure sensitive adhesive label is attached to the package, and removal of the pressure sensitive adhesive label from the package opens the laser scored venting mechanism to open the hermetic seal and which causes the package to vent when being cooked in a microwave oven.

Appeal Br. 2–3 (Claims App.).

#### REFERENCES

The prior art relied upon by the Examiner is:

<b>Name</b>	<b>Reference</b>	<b>Date</b>
Lin	US 2008/0220212 A1	Sept. 11, 2008
Ziolkowski	US 2010/0247822 A1	Sept. 30, 2010
Bosman	US 2011/0103718 A1	May 5, 2011

#### REJECTIONS

- I. Claim 18 is rejected under 35 U.S.C. § 112(a) as failing to comply with the written description requirement.
- II. Claims 1, 3–7, and 20 are rejected under 35 U.S.C. § 103 as unpatentable over Bosman and Ziolkowski.
- III. Claim 2 is rejected under 35 U.S.C. § 103 as unpatentable over Bosman, Ziolkowski, and Lin.

OPINION

*Rejection I—Written Description*

With respect to claim 18, the Examiner finds “[t]he specification, as originally filed, lacks antecedent basis for material having an uncut, inner barrier layer and an outer layer, wherein only the inner surface of the outer layer and not the outer surface thereof has multiple scored shapes.” Final Act. 4. Appellant indicates that this rejection is not being appealed. Br. 14. Accordingly, we sustain the rejection of claim 18 as failing to comply with the written description requirement. *See In re Berger*, 279 F.3d 975, 984, 985 (Fed. Cir. 2002) (holding that the Board did not err in sustaining a rejection under 35 U.S.C. § 112, second paragraph, when the applicant failed to contest the rejection on appeal).

*Rejection II—Bosman and Ziolkowski*

The Examiner finds that Bosman discloses many of the elements recited in claim 1, including a venting mechanism 16 that is laser scored (at lines of weakness 36) on the inner surface of a packaging film (second layer 26) to define a perimeter of the venting mechanism. Final Act. 4–5; Ans. 5. The Examiner finds that it is unclear whether the laser scoring for Bosman’s vent mechanism goes all of the way through second layer 26. *Id.* at 5. To address this apparent deficiency, the Examiner turns to Ziolkowski, which, the Examiner finds, “teaches that it is known in the art to provide a laser scored line of weakness that extends from an inner surface of an inner layer (‘sealant layer’), but not to the outer layer (‘abuse layer’).” *Id.* (citing Ziolkowski ¶ 35). The Examiner finds that Ziolkowski teaches the selection of the depth of laser scoring based on the desired tensile strength of the weakened portion of the film. *Id.* (citing Ziolkowski ¶¶ 32, 36). The

Examiner determines that a person of ordinary skill in the art would have found it obvious to modify the laser scoring disclosed by Bosman for the reasons disclosed by Ziolkowski. *Id.*

Appellant contends “Bosman does not have an outer surface of his package which is completely continuous and unscored prior to opening the PSA film[, and, i]n fact, Bosman’s outer surface has holes in it as can clearly be seen in figures 3, 4 and 5.” Br. 8. According to Appellant, the holes in the outer surface of Bosman’s package “are filled with plugs that are attached to Bosman’s removable label. See figure 3 which shows that removable layer having the plugs thereon, and figure 5 showing the cross-section of the package with the label attached.” *Id.*

This argument does not apprise us of Examiner error because the Examiner acknowledges that Bosman fails to clearly disclose that the scoring that creates the “plugs” referred to by Appellant goes only part of the way through second layer 26. *See* Final Act. 5. The Examiner addresses this deficiency by modifying lines of weakness 36, based on the teachings of Ziolkowski, such that they do not reach the outer surface of second layer 26. *See id.* Accordingly, Appellant’s argument on this point does not address the Examiner’s proposed combination of the prior art.

Appellant next argues, “[c]laim 1 also recites ‘where the adhesive on the back surface of the pressure sensitive adhesive label adheres to the area of the outer surface opposite the laser scored perimeter on the inner surface’. No prior art shows or suggests this.” Br. 8–9.

This argument does not identify Examiner error inasmuch as a preponderance of the evidence supports the Examiner’s finding that adhesives 32 and 38 cover the disclosed vent area, thus attaching removable

tab 14 (which the Examiner finds correlates to the recited label) over the venting area. *See* Bosman, Figs. 2, 4, 5; Ans. 5.

Appellant also argues that “[t]here is a first line of weakness 34 formed in Bosman’s outer layer 24. This first line of weakness allows the outer surface of the package to be removed from the inner surface of the package. There is also a second line of weakness 36 formed in Bosman’s inner layer, see paragraph 22.” Br. 9. Appellant states, “as shown in figure 3 of Bosman, a layer of the package is removed, to remove both that layer of the package and also to remove plugs in the other layer of the package.” *Id.*

We do not agree with Appellant’s argument because line of weakness 34 of Bosman defines the area of *removable tab 14*, which the Examiner finds corresponds to the recited *removable label* (a finding Appellant appears to acknowledge on page 8 of the Appeal Brief). Thus, the presence of line of weakness 34 separating removable tab 14 from first layer 24 does not impair the Examiner’s rejection because line of weakness 34 does not amount to a perimeter of the venting mechanism scored on *the outer surface*.

Appellant next argues, “Ziolkowski says nothing about the limitations of the adhesive on the back surface of the pressure sensitive adhesive layer label adhering to the layer of the surface opposite the laser scored perimeter as claimed herein.” Br. 10.

This argument is unavailing because the Examiner relies on Ziolkowski to teach that lines of weakness, i.e., scoring, may be extend either through full thickness of the material in which they are located, or partially through this thickness. Final Act. 5; Ans. 6. This finding is supported by a preponderance of the evidence. *See* Ziolkowski ¶ 32.

Appellant's contention regarding Ziolkowski's alleged failure to disclose an adhesive on the back surface of a label is an attack on Ziolkowski for failing to disclose an element the Examiner does not find in Ziolkowski (and, instead, finds is taught by Bosman). *See* Ans. 5.

Appellant argues that Ziolkowski forms a line of weakness for a purpose other than removing the area that is scored, in contrast to Bosman, which teaches removal of plugs defined by scoring. Br. 10–11. Thus, according to Appellant, the Examiner's proposed combination of the teachings of these two references results in contradicting the teachings of Bosman. *Id.*

We do not agree that the Examiner's proposed combination of teachings contradicts the teachings in Bosman because Bosman, in its unmodified state, uses scoring to define tab portion 14. *See* Bosman ¶ 23. The Examiner's proposed modification merely changes the depth of this scoring. *See* Final Act. 5. In other words, the Examiner's proposed modification to Bosman merely reduces the dimension of a structure that results from a function already performed in Bosman, namely, scoring.

Appellant also argues that the Examiner "gives no reason why the references should be combined other than that it would produce the results with which we are now claiming." Br. 12.

This argument is without merit because the Examiner refers to the reason taught by Ziolkowski (providing a package with a desired tensile strength for tearing) as providing motivation for a person of ordinary skill in the art to modify the scoring disclosed by Bosman. *See* Final Act. 5. This motivation is supported by Ziolkowski's explicit teachings. *See* Ziolkowski ¶¶ 32, 36.

We have considered all of Appellant’s arguments in support of the patentability of claim 1, but find them unavailing. Accordingly, we sustain the rejection of claim 1, and claims 3–7 and 20 depending therefrom, as unpatentable over Bosman and Ziolkowski.

*Rejection III— Bosman, Ziolkowski, and Lin*

Appellant does not make arguments for the patentability of claim 2 aside from those discussed above regarding claim 1. *See* Appeal Br. 13–14. Accordingly, for the same reasons, we sustain the rejection of claim 2 as unpatentable over Bosman, Ziolkowski, and Lin.

CONCLUSION

The Examiner’s rejections are affirmed.

DECISION SUMMARY

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
18	112(a)	Written Description	18	
1, 3–7, 20	103	Bosman, Ziolkowski	1, 3–7, 20	
2	103	Bosman, Ziolkowski, Lin	2	
<b>Overall Outcome</b>			1–7, 18, 20	

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

AFFIRMED