

PATENTS ACT 1977

0137/93

IN THE MATTER OF an application to  
amend Patent Specification No  
2,198,782 in the name of  
Andre Philip Wilkins and an opposition  
thereto by Britannia Labels & Print Limited.

**DECISION**

1. The proprietor, Andre Philip Wilkins has applied under Section 27 to amend his patent so as to distinguish the invention from the hook shown in UK Registered Design 1022918 registered in the name of Eugen Malzahn KG.
2. Mr Wilkins filed a first set of proposed amendments on 30 May 1991 but as a result of official objections to these he submitted fresh proposals on 13 September 1991. These were considered prima facie allowable and were advertised in the Official Journal (Patents) on 30 October 1991.
3. On 19 December 1991, Britannia Labels & Print Limited filed notice of opposition. The grounds in the accompanying Statement are that Claim 1 as proposed to be amended still lacks novelty over the Malzahn hook. This is refuted by Mr Wilkins in a Counterstatement filed 27 March 1992.
4. Evidence in support of the Statement is in the form of two Statutory Declarations, with Exhibits, in the name of Robert Arthur Simpson who is a Director of Britannia Labels & Print Limited.
5. Mr Wilkins has filed a Statutory Declaration and Exhibit as evidence in support of the Counterstatement.
6. The case was set down for hearing before me on 5 March 1993. However, the opponents

indicated that they would not attend. On a preliminary examination of the file it seemed to me that the application to amend was allowable and the hearing would probably be a waste of money. I therefore cancelled the hearing on the basis that it would be reappointed if:

- a. I thought on closer scrutiny of the papers that my preliminary view might be wrong;
- b. the opponents should change their mind within two weeks and press for a hearing;
- or
- c. the proprietor had a good reason for wanting the hearing to be held.

Neither of the eventualities (b) and (c) occurred. I therefore studied the papers in greater detail and am satisfied that the application is allowable, for the reasons which I now set out.

7. The invention concerns a pack for packaging articles at the point of sale. The pack includes a folded card for supporting the articles, and a suspension member. The suspension member comprises two portions. One is a base portion inserted through a slit on or adjacent the fold in the card. The other is a suspension portion extending from the base portion and projecting externally beyond the fold. At least one side of the base portion has a resilient tongue which deflects inwardly during insertion through the slit and then springs back to resist withdrawal.

8. Claim 1 reads as follows, with the proposed amendments shown in italics (for insertions) and crossed out (for deletions):

"A pack for articles including a body formed from a stiff sheet of material adapted to contain or be attached to said articles, the body including a pair of folded wall portions held in face to face contact and joined by a fold, and a suspension member having a planar base portion and a suspension portion extending therefrom, the base portion being adapted for insertion through a slit formed on or adjacent the fold so that after insertion the base portion is located adjacent the internal face of at least one of said folded wall portions and the suspension portion extends externally of the folded wall portions to project beyond the fold, *said suspension portion including at least one shoulder which is engageable with said fold to limit insertion of the suspension member into the slit*, the base portion having an upper end adjacent to the

suspension portion and a bottom terminal end which is of narrower width dimension than the upper end, the upper end being of greater width dimension than the length of said slit, at least one side of the base portion being defined by an inwardly deflectable resilient tongue which extends along said one side from the bottom end of the base portion toward the suspension portion so that during insertion the tongue is deflected inwardly *by engagement with said slit* and that after insertion *up to said limit the terminal end of the deflected tongue clears said slit to permit the tongue to return to its original position to enable its terminal end to engage* engages beneath a marginal portion of the fold adjacent to said slit to resist withdrawal of the suspension member from said pair of folded wall portions."

9. The proposed amendments aim to distinguish the Claim from the Malzahn hook by adding the feature that the suspension portion includes at least one shoulder which is engageable with the fold to limit insertion of the suspension member into the slit. The Malzahn hook also has shoulders that limit insertion and the argument turns on whether these are part of the suspension portion.

10. To support the argument in paragraphs 10 and 11 of their Statement that Claim 1 as proposed to be amended remains anticipated, the opponents place a particular construction on two expressions used in the Claim. In their interpretation, "suspension portion" includes all those parts of the suspension member projecting externally beyond the fold in the card and "base portion" includes all those parts inserted through the slit in the card. As they project externally beyond the fold, the shoulders on the Malzahn hook can then be said to be part of the suspension portion and the proposed version of Claim 1 is anticipated.

11. In paragraph 6 of his Counterstatement, Mr Wilkins argues that as each shoulder on the Malzahn hook is an integral part of the tongue it forms part of the base portion. To form part of the suspension portion, he says each shoulder would need to be separated from the rest of the tongue and attached to the suspension portion.

12. In paragraph 4 of his Statutory Declaration Mr Wilkins expresses the view that the suspension portion is that portion which supports, ie in use suspends, the base portion. The

base portion in turn supports the card. This, he says, is clearly consistent with the description of his patent and is clearly its intended meaning.

13. He goes on to argue that there is an advantage in arranging for the shoulders to be on the suspension portion and independent of the tongues. He says that if one of the shoulders snags, for example against a rail, it does not deflect the tongues or cause the slit to deform as would be the case with the Malzahn hook in which the shoulders are mounted on the tongues.

14. In a Statutory Declaration dated 14 December 1992 Mr Simpson takes issue with this argument. He says that snagging is generally caused not by a shoulder but by a leading edge of the folded card and that the patented arrangement is not immune from this disadvantage. He surmises that this is why the patented hook in Exhibit RAS 2 may be glued to the card.

15. In deciding how the expressions "suspension portion" and "base portion" should be interpreted, I shall turn first to the description which I consider contains clear signposts as to the intended meaning.

16. In the general description of the invention, at the top of page 2a, it is stated that the suspension portion is preferably defined by a hook portion. In the second paragraph on the same page it is said that advantageously the hook portion is shaped and formed....such that a downward pull on a pack suspended by the hook portion causes the hook portion to deform and uncurl from the supporting rail in preference to separation of the base portion from the body of the pack. In the description of the preferred embodiment, in the last paragraph on page 3, again it is stated that the suspension portion is in the form of a hook portion 26. In paragraph 3 on page 4 it is explained that the lower portion of the hook portion 26 is provided with a pair of shoulders 60.

17. These references are in my view consistent with the natural meaning of the words in the claim, which I interpret as meaning that the suspension portion has the function of enabling the pack to be hung up, and the base portion is adapted to be inserted through a slit, and, because of the action of the tongue, not to be withdrawn. If one then asks where the

shoulder is located in Claim 1 and in the Malzahn hook, it is clear that Claim 1 specifies that the shoulder is included in the suspension portion, and that in the Malzahn hook the shoulder is on the tongues, which are part of the base portion.

18. I can find nothing in the specification to support the opponents' interpretation of the two expressions. A further factor that persuades me against accepting the opponents' line of thinking is that if the shoulders on the Malzahn hook were considered to form part of the suspension portion then that portion would comprise three entirely separate parts interconnected only through the base portion. As there is nothing in the specification to indicate other than that the suspension portion is an integral whole, to argue that it might comprise three entirely separate parts seems to me to be highly contrived.

19. For these reasons I reject the opponents' objections to the proposed Claim 1. I have considered the proposed amendments other than to Claim 1, and am satisfied that these too are allowable. I therefore allow the application to amend, subject to a new specification complying with Rule 40(7) of the Patents Rules being filed within two months of the date of this decision.

20. In all the circumstances of this case, I make no award of costs.

Dated this 11 day of March 1993.



W J LYON

Superintending Examiner, acting for the Comptroller

**THE PATENT OFFICE**