

COMMISSIONER'S DECISION

SECTION 36(2) - Labelling Apparatus

The invention is directed to a hand-held label printing and applying apparatus for pressure sensitive labels carried on a web of supporting material. Amended claims were accepted which overcome the Section 36 rejection.

Final Action: Affirmed

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Patent application 281,732 (Class 101-29), was filed on June 30, 1977, for an invention entitled "Label Printing and Applying Apparatus." The inventor is William A. Jenkins, assignor to Monarch Marking Systems, Inc. The Examiner in charge of the application took a Final Action on June 27, 1978, refusing to allow it to proceed to patent. In reviewing the rejection, the Patent Appeal Board held a Hearing on December 12, 1979, at which the Applicant was represented by Mr. E. O'Connor. Also in attendance were Mr. J. Grass, United States Patent Attorney and Mr. Hamisch from the Parent Company.

Patent application 281,732 is directed to a hand-held label printing and applying apparatus for printing and applying pressure sensitive labels carried on a web of supporting material.

In the Final Action the Examiner refused claims 1,5 and 7 in view of United States patent 3,440,123, dated April 22, 1969, to Hamisch, and for failure of these claims to comply with Section 36(2) of the Patent Act.

In response to the Final Action the Applicant argued that the refused claims were not open to the objections made by the Examiner.

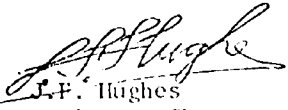
At the Hearing, Mr. O'Connor discussed the problem of claiming faced by the Applicant. It was soon clear that the root of the trouble was related to Section 36(2) of the Patent Act. After some discussion, a clarifying amendment to overcome the problem was suggested by Mr. Grass. The amendment consisted of adding to claim 1, the only independent claim, the following:

"... and means coupling the print head moving means and the feed wheel."

The proposed amendment was taken under consideration and after due deliberation Mr. O'Connor was informed by telephone that it would be acceptable. This amendment essentially ties the movement of the print head to the feed wheel, thus avoiding an ambiguous situation and satisfying Section 36(2) of the Patent Act.

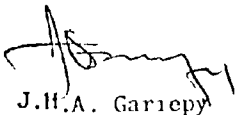
On January 14, 1980, a voluntary amendment was submitted cancelling all of the claims and replacing them by new claims 1 to 10.

The amended claims clearly overcome the objections raised in the Final Action. No further discussion is therefore necessary.



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

I concur with the reasoning and findings of the Board. The application is returned to the Examiner for resumption of prosecution.



J.H.A. Gariepy  
Commissioner of Patents

Dated at Hull, Quebec

this 20th. day of February, 1980

Agent for Applicant

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