COMMISSIONER'S DECISION

Obviousness: Postage Meter Tape

The tape comprises an elongated print receptive tape strip transversely scored and releasably attached by pressure sensitive adhesive to a carrier band. The carrier band is wider than the strip. Spracket engaging drive holes are provided in the margin of the band at spaced intervals and coincident with the score lines. The prior art did not teach the subject matter of this application, nor is it obvious from the art. An amended claim was suggested to the applicant which would be acceptable.

Final Action: Reversed

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This decision deals with a request for review by the Commissioner of Patents of the Examiner's Final Action dated June 24, 1976, on application 169,737 (Class 219-3), and is entitled "Postage Tape and Carrier Strip with Marginal Registration Perforations." The Patent Appeal Board conducted a Hearing on October 19, 1977, at which Mr. N. Hewitt represented the applicant.

The application is directed to a postage tape strip or postage meter tape. The tape comprises an elongated print receptive tape strip releasably attached by pressure sensitive adhesive to a carrier band wider than the print receptive tape strip so as to leave a margin of the band exposed. The tape strip is transversely scored by weakened score lines. Sprocket engaging drive holes are also provided in the margin at spaced intervals and coincident with the score lines. The arrangement is illustrated below by Figure 1 of the drawings.

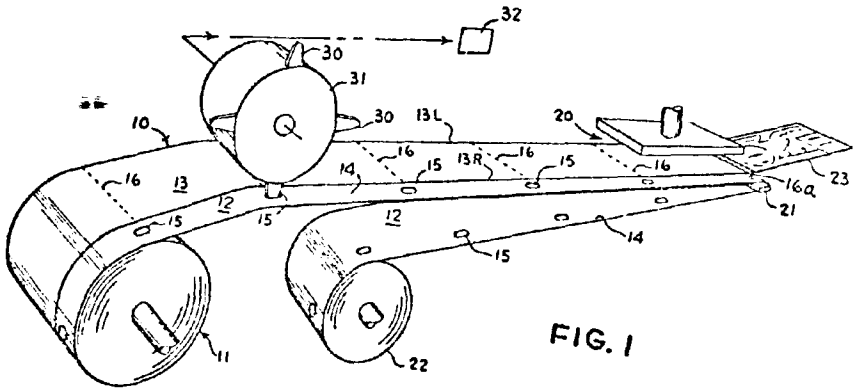


FIG. 1

In the Final Action the examiner refused Claim 1 (the only claim) in view of the following United States Patent:

3,501,365 Mar. 17, 1970 Marshall

Marshall discloses a pressure sensitive label strip mounted on a backing strip in synchronous relation to feed apertures 30a on said backing strip. Means (16) are provided for printing on the label strip. A pinned drive roller (26) operates the tape. That invention is illustrated by the following drawings, Figures 1 and 3, of that Patent:

FIG. 1

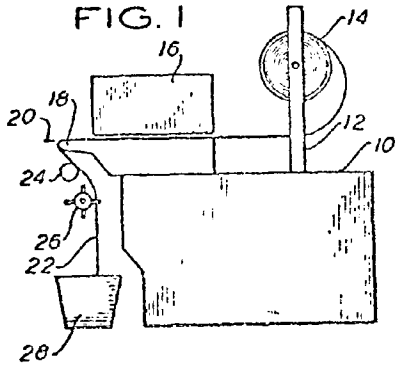
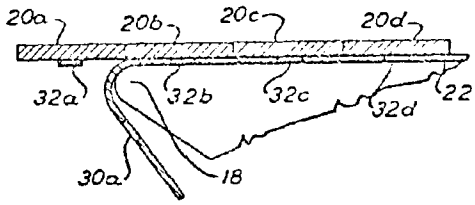


FIG. 3



Claim 1 of that patent reads:

> The combination of label material and supporting material disposed in juxtaposed relation and a layer of adhesive material therebetween releasably securing said label material and said supporting material one to the other, a plurality of cut means each forming a line of severance only through said supporting material, each of said lines of severence constituting the side walls of a feed hole disposed within the peripheral limits of said associated label material in such a way that some of said supporting material forms an internal portion lying within each of said lines of severance, said side walls defined by said lines of severance constituting a defined feed surface permitting the advancing of said label material and said supporting material.

In the Final Action the examiner presented his position (in part) as follows:

> ...
> The features of claim 1 not disclosed by the cited reference are:
> (a) the production of a postage stamp in lieu of a label, and
> (b) the alignment of the lines of weakness with the feed apertures.

The first difference is clearly obvious to implement by those skilled in the art as they need only change the printing plates of Marshalls device. The second difference (b) is not of significance to the operation of the applicants device as synchronization can be achieved just as simply without this restriction. In some cases, where both carrier strip and carried strip are simultaneously detachable, this feature assists in dispensation. With the applicants' system, however, no advantage is gained by this co-incidence and, in fact, a tiny unresolved problem is presented to readers of the application with respect to scratching of fingers as at 16(a) upon sharp edges of a folded aperture in the carrier strip.

BRIEF REBUTTAL OF APPLICANTS' ARGUMENTS

(1) Features not shown in Marshall or Modifications thereover required to produce Applicants Device

The applicant cites several features of his tape and states that Marshall does not show them. He then speculates as to how one skilled in the art might shift the Marshall feature to produce an approximation to this system.

The point is that one need not start at the "Marshall composite tape" to produce this approximation. One may more easily start, as Marshall did, at the prior art state described by Marshall. When this is done, one sees that the only significant difference between applicants' tape and the prior art composite tape lies in the alignment of the feed apertures with "lines-of-perforation".

(2) SYNCHRONIZATION Achieved by Aligned Apertures And Perforation Lines

As pointed out to the Applicants' Agent at the interview with the Examiner the detailed or specific type of alignment claimed by the Applicant is not required to effect synchronization. One merely requires feed holes of constant pitch and tape strip cut or perforated at a multiple of this pitch. Final adjustments are then effected in the relative mounting of the printer, feed roll and, if required, tear off plate. These adjustments are required for both types of alignment so no effective result re "synchronization" may be claimed by the applicant.

...

(5) Unexpected Result - Other Evidence of Invention

Where there is no professed "unexpected result" one looks elsewhere for inventive features. An advance in the art is known to be one such feature. The applicants' particular solution to his problem wherein he unnecessarily uses a concatenated tape strip requiring a tear-off knife plate and/or separator bar whereupon sharp edges are depicted as being presented to an operator is not an advance in the art. In fact one advantage shown by the prior art, of using a "carrier tape" has been missed. As shown clearly by Marshall in 1970 (six years ago) with such a composite strip no concatenation or "tear-off" facilities are required. One simply replaces the perforating die with a knife-type die.

> Sometimes a long-felt-want or evidence of commercial success are indicative of invention. The evidence presented by the applicant does not support these as inventive features. Stamps that may be easily and/or accidentally stripped from their packages preclude any commercial success. The desires of "stamp-collectors", on the other hand cannot take priority over the satisfied every day public postage stamp user.
>
> ...

In response to the Final Action the application amended the claim and had this to say (in part) as follows:

> ...
>
> In applying the reference, the Examiner states that Marshall discloses a pressure sensitive label strip mounted on a backing strip in synchronious relation to feed apertures 30a on the backing strip and means are provided for printing on to or otherwise working the label strip. The Examiner refers to column 2, lines 3 to 5 which he submits disclose the initial use of a label strip which may be cut to various specifications and the Examiner also refers to column 2, lines 62 to 64 for discussing the use of a wide backing strip to facilitate the use of a side thereof by a pinned drive roller operating on holes punches therein. The Examiner takes the position that over this alleged disclosure the differences defined in the claim are obvious to those skilled in the art. Applicants submit that on a general basis, Marshall fails to disclose as a finished product, an elongated print receiving strip releasably carried by a backing strip and an interposed layer of pressure sensitive adhesive. In general, the passages to which the Examiner refers fail as an effective disclosure. In particular, the general inference of these disclosures of Marshall is that many possible approaches to this problem have been made such as those discussed in columns 1 and 2 as prior art and they are not desirable solutions from a practical and economical point of view. In particular, Marshall aims at a deliberate spacing between each label and thus the problem mentioned by the applicants in their previous arguments, namely separating the pressure sensitive adhesive backed strip at the score line is actually avoided in Marshall. However, the method set forth by Marshall which avoids the separation of the pressure sensitive adhesive backed strip at the score line involves cutting and discarding of parts of the strip and in practice, the disadvantage of the wider backing strip does not amount to anything substantial when it is realized that the extra backing strip so involved will compensate for the complicated cutting away and discarding of the label material as in Marshall. Thus, in particular, Marshall does not disclose a label strip and it is submitted that the Examiner's statement as quoted above that Marshall discloses a pressure sensitive label strip either in discussing his invention or discussing the prior art is erroneous....
>
> ...
>
> Applicants disagree with the Examiner's statement in sub-paragraph 3. A tape composite is formed initially only of two integral strips, namely a label stock strip and a strip of release material with a suitable adhesive therebetween. Further, to be useful in the prior art and as acknowledged by Marshall, and in Marshall's invention, it is necessary to separate the label stock strip into separate labels by the inconvenient and tedious method of cutting away waste material between the labels. Thus, the useful tape composite of Marshall does not comprise a label strip. Applicants totally disagree with the Examiner's statement in sub-paragraph 4. There is <u>no</u> disclosure in Marshall of lines of weakness. There is only disclosure of complete separation of the labels both in Marshall's discussion of the prior art and his own invention. The parts referred to by the Examiner to support his position clearly support the opposite, namely the applicants' assertion as just set forth.

We have considered with care the many, varied and lengthy arguments of the applicant and the examiner; the arguments appear however, to overshadow the differences of the alleged invention over the cited art. The issue is whether or not the applicant has made a patentable advance in the art.

We would firstly point out that we agree with the applicant when he states that, "the roller 31 which cooperates with the holes 15 in the edge portion of the composite tape of the present application is not a drive roller. The drive roller is in fact the driven reel 22 which pulls the backing tape continuously ...." There was some confusion on this in the Final Action.

At the Hearing Mr. Hewitt made a noble effort to maintain that he is concerned with "a different field of technology" than that of Marshall, but it is clear that both are concerned with problems in the dispensing field. The applicant is interested in dispensing a postage tape strip, and Marshall in dispensing labels. The arguments appear, in our view, to be weak.

We turn now to a consideration of the application and the amended claim. That claim reads as follows:

> A postage meter composite tape comprising an elongate print receptive tape strip releasably attached by pressure sensitive adhesive to a carrier band, said strip being transversely scored by weakening score lines at intervals equally spaced along the strip to define between adjacent score lines segments defining print receptive areas to be torn-off successively in turn after being printed upon at the printing station of the meter to yield pressure sensitive adhesively backed postage stamps, said band being wider than said strip to leave an exposed margin of the band at one edge of the tape for accommodating sprocket engaging drive holes longitudinally equally spaced at intervals coincident with the score lines which holes are engageable by a sprocket driven by said holes for effecting a printing operation on the free end tape strip segment at the printing station and are so spaced that at each advance of the composite tape the free end segments of the strip then at the printing station is advanced forwardly beyond the bending station while still remaining attached to the strip to be torn-off precisely at the score line rather than at the printing station.

As mentioned above Marshall discloses a pressure sensitive label strip mounted on a backing strip. Means (16) are provided for printing onto or otherwise working the label strip. The initial use of the label strip is to be cut to

various specifications. A pinned drive roller operates on holes punched in a backing stri of tape.

One difference over the cited art is in the drive means. The drive means is in part the driven reel 22 which pulls the backing tape continuously through the printing station 20 from the supply roll 11 and the drum 31 (see Figure 1, supra). The drive means in the reference is performed by sprocket 26. The reference does not teach the alignment of the lines of weakness with sprocket engaging drive holes. A sprocket is driven by the sprocket engaging drive holes purely as a synchronization device. The hinged disengagement from the backing strip is also different from the cited art. It also appears that Marshall aims at a deliberate spacing between his labels, whereas the applicant is concerned with an elongated print receiving strip releasably carried by a backing strip with an interposed layer of pressure sensitive adhesive. In other words, a feature of the present arrangement is that a composite strip comprises an elongate print receptive tape having weakened score lines at equal intervals, spaced longitudinally along the strip to define print receptive areas, which are torn-off after being printed upon at the printing station of the meter. Marshall was also not concerned with detaching along perforated lines.

The gap between the cited art and the present application when taken bit by bit may appear indeed to be minimal. We must however, consider the combination as a whole and its effect. The examiner stated at the Hearing that given the problem the solution was obvious. We must remember that part of the invention in any situation like this may be in recognizing that there is a problem, and in the idea or concept of solving that problem.

In view of the above considerations we are unwilling to suggest to the Commissioner that the applicant has not made a patentable advance in the art. We are not satisfied, however, with amended claim 1 as presented. Some of the limitations relate to methods of using the tape. The claim should be

clearly addressed to a product. We feel that the environment in which the tape is to be used should in this case be completely stated in the preamble; i.e. "For use in a postage meter wherein tape driving means operate on the backing strip beyond the dispensing station, and wherein synchronism between a tear-off station and lines of weakness are maintained VIA a feedback system incorporating an index sprocket, an enabling switch and a motorized feed roll-drive; a composite tape comprising ..." The body of the claims should then be amended to facilitate the above changes. The last line of the claim should be corrected to read "... score line rather than at the printing station."

In summary, we are satisfied that the applicant has made a patentable advance in the art. There can clearly be no argument about the novelty of the combination and we think that there is ingenuity in the invention. We recommend that the decision in the Final Action to refuse the claim be affirmed, but that the claim submitted after the Final Action be accepted when amended as suggested.

J.F. Hughes
Assistant Chairman
Patent Appeal Board, Canada

I have studied the prosecution of this application and I concur with the recommendations of the Patent Appeal Board. Accordingly, I will accept claim 1 when amended as discussed by the Board. The applicant has six months within which to cancel the proposed amended claim and submit an appropriate amendment, or to appeal my decision under the authority of Section 44 of the Patent Act.

J.H.A. Gariépy
Commissioner of Patents

Dated at Hull, Quebec

this 18th day of November, 1977

Agent for Applicant

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