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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* ARTHUR NAZGINOV

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Appeal 2010-006584  
Application 11/559,337  
Technology Center 3600

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Before: JOHN C. KERINS, JAMES P. CALVE, and  
BEVERLY M. BUNTING, *Administrative Patent Judges*.

BUNTING, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF CASE

Appellant appeals under 35 U.S.C. § 134 from a rejection of claims 1, 3 and 5-14. Supp. App. Br. 1. Claims 2, 4 and 15-19 are canceled. *Id.* We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

## CLAIMED SUBJECT MATTER

The claims are directed to slipcovers with improved material gathering. Claim 1 is the independent claim. Claim 1, as reproduced below, is illustrative of the claims on appeal:

1. A furniture slipcover comprising:

a slipcover body adapted to cover at least some surfaces of a piece of furniture that has a front side, a rear side, a left side, and a right side, each side having a longitudinal length, the slipcover body adapted to have a circumferential size that is larger than a combined length of the sides of the piece of furniture;

a first band strip fixedly attached at a first end to the slipcover body and including a fastening member at a second end, the fastening member of the band strip being operative to releasably directly engage, gather and hold a bunched portion of the slipcover body to impart a fitted appearance to the slipcover, and said fastening member being formed as a suspender clip which clip includes a clipping portion which clipping portion is operable to grasp, pull and hold the bunched portion of the slipcover body toward the slipcover body attached to the first end of the band strip, and

wherein the first band strip is adapted to extend in a substantially horizontal direction and to be free of substantial dangling, when the fastening member is releasably holding the bunched portion.

## REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Riley et al.	US 2004/0155497 A1	Aug. 12, 2004
Baines	US 2006/0103197 A1	May 18, 2006

## REJECTIONS

Appellant appeals the following grounds of rejection set forth in the Final Rejection mailed on November 6, 2008 ("Final Rej."):

Claims 1, 3 and 5-14 stand rejected under 35 U.S.C §112, first paragraph as failing to comply with the written description and/or the enablement requirements. App. Br. 3.

Claims 1, 3 and 5-14 stand rejected under 35 U.S.C §103(a) as being unpatentable over Riley in view of Baines. App. Br. 3.

## ANALYSIS

### *Rejections under 35 U.S.C §112 First Paragraph*

#### *Written Description*

The Examiner found that claim 1 lacks adequate written descriptive support in the application as filed, since it recites that the suspender clip's clipping portion is operable "to grasp, pull and hold the bunched portion of the slipcover body", whereas the Specification teaches that the user, and not the clipping portion, manually performs the function of grasping and pulling the bunched slipcover into place, tucking away excess material and forming a neat pleat, and the clipping portion holds the neat pleat. Ans. 9.

Appellant argues that the Specification adequately describes the claimed subject matter so that one skilled in the art can recognize what is claimed,

and points to the language of originally filed claims 1 and 3. App. Br. 4. Appellant notes that Claim 1 as originally filed recites that the fastening member of the first strip-like band is operative to “hold a bunched portion of the slipcover body,” and original claim 3 further recites that the first strip-like band “comprises an elastic material adapted to exert a contracting force when the fastening member is secured to the bunched portion of the slipcover”. *Id.* According to Appellant, further support is found in the teaching that the band “exerts a contracting force when the fastening member is secured to the bunched portion of the slipcover body.” *Id.*

Whether a specification complies with the written description requirement of 35 U.S.C. § 112, first paragraph, is a question of fact. *Regents of Univ. of Cal. v. Eli Lilly and Co.*, 119 F.3d 1559, 1566 (Fed. Cir. 1997) citing *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1563 (Fed. Cir. 1991)). The Examiner has the initial burden of presenting evidence or reasoning to explain why persons skilled in the art would not recognize in the original disclosure a description of the invention defined by the claims. *In re Wertheim*, 541 F.2d 257, 263 (CCPA 1976). We agree with Appellant that the Specification provides sufficient guidance regarding fastening of the clipping portion to the bunched portion of the slipcover body, so that the clipping portion is operable to “grasp, pull and hold the bunched portion of the slipcover body toward the slipcover body attached to the first end of the band strip”.<sup>1</sup> One of skill in the art would understand how the user would

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<sup>1</sup> We find that an ordinary and customary meaning of the term “grasp” is “to clasp or embrace especially with the fingers or arms” . See [www.Merriam-Webster.com](http://www.Merriam-Webster.com) on February 13, 2013. Further, the ordinary and customary meaning of “hold” is “to keep under restraint” or “to maintain a grasp on something”, *id.*, and the ordinary and customary meaning of the term “pull”

attach the clipping portion to hold the bunched excess slipcover that a user has manually grasped and pulled in place so that the clipping portion operatively performs the grasping, pulling and holding of the bunched portion of the slipcover body toward the slipcover body attached to the first end of the band strip.

*Enablement*

The Examiner further found that Appellant's Specification is not enabling because essential information is missing from the Specification regarding the relationship between the clipping portion and the bunched portion which one skilled in the art could not develop without undue experimentation. Ans. 10. The Examiner construes claim 1 as requiring that the clipping portion be capable of operating (a) to grasp the bunched portion of the slipcover body, (b) to pull that bunched portion, and (c) to hold that bunched portion in place. *Id.* According to the Examiner, the Specification provides no information to guide one skilled in the chair art as to how the clipped portion pulls the bunched portion to hold the bunched portion in place, because prior to fastening the clipping portion, the user has already tucked in the excess slipcover material and created the neat pleat. Ans. 11. Examiner found that undue experimentation would be required to alter the disclosed neat pleat to create an exposed bunched portion of the slipcover body that is both pulled and held in place by operation of the clipping portion. Ans. 12. Appellant counters that if any experimentation is required, it is not “undue” when provided with the exemplary embodiments of the specification. App. Br. 5.

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is “to exert force upon so as to cause or tend to cause motion toward the force”. *Id.*

We are not persuaded that undue experimentation is necessary in order to fasten the clipping portion to the slipcover body so as to grasp, pull and hold the bunched portion of the slipcover body toward the slipcover body attached to the first end of the band strip. The Examiner acknowledges that Appellant's Specification discloses how a user manually grasps and pulls excess bunched slipcover material into place and then tucks the material away. Ans. 9. The clipping portion is secured to directly engage, gather, and holds the bunched portion of the slip cover that the user gathered.

We cannot sustain the rejection of Claims 1, 3 and 5-14 under 35 U.S.C §112, first paragraph, as failing to comply with the written description and/or the enablement requirements.

*Rejection under 35 U.S.C §103(a)*

Examiner found that Riley disclosed a semi-fitted slipcover body 30, and in FIG. 9 shows excess slipcover material at both arm portions 36, 36a to accommodate various types of armed pieces of furniture. Ans. 13. The Examiner also noted that the slipcover includes a cover skirt 50 covering the bunched portion 37, and the cover skirt includes a ribbon 52 having one end sewn to the slipcover body and a second end with a fastening member 56 removably attached to the slipcover body. Ans. 5. The Examiner explained that the cover skirt 50 functions to cover the unsightly bunched portion 37, as shown in Fig. 11, that is formed along the arm portion of the slipcover due to the gathering means 100. Ans. 13. The Examiner acknowledged that the fastening member of Riley lacks a clipping portion, but is instead one portion of a hook and loop fastener. Ans. 4-5. The Examiner further found

that Baines teaches a slipcover having a covered seat cushion portion that includes a slipcover body 12a, a band strip 28 and a fastening member 30 formed as a suspender clip. Ans. 13-14. According to the Examiner, the suspender clip of Baines is operable to grasp, pull, and hold a bunched portion 12b of the slipcover body. Ans. 14.

Thus, the Examiner reasoned it would have been obvious to modify the slipcover of Riley to utilize the suspender clip of Baines as a fastening member, since the suspender clip is operable to grasp, pull, and hold the bunched portion of the slipcover body. Ans.16. In support of the proposed combination of Riley and Baines, the Examiner provided Diagram B reproduced below. Ans. 14-15.

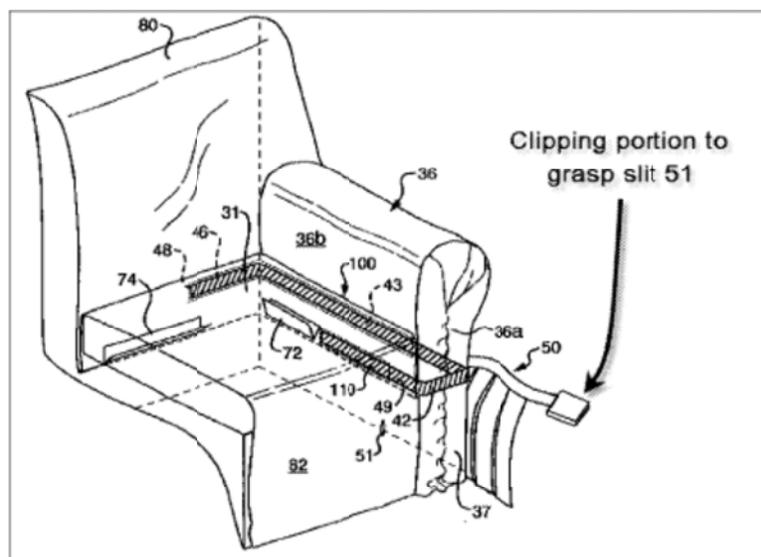


Diagram B - Annotated Figure 11 of Riley et al. showing suspender clip of Baines added to the first band strip

Diagram B is an Examiner-annotated version of Figure 11 of Riley, depicting a slipcover being fitted to a piece of furniture.

Appellant argues that Riley teaches a continuous band 42 that encircles the body portion of the furniture to retain the slipcover body in

place, that the elastic band 42 is covered or concealed by the cover skirt 50, and that the end of the cover skirt is secured to the slip cover body using a Velcro fastener. *App. Br. 7.* Appellant contends that it would not have been obvious to modify Riley in view of Baines, since such modification would not obviate the need to conceal the clip and/or strap of Riley under the skirt 50, and further that the ability of the clip to hold the slipcover, as taught in claim 1, obviates the need for a skirt. *App. Br. 8.* The Examiner counters that the teachings of Baines were only used to replace the hook and loop fastener 53, 56 used to secure the skirt of Riley to the slipcover body with a clip. *Ans. 16.* According to the Examiner, the motivation to substitute the suspender clip for Riley's hook and loop fastener is so that the slipcover body can be more securely held taut by the suspender clip. *Ans. 16.* The Examiner concedes that Riley discloses the need to conceal the unsightly gathering means, but one of ordinary skill in the art would nevertheless have been motivated by the teachings of Baines to add a suspender clip to the skirt of Riley to ensure that the bunched portion of the slipcover is tautly concealed from view. *Id.*

The Examiner's finding that the cover skirt taught by Riley, as modified by Baines, represents a band having a clip that is operable to grasp, pull and hold the bunched portion of the slipcover body is not supported by a preponderance of the evidence. As shown in the proposed modification of Riley by the Examiner in Diagram B above, the Examiner proposes attaching the clip at the end of the cover skirt 50 to the slit 51, and it thus would not be operative to grasp, pull and hold a bunched portion of the slipcover body. Riley discloses that the elastic band 42 is part of a gathering means used to gather the excess arcuate front portion 36a of the arm portion.

Paras. [0046-0047, 0057, 0062-0063]; Fig. 11. Riley also discloses that the cover skirt 50, which includes a band, is placed over this elastic wrap retaining means to decoratively cover it and is connected at both ends to the slipcover with at least one end 59 of the skirt being releasably connected to the slipcover body by hook-and-loop fastener tapes. Paras. [0047-0049, 0066].

Even if the skirt 50 of Riley is operative to engage, gather, and hold the bunched portion 36a in some manner, the Examiner has not adequately explained why a skilled artisan would have had a reason to replace the hook-and-loop fastener 56 at one end of the skirt 50 of Riley with a clip of Baines so that the clip is operative to grasp, pull, and hold a bunched portion of the slipcover body (Ans. 16) when Riley discloses that the elastic band 42 performs this function. The hook-and-loop fastener 56 on the skirt 50 of Riley merely serves to secure an end 59 of the skirt 50 to the slipcover so that the skirt 50 can cover the bunched portion, and Riley further discloses that the fastener 56 passes through the slit 51 to be secured to an inside surface of the skirt portion 82 so that it is concealed from view. Para. [0066, 0049]; Fig. 11. Riley thus clearly evidences that it is seen as being desirable to conceal at least the end of the skirt band, if not the entirety of it. See, Riley, Figs. 7, 11. The Examiner's proposed modification to provide a clip on the skirt band and to use the clip to engage slit 51 on the front of the slipcover would leave the outer portion of the clip, and the entire end of the skirt band, exposed on the covered piece of furniture. This runs counter to Riley's teaching that concealment is desired.

Accordingly, we cannot sustain the rejection of claims 1, 3 and 5-14 under 35 U.S.C §103(a).

Appeal 2010-006584  
Application 11/559,337

DECISION

The rejection of claims 1, 3 and 5-14 under 35 U.S.C §112, first paragraph, as failing to comply with the written description and the enablement requirement is REVERSED.

The rejection of claims 1, 3 and 5-14 under 35 U.S.C §103(a) as being unpatentable over Riley in view of Baines is REVERSED.

REVERSED

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