



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/847,781	08/30/2007	Kristin Ann Goerg-Wood	KCX-1367 (64356313US01)	2690
22827	7590	01/30/2013	EXAMINER	
DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			KIDWELL, MICHELE M	
			ART UNIT	PAPER NUMBER
			3761	
			MAIL DATE	DELIVERY MODE
			01/30/2013	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

*Ex parte* KRISTIN ANN GOERG-WOOD and  
ANTHONY JAMES MICHALSKI

---

Appeal 2010-007034  
Application 11/847,781  
Technology Center 3700

---

Before: STEVEN D.A. MCCARTHY, STEFAN STAICOVICI, and  
CHARLES N. GREENHUT, *Administrative Patent Judges*.

GREENHUT, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134 from a rejection of claims 3-9 and 12-21. App. Br. 2. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part and denominate our affirmance NEW GROUNDS OF REJECTION insofar as our reasoning differs from that of the Examiner.

The claims are directed to an attachment pattern for undergarment attached absorbent articles. Claims 13 and 14, reproduced below, with emphasis added, are illustrative of the claimed subject matter:

13. An undergarment attached absorbent article defining an X direction and a Y direction, the undergarment attached absorbent article further defining a first fold line and a second fold line oriented in the Y direction and separating the article into a front portion, a middle portion, and a back portion, wherein the middle portion defines a middle width in the Y direction and a middle length in the X direction, the undergarment attached absorbent article comprising

a liquid permeable topsheet;

a liquid impermeable backsheet defining an outer surface;

an absorbent core positioned between the backsheet and the topsheet; and

an adhesive applied to the outer surface of the liquid impermeable backsheet in a first pattern on the front portion and in a second pattern to the back portion, wherein both the first pattern and second pattern have breaks in the Y direction that are substantially free of adhesive,

*wherein the adhesive is applied in a plurality of adhesive dots to a center third of the middle width and the middle length of the middle portion, wherein both outer thirds of each the middle width and the middle length are substantially free from adhesive such that the adhesive covers less than about 33% of the middle width and the middle length.*

14. An undergarment attached absorbent article defining an X direction and a Y direction, the undergarment attached absorbent article further defining a first fold line and a second fold line oriented in the Y direction and separating the article into a front portion, a middle portion, and a back portion, wherein the middle portion defines a middle width in the Y direction and a middle length in the X direction measured from the first fold line to the second fold line, the undergarment attached absorbent article comprising

a liquid permeable topsheet;

a liquid impermeable backsheet defining an outer surface;

an absorbent core positioned between the backsheet and the topsheet; and

an adhesive applied to the outer surface of the liquid impermeable backsheet in a manner such that the outer surface of the liquid impermeable backsheet is substantially free of adhesive about each fold line,

*wherein the adhesive is applied in a first pattern to the front portion, the first pattern having breaks in the Y direction that are substantially free of adhesive,*

*wherein the adhesive is applied in a second pattern to the back portion, the second pattern having breaks in the Y direction that are substantially free of adhesive, and*

*wherein the adhesive is applied in a third pattern to the middle portion, wherein the third pattern defines from 3 to 6 adhesive bands extending in the X direction to have a length of about 50% to about 90% of the middle length.*

## REFERENCES

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

DiPalma	US 5,649,916	Jul. 22, 1997
Finch	US 5,954,201	Sep. 21, 1999
Lichtstein	EP 0 607 986 A1	Jul. 27, 1994

## REJECTIONS

Claims 3-9 and 13-21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Finch and Lichtstein. Ans. 3.

Claim 12 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Finch, Lichtstein and DiPalma. Ans. 5.

## OPINION

The Examiner found, and Appellants do not dispute, that Finch discloses the basic structure claimed absent the particular pattern of adhesive as recited in claims 13 and 14. Ans. 3-4. The Examiner cites Lichtstein to demonstrate that adhesive application techniques that would result in the recited adhesive patterns were known in the art. Ans. 4, 5-6 (*citing* Lichtstein col. 6, ll. 42-54; figs. 4, 6).

Initially, we note that some confusion exists based on the Examiner's apparent reliance on both the Figure 4 and Figure 6 embodiments of Lichtstein regarding the central positioning adhesive 16, along with column 6 of Lichtstein which discloses various alternative adhesive application techniques for the anterior and posterior end regions.<sup>1</sup> *Cf.* Ans. 4 *and* 5; *Cf.* App. Br. 10-11 *and* Reply Br. 2-3. Appellants argue that there is no single embodiment of Lichtstein that discloses the exact pattern of adhesive applied in the exact location recited in claims 13 and 14. App. Br. 10-11; Reply Br. 2-3 (arguing that Lichtstein's Figure 6 embodiment shows only 1 area of adhesive 16 in the middle portion and while the Figure 4 embodiment shows

---

<sup>1</sup> Lichtstein generally refers to the anterior and posterior regions as the "adhesive areas." *See, e.g.*, col. 6, ll. 45-54 ("the adhesive areas. . .The remaining central region...")

Appeal 2010-007034  
Application 11/847,781

a plurality of such areas they are not in the middle portion as recited). However, a determination of obviousness does not require the claimed invention to be expressly suggested by any one or all of the references. *See e.g., In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

Lichtstein addresses the same problem of absorbent article movement as addressed by Appellants. Lichtstein col. 4, l. 43- col. 5, l. 1; Spec. 1-2; *see* Ans. 6. Lichtstein does so by “uncoupl[ing] attachment of the absorbent product from the areas of the panty, such as the crotch region, that are in relatively high motion.” Lichtstein col. 5, ll. 1-7. Lichtstein teaches that a small amount of adhesive is still desirable in the central region for positioning the absorbent product. Lichtstein col. 6, ll. 30-42. According to Lichtstein the critical variable insofar as the central positioning adhesive 16 is concerned is the area it comprises. Lichtstein col. 6, ll. 42-44, col. 10, ll. 53-55 (suggesting the positioning adhesive will comprise a total area no greater than about one square inch). Appellants also recognize the benefits of reduced coverage area of the middle portion adhesive. Spec. 10:8-15.

The Examiner determined that segmentation is a technique that may be applied to the small vertical<sup>2</sup> strip of placement adhesive 16, and that this technique would result in the plurality of dots as recited in claim 13. Ans. 6 (*citing* Lichtstein col. 6, ll. 45-47). The Examiner cited this same portion of Lichtstein in the Final Rejection without explication and the Examiner’s position in this regard is uncontroverted. *See* Final Rej. 3. Lichtstein does not specify the direction of the segmentation and the Examiner does not explain if this teaching is also being applied in support of the Examiner’s

---

<sup>2</sup> Though depicted horizontally in the figures, Lichtstein appears to use “vertical” to refer to the direction of the longitudinal axis of Lichtstein’s sanitary napkin 10 (effectively, Appellants’ “X direction”).

Appeal 2010-007034  
Application 11/847,781

conclusion of obviousness with regard to claim 14 (requiring bands instead of dots). We additionally note, with regard to claim 14, this same section of Lichtstein as cited by the Examiner (specifically col. 6, ll. 51-52) suggests the use of vertical bars.

We recognize that the list of patterns suggested by Lichtstein is mainly intended to describe a list of possibilities for the anterior and posterior adhesive regions. However, we see no reason why it would not have been obvious to apply these same techniques to the middle region in a manner that complies with Lichtstein's instruction regarding the one square inch area of the positioning adhesive. Changing the pattern to include multiple dots or lines would not necessarily change the surface area of the adhesive itself as Appellants suggest. *Contra* App. Br 10-11; Reply Br. 2-8. Selecting the particular pattern of adhesive from the list of Lichtstein amounts to choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success. *See, e.g., In re Kubin*, 561 F.3d 1351, 1358-60 (discussing "obvious to try" situations in light of *In re O'Farrell*, 853 F.2d 894, 903 (Fed. Cir.1988) and *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 421). Further, while one particular pattern of adhesive may produce better results than another (*see e.g., Spec. 18-20*), the function or purpose of the adhesive pattern, adhering the product to the garment, is ultimately the same. Thus, such pattern amounts to an obvious matter of design choice. *See, e.g., In re Aslanian*, 590 F.2d 911 (CCPA 1979)(holding that the number of adhesive locations provided for the same purpose would have been an obvious design choice for one skilled in the art); *cf In re Chu*, 66 F.3d 292, 298-9 (Fed. Cir. 1995)(the fact that selecting a particular structure results in a different function or purpose is indicative that such selection is not merely a matter of design choice.); *see also In re Hodgson*,

Appeal 2010-007034  
Application 11/847,781

96 F.2d 285, 287 (CCPA 1938) (“Mechanical skill alone may assemble or combine desirable features of the prior art and obtain better results than have ever been obtained, but the patent laws afford no reward for such an improvement . . . if, in fact, there was no invention.”)(citations omitted).

Claims 13 and 14 additionally require the adhesive to cover a particular percentage of the middle width and length (claim 13) or middle length (claim 14). We note that the middle is defined by the fold locations, which Finch suggests can be variable. Finch col. 4, ll. 51-52. The extent to which the adhesive of a central portion may reach<sup>3</sup> will be a product of that expressly suggested variation. Furthermore, that extent will be dependent upon the distribution or location of the approximately one square inch of adhesive, i.e., the size or thickness and spacing of lines or segments would dictate the extent of coverage. Lichtstein, preferring an approximately central or anterior of central location (*see, e.g.*, Lichtstein col. 6, ll. 30-34), recognizes that this variable will affect performance of the resulting product. Thus, we consider the subject matter described by the limitations directed thereto to be the product of routine optimization rather than innovation. *See e.g., In re Applied Materials, Inc.*, 692 F. 3d 1289, 1294-98 (Fed. Cir. 2012).

For the above reasons we agree with the Examiner’s conclusion that the subject matter of claims 13 and 14 would have been obvious to one having ordinary skill in the art. Accordingly, we affirm the Examiner’s rejection of claims 13 and 14. Since claims 3-5 and 15-20 are not separately argued, and since claims 12 and 21 are argued solely based upon dependency from claims 13 and 14, we affirm the Examiner’s rejections of these claims as well. While we believe we have expounded upon the position taken by the Examiner, since the Examiner’s reasoning in support of this

---

<sup>3</sup> As compared to the total area of the adhesive itself.

Appeal 2010-007034  
Application 11/847,781

conclusion warranted further explanation we designate our affirmance as NEW GROUNDS OF REJECTION pursuant to our authority under 37 C.F.R. § 41.50(b) so that Appellants may be afforded a fair opportunity to respond. *See In re Leithem*, 661 F.3d 1316 (Fed. Cir. 2011).

Appellants argue that the Examiner has failed to provide evidence or reasoning as to why the subject matter of claims 6-9 would have been obvious to one having ordinary skill in the art. App. Br. 14. We agree. The entirety of the Examiner's rejection of these claims is articulated as follows:

With respect to claims 4 - 9 and 17 - 19, see the rejection of claims 13 - 14. Finch in view of Lichtstein disclose the claimed adhesive bands. The modification of the size and/or location of the bands is within the level of ordinary skill in the art as such is suggested by Finch in col. 3, lines 56 - 58.

Ans. 4.

The unpatentability of dependent claims is not necessarily established by establishing the unpatentability of the claims from which they depend. The Examiner's discussion of the bands is not an articulation of why the subject matter of claims 6-9, involving the dot embodiment, would have been obvious. *See, e.g.*, MPEP §§ 2141-2143 ("The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious.") Accordingly, we must reverse the Examiner's rejection of claims 6-9.

## DECISION

The Examiner's rejections of claims 3-5 and 12-21 are affirmed. We designate this affirmance as NEW GROUNDS OF REJECTION under 37 C.F.R. § 41.50(b).

The Examiner's rejection of claims 6-9 is reversed.

This decision contains new grounds of rejection pursuant to 37 C.F.R. § 41.50(b) (2008). 37 C.F.R. § 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.”

37 C.F.R. § 41.50(b) also provides that Appellants, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new grounds of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution*. Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the Examiner, in which event the proceeding will be remanded to the Examiner. . . .

(2) *Request rehearing*. Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2009).

AFFIRMED-IN-PART; 37 C.F.R. § 41.50(b).

mls