

Answer guidelines to QE 2006 Paper C

Note: The answer guidelines contain some points (non-exhaustive) that could be covered in the answer to this Paper.

Interpretation

Issues:

Claim 1: "areas"

“at an opening portion”

“having been”

“roughened”

Claim 2: “dimples” – including corrugations?

possible antecedent issue

Claim 3: "perforations"

Claim 4: “handle portions”

Claim 5: “shopping bag”

"plastic"

“very thin

Claim 6: Order of the steps

Infringement

Issues:

Claim 1

- is corrugation “roughness”?
- is the roughness at the opening portions?
- the order of the roughening and bag formation

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Claim 2 – infringed by the corrugations?

Claim 3 + 4 – not infringed?

Claim 5 - infringed?

Claim 6 – again, the order issue.

Validity

Claim 1 priority claim valid? If so, valid over “Badguy bags the business”; still lacking novelty over “breather bag”.

Claim 2 priority claim invalid; lacking novelty if Badguy’s corrugations or the “breather bag” pits can be described as creating “dimples”; or conversely not infringed.

Claim 3+4 valid? Both benefit from priority claim and features are inventive over “breather bag”.

Claim 5 priority claim invalid, and therefore lacks novelty over “Badguy bags the business”.

Claim 6 priority claim invalid, so either lacks novelty over “Badguy bags the business” or not infringed.

Amendment

Amend claim 1 to require the bags to be made from two sheets or have handles, but not so limited as claim 4. Arguably possible to limit to roughened areas *only* being at the top area.

Is it possible to amend claim 6 to make its priority claim valid? This requires adding a reference to the roughness being near the opening portions, and also removing the reference

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to the ultra-thin sheet and the “shopping bag”. Would this unallowably broaden the scope of the patent?

Legal issues

1. Should post-grant amendment over “Breather bag” be allowed, given that the client knew about it pre-grant?
2. Conditions for an interlocutory injunction met?
3. Infringer carries out the method in US. Is method claim still infringed?
4. If the “dimples” feature reads onto corrugations, should Badguy have been named as an inventor?
5. Back-damages dating to patent application publication?