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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* BRIAN INGRAHAM

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Appeal 2019-003079  
Application 13/906,686  
Technology Center 3700

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Before EDWARD A. BROWN, MICHAEL J. FITZPATRICK, and  
LISA M. GUIJT, *Administrative Patent Judges*.

FITZPATRICK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant, Amcor Flexibles, Inc.,<sup>1</sup> appeals under 35 U.S.C. § 134(a) from the Examiner’s final decision rejecting claims 1–13, 21, and 22. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

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<sup>1</sup> Appellant is the “applicant” under 37 C.F.R. § 1.42(b). Appellant identifies itself as the sole real party in interest. Appeal Br. 1.

## STATEMENT OF THE CASE

### *The Specification*

The disclosure “relates to a blister-type package and in particular to a child resistant blister package.” Spec. ¶2. Blister packages are frequently used for medicine, such as in the form of tablets or capsules. *Id.* ¶3. “Blister packages typically include a base sheet of plastic material that is molded or thermoformed to provide a tray having a plurality of recesses or cavities that are each adapted to hold an individual medicament.” *Id.* “A lidding, also referred to as a backing or retaining sheet, is attached to the base sheet so that it overlies the plurality of cavities and encloses each of the medicaments in their respective cavities.” *Id.*

“Many blister packages are designed so the areas of the lidding can be ruptured or opened to provide access to an individual cavity.” *Id.* ¶4. Appellant’s Specification notes a continuing “need for an improved blister package that is child and bite resistant and that can still be easily opened by the elderly and infirmed.” *Id.* ¶7.

### *The Claims*

Claims 1–13, 21, and 22 are rejected. Final Act. 1. Claims 14–20 are withdrawn from consideration, and no other claims are pending. *Id.*

Claim 1, the sole independent claim, is representative and reproduced below.

1. A child resistant package comprising:
  - a tray having a plurality of spaced apart cavities formed therein, each of the cavities having at least one sidewall defining a compartment for receiving a product therein; and
  - a polymeric sheet material overlying said tray such that a product disposed in each of the compartments is enclosed therein, wherein each region of the sheet material overlying an individual compartment includes a plurality of

microperforations defining a zone of weakening in which the plurality of microperforations are disposed in a discrete location above each individual compartment, and a puncture and/or tear resistant zone that is free of said microperforations, and wherein said zone of weakening is positioned along at least one sidewall of said individual compartment.

Appeal Br. 17.

*The Examiner's Rejections*

The rejections before us are:

1. claim 22, under 35 U.S.C. § 112(a)/¶1, for failure to comply with the written description requirement (Final Act. 3);
2. claims 1–6, 9, 11, 13, and 21, under 35 U.S.C. § 103(a), as unpatentable over Bobbett<sup>2</sup> and Wallen<sup>3</sup> (*id.* at 5, 8);
3. claims 7 and 8, under 35 U.S.C. § 103(a), as unpatentable over Bobbett, Wallen, and Ukpabi<sup>4</sup> (*id.* at 9); and
4. claims 10 and 12, under 35 U.S.C. § 103(a), as unpatentable over Bobbett, Wallen, and Miller<sup>5</sup> (*id.* at 10).

DISCUSSION

*Rejection 1 — Written Description*

Claim 22 depends from claim 1 and recites “wherein the plurality of microperforations are not distributed across the entire polymeric sheet material.” Appeal Br. 20. The Examiner finds that “[t]he newly added limitation, ‘the plurality of microperforations are not distributed across the entire polymeric sheet material’ [is] new matter.” Final Act. 4; *see also*

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<sup>2</sup> US 2008/0230432 A1, published Sept. 25, 2008 (“Bobbett”).

<sup>3</sup> US 2004/0191476 A1, published Sept. 30, 2008 (“Wallen”).

<sup>4</sup> US 2008/0176037 A1, published July 24, 2008 (“Ukpabi”).

<sup>5</sup> US 2005/0139505 A1, published June 30, 2005 (“Miller”).

Spec. 16 (no claim 22 in the as-filed Application). The Examiner makes this finding based on his underlying finding that the Specification “does not specify that the microperforations are not distributed across the entire sheet.” Final Act. 4.

Appellant correctly argues that “there is no in haec verba requirement.” Appeal Br. 6. *Purdue Pharma L.P. v. Faulding, Inc.*, 230 F.3d 1320, 1323 (Fed. Cir. 2000) (“In order to satisfy the written description requirement, the disclosure as originally filed does not have to provide *in haec verba* support for the claimed subject matter at issue.”). What is required is the originally filed disclosure “convey with reasonable clarity to those skilled in the art that the inventor was in possession of the invention.” *See id.* This the Specification clearly does.

Figure 1 of the Specification is reproduced below.

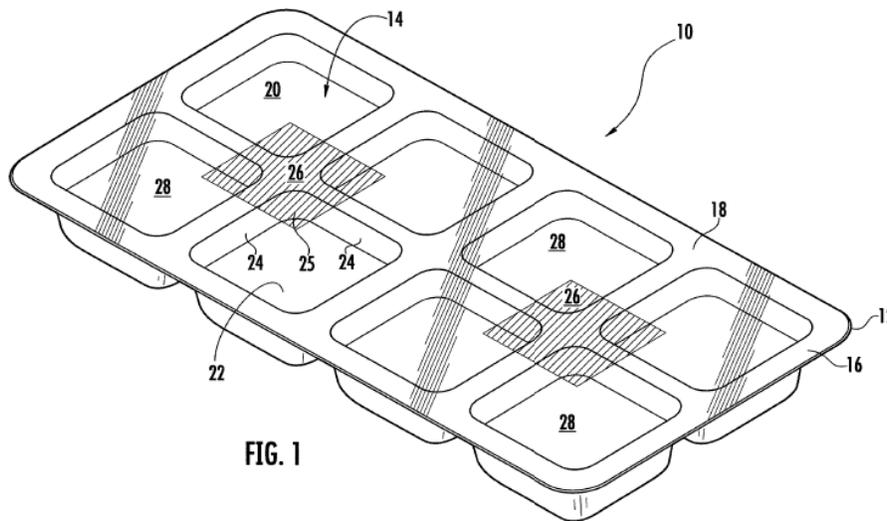


Figure 1, reproduced above, shows blister package 10. Spec. ¶20. The blister package includes tray 12 having a plurality of cavities 14. *Id.* The blister package includes lidding 20 that overlies the tray, enclosing the individual medicaments in their respective cavities/compartments. *Id.* ¶21.

[T]he lidding comprises a *polymeric sheet* material having a plurality of microperforations that define a plurality of discrete zones of weakening in the lidding. The zones of weakening each overly from about 5 to 35% of the surface area of the lidding overlying an individual compartment. *The remainder of the surface area of the lidding above each of the compartments does not include microperforations* and therefore defines a puncture or tear resistant zone in the lidding.

*Id.* (emphasis added). “[T]he zones of weakening are represented by the shaded area indicated by reference number 26” and the lidding also shows “the non-weakened zones 28 (the area that is non-perforated).” *Id.* ¶30.

In view of Figure 1, which depicts clearly microperforations that are not distributed across the entire polymeric sheet material, which are also described in the Specification as discrete zones defined in the sheet material, we find ample written description support for “wherein the plurality of microperforations are not distributed across the entire polymeric sheet material,” as recited in claim 22.

Accordingly, we reverse the rejection of claim 22 under 35 U.S.C. § 112(a)/¶2.

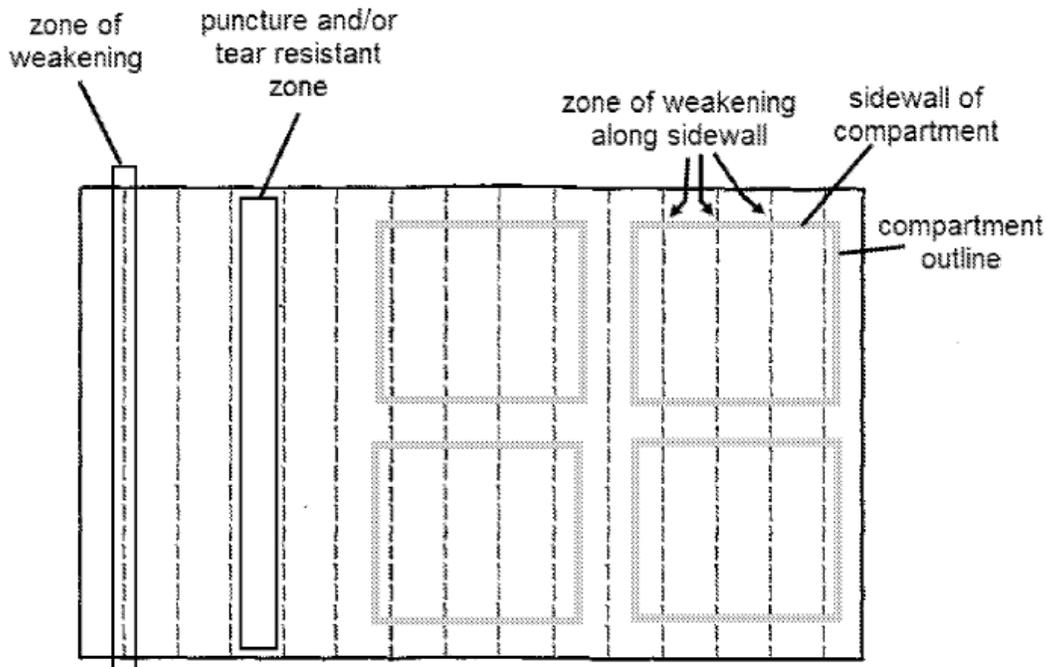
#### *Rejections 2–4 — Obviousness*

The Examiner rejected claim 1, among others, as unpatentable over Bobbett and Wallen. Final Act. 5. In particular, the Examiner found that Bobbett teaches all of the subject matter of claim 1, including “perforations 11 defining a zone of weakening,” except that it teaches perforations and not microperforations. *Id.* at 5–6 (citing Bobbett, Figs. 1–4). For microperforations, the Examiner relies on Wallen. *Id.* at 6.

Appellant argues that Bobbett does not teach the recited *zones*. Appeal Br. 9–10. “More specifically, [Appellant argues,] Bobbett does not

teach a sheet material/lidding having both a zone of weakening comprising a plurality of []perforations and a tear and puncture resistant zone that is free of any []perforations.” *Id.* at 10. Instead, according to Appellant, “Bobbett teaches that [] points of weakness are distributed over the entire surface of the label.” *Id.* at 9.

The dispute between the Examiner and Appellant is best illustrated by the Examiner’s annotated copy of Bobbett’s Figure 5a, which is reproduced below. Ans. 4.



**Fig.5(a)**

The Examiner’s annotated version of Bobbett’s Figure 5a shows a blister package sheet “in which lines of slits transverse the sheet horizontally.” Ans. 4; Bobbett ¶39; *see also id.* ¶40 (referring to such lines as “lines of weakness”). We agree with the Examiner that Bobbett shows, as annotated, a “puncture and/or tear resistant zone” between adjacent lines of

weakness. We do not, however, agree that any of Bobbett's individual lines of weakness is a *zone* of weakening, as claimed.

The Specification illustrates numerous zones of weakening, all of which are illustrated as two-dimensional portions of a polymeric sheet. *See* Fig. 1 (ref. 26), Fig. 2 (ref. 26), Fig. 4 (refs. 26a, 26b, 27a, 27b). The Specification describes the zones as two-dimensional shapes such as “circular, oval, rectangular, star-shape, etc.” Spec. ¶37. The Specification further describes the zones of weakening as covering a percentage of a polymeric sheet. *See* Spec ¶9 (“The plurality of microperforations, and hence, each of the zone of weakening covers from about 5 to 90% of the surface area of the polymeric sheet material that overlies each of the individual compartments.”); *see also id.* ¶10 (“The density of the microperforations in the zone of weakening is generally from about 100 to 400 perforations per cm<sup>2</sup>, which a density from about 200 to 300 being somewhat more typical.”).

In light of the Specification, a “zone of weakening” as used in claim 1 refers to a two-dimensional portion or area of the polymeric sheet. Bobbett does not teach this limitation. Accordingly, we reverse the obviousness rejection of claim 1. We likewise reverse the obviousness rejections of claims 2–13, 21, and 22, all of which deficiently rely on Bobbett's line of weakness as teaching a “zone of weakening.”

SUMMARY

<b>Claims Rejected</b>	<b>35 U.S.C.</b>	<b>Basis/Reference</b>	<b>Affirmed</b>	<b>Reversed</b>
22	§ 112(a)/¶1	Lack of written description		22
1-6, 9, 11, 13, 21	§ 103(a)	Bobbett, Wallen		1-6, 9, 11, 13, 21
7, 8	§ 103(a)	Bobbett, Wallen, Ukpabi		7, 8
10, 12	§ 103(a)	Bobbett, Wallen, Miller		10, 12
<b>Overall Outcome</b>				1-13, 21, 22

REVERSED