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KIMBERLY-CLARK WORLDWIDE, INC. Tara Pohlkotte 2300 Winchester Rd. NEENAH, WI 54956			CHAPMAN, GINGER T	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHANTEL SPRING BUHROW, KUSUM GOSAIN,
SHANNON KATHLEEN MELIUS, JOHN TIMOTHY HAHN,
VIPULA JITENDRA TAILOR and EARL DAVID BROCK

Appeal 2010-006938
Application 11/111,531
Technology Center 3700

Before EDWARD A. BROWN, JOHN W. MORRISON and
RICHARD E. RICE, *Administrative Patent Judges*.

RICE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Chantel Spring Buhrow, et al. (Appellants) seek our review under 35 U.S.C. § 134 of the Examiner's rejection of claims 1-3 and 7-11. Claims 4-6 and 12-20 are canceled. We have jurisdiction under 35 U.S.C. § 6(b). We REVERSE.

The Claimed Subject Matter

The claimed subject matter relates to “disposable diapers, particularly designed for newborns, which include an optional umbilical feature that does not require the disposal of removable parts and maintains an area that is free of diaper components and minimizes contact and irritation with the umbilical cord and/or navel.” Spec. 1, ll. 14-18. Claim 1, reproduced below, with italics for emphasis, is representative of the subject matter on appeal:

1. A diaper comprising,
 - a. a front portion having *at least one line of weakness adapted to be torn*;
 - b. at least one umbilical cover *defined in part by the at least one line of weakness*, the at least one umbilical cover being moveable from a starting position to an open position *upon tearing of the at least one line of weakness*; and
 - c. at least one umbilical cover anchor permanently joined to the umbilical cover when the umbilical cover is in the starting position wherein the umbilical cover anchor is adapted to maintain the at least one umbilical cover in the open position.

The Rejection

The following Examiner's rejection is before us for review: Claims 1-3 and 7-11 stand rejected under 35 U.S.C. § 103(a) as unpatentable over

Sorenson (US 4,801,298, iss. Jan. 31, 1989) and Brown (US 4,675,015, iss. Jun. 23, 1987).¹

OPINION

Sorenson discloses a reusable diaper having a “V”-shaped pile attachment strip 40 positioned at the top front center portion of the diaper. Sorenson, col. 5, ll. 7-10, figs. 1 and 3. The “V”-shaped strip defines a border or barrier permitting the user to fold under the triangular-shaped portion of the diaper (referred to hereafter as the “foldable portion”) above the strip that covers an infant’s naval. *Id.* at col. 5, ll. 42-49; figs. 1, 5 and 6. Hook fastener strips on each of the back wings of the diaper connect to pile attachment strip 40 in order to define an adjustable waist girthing structure for assembling the diaper on the infant. *Id.* at col. 9, ll. 53-59, fig. 6. At such time as the infant’s naval region can tolerate fabric over it, the diaper may be used in its original unfolded condition, “which positions a portion of the diaper sufficiently above the infant’s lower abdominal region to avoid waste discharge through the waist region of the diaper.” *Id.* at col. 5, ll. 49-57.

Brown discloses a disposable diaper having a separable panel formed in the umbilical area of the diaper. Brown, col. 1, ll. 23-25, figs. 1-3. “The

¹ The Final Rejection included a provisional nonstatutory obviousness-type double patenting (ODP) rejection of claims 1-3 and 7-11 over claims 1-20 of copending Appl. No. 11/084,317, filed Mar. 18, 2005 (now US 7,947,028 B2, iss. May 24, 2011). Final Rej. mailed 3/17/09 at 7, para. 27. Appellants have not addressed the ODP rejection in their briefs. *See* App. Br. 1-13; Reply Br. 1-4. However, the Examiner has not withdrawn the rejection. Ans. 2, 13-14, 17. As such, Appellants have waived their right for review of the ODP rejection by the Board. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2011).

umbilical panel is prefer[ably] in the form of a perforated section which can be separated to allow the umbilical cord of newborn infants to project therethrough, and which later can be left intact when the umbilical cord has been eliminated.” *Id.* at col. 1, ll. 25-31. “[T]he umbilical panel may be formed as a tear-out square or circle by perforation or forming a weakened tear line, or may be provided as a flap which is bent back to expose the umbilical cord.” *Id.* at col. 2, ll. 34-37.

With respect to independent claim 1, the Examiner pertinently finds that Sorenson discloses a diaper having a front portion; an umbilical cover (the foldable portion) moveable from a starting position to an open position; and at least one umbilical cover anchor (pile attachment strip 40) permanently joined to the umbilical cover when the umbilical cover is in the starting position, wherein the umbilical cover anchor is adapted to maintain the umbilical cover in the open position. Ans. 4-7. Acknowledging that Sorenson fails to disclose “a line of weakness” (*id.* at 7), the Examiner finds that Brown discloses a front portion having at least one line of weakness adapted to be torn and at least one umbilical cover, defined in part by the at least one line of weakness, that is moveable from a starting position to an open position upon tearing of the at least one line of weakness (*id.* at 8). The Examiner concludes that “one having ordinary skill in the art at the time the invention was made would be motivated to modify the umbilical cover of Sorenson as taught by Brown to provide an umbilical cover that can be moveable from a starting position to an open position upon either tearing or folding of the cover along a line of perforation or a fold line for the benefits to the newborn infant disclosed by both Sorenson and by Brown.” *Id.* at 8-9.

Appellants argue, and we agree, that the Examiner's conclusion of obviousness is not supported by adequate articulated reasoning with rational underpinning.² App. Br. 7; Reply Br. 3. In particular, the Examiner does not provide a sufficient rationale to explain why a person of ordinary skill would have reason to modify Sorenson's reusable diaper, which already has a movable umbilical cover (the foldable portion), by providing a line of weakness such that at least one umbilical cover is moveable from a starting position to an open position upon tearing of the line of weakness. To the extent that the Examiner reasons that the proposed modification involves only the predictable substitution of one known equivalent feature for another, we disagree. *See* Ans. 8. A permanent opening in the umbilical region of Sorenson's reusable diaper would frustrate Sorenson's objective of returning the diaper to its original unopened position at such time as the infant can tolerate fabric over its navel region. *See* Sorenson, col. 5, ll. 49-57. Further, the Examiner has not explained whether or how the proposed modification would affect the operation of Sorenson's umbilical cover anchor (pile attachment strip 40), which, as required by claim 1, must be adapted to maintain the at least one umbilical cover in the open position.

Accordingly, we do not sustain the rejection of claim 1, and claims 2, 3 and 7-11 dependent thereon, under 35 U.S.C. § 103(a) as unpatentable over Sorenson and Brown.

² *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

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DECISION

We reverse the rejection of claims 1-3 and 7-11.

REVERSED

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