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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* ROBERT P. HUGHES

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Appeal 2010-012092  
Application 11/285,015  
Technology Center 3600

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Before STEFAN STAICOVICI, PATRICK R. SCANLON, and  
BART A. GERSTENBLITH, *Administrative Patent Judges*.

GERSTENBLITH, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Robert P. Hughes (“Appellant”) appeals under 35 U.S.C. § 134 from the Examiner’s decision rejecting claims 20-24, 26-28, 30, 31, 34-36, 38-40, 42, 43, and 46-52. We have jurisdiction under 35 U.S.C. § 6(b).

*The Claimed Subject Matter*

Claim 20 is illustrative of the claimed subject matter and is reproduced below.

20. A display apparatus, comprising:  
a foldable frame having a plurality of spaced apart display panel connectors; and  
at least one display panel including a dye sublimated image printed thereon, said display panel comprising a layer of stretch fabric being so configured so as to have a plurality of corners and further including an aperture located proximal each of said plurality of corners; wherein each aperture of said display panel is connected to a different display panel connector such that said display panel is stretched between said display panel connectors and is in stretch tension such that said display panel appears substantially wrinkle free.

*References*

The Examiner relies upon the following prior art references:

Brooks	US 4,265,039	May 5, 1981
Zeigler	US 4,512,097	Apr. 23, 1985
Bannister	US 4,569,143	Feb. 11, 1986
Delamere	US 4,611,420	Sept. 16, 1986



## OPINION

Appellant raises four arguments on appeal. First, Appellant asserts that Brooks teaches away from the claimed invention because (1) an object of Brooks is to avoid the need for holes in the material of the display face whereas Appellant's claims include multiple apertures and (2) Brooks discusses the problems or difficulties in employing stretch fabric panels and the solution used by Brooks to address those difficulties is different than the solution employed by Appellant. App. Br. 4-6.

Second, Appellant contends that the Examiner ignored an express limitation in claims 20-31, 48-50, and 52 requiring that the claimed display apparatus comprise a "display panel including a dye sublimated image printed thereon." *Id.* at 6-7. Specifically, Appellant asserts that a dye sublimated image "has particular physical or structural attributes which distinguish such an image from alternative (or generic) image types (a silk screened image, for example)." *Id.* at 7.

Third, Appellant asserts that the Examiner failed to set forth a cognizable reason or motivation to combine the "specifically oriented, elongated apertures" of Delamere with the teachings of Bannister and Brooks. *Id.* at 7-8. Appellant contends that because the plastic panel of Delamere does not have any stretch properties, it would not have the wrinkle problems associated with stretch fabric designs and thus one of ordinary skill in the art would not look to Delamere for any teaching to use the apertures disclosed therein to orient, align, or distribute the stretch or tension vectors in the installed fabric panel as claimed. *Id.* at 8. Further, because non-elongated, non-oriented apertures would sufficiently serve to connect the stretch fabric display panel to the frame, Appellant asserts that it would be

redundant to look to another reference, such as Delamere, for its disclosure of how a panel is attached to a frame. *Id.*

Finally, Appellant contends that Brooks is non-analogous art because it is not in Appellant's field of endeavor nor reasonably pertinent to the particular problem with which Appellant's invention is concerned. *Id.* at 8-9. Specifically, Appellant asserts that Brooks is directed to a "heavy duty, industrial-type sign (i.e., the type built to withstand hurricane force winds)" whereas Appellant's invention is "specifically designed so that it is lightweight, foldable, easily transported (on airplanes, etc.), as well as easily assembled and disassembled." *Id.* at 8. Thus, Appellant contends that it is improper to rely on Brooks to reject Appellant's claims.

For the reasons explained herein, we do not find Appellant's arguments persuasive. First, we disagree that Brooks teaches away from the claimed invention. The Examiner relied upon Brooks as disclosing the use of a stretchable fabric to form a display panel, not for any disclosure (or lack thereof) of using holes in the material display face. *See* Ans. 4, 10. While Brooks explains that "[a]nother object of the present invention is to provide a manner of mounting such a display face which avoids any need for the formation of holes or other openings in the material of the display face itself," Brooks, col. 7, ll. 5-8, and that "[b]etter hardware is provided . . . [such that] there is no need to make mounting holes in the material," *id.* at col. 22, ll. 38-42, Appellant has not persuasively shown that Brooks would have discouraged or led one of ordinary skill in the art in a direction away from using holes when employing a stretchable fabric to form a display panel. *See, e.g., In re Haruna*, 249 F.3d 1327, 1335 (Fed. Cir. 2001) ("A reference may be said to teach away when a person of ordinary skill, upon

reading the reference, . . . would be led in a direction divergent from the path that was taken by the applicant.”) (quoting *Tec Air, Inc. v. Denso Mfg. Mich. Inc.*, 192 F.3d 1353, 1360 (Fed. Cir. 1999)).

Further, we do not find Appellant’s focus on Brooks’ discussion of the disadvantages of stretchable fabric for display faces and the differences between the way in which Brooks constructs the display as compared to Appellant’s claims persuasive. As Appellant correctly notes, Brooks discusses many benefits of stretch fabric panels and ultimately discloses a display sign employing a stretchable fabric as a display face. *See App. Br. 5; see also Brooks*, col. 1, ll. 4-6. That Appellant employed a different “solution” as compared to Brooks does not mean, without more, that Brooks teaches away from the claimed invention.

Second, while the Examiner indicated that the method of producing the apparatus is not relevant to the patentability of the apparatus when analyzing an apparatus claim, the Examiner found that “[t]he physical result of the dye sublimation process is that pigment is placed on the sign fabric.” *Ans. 10*. Further, the Examiner found that the physical result disclosed by Brooks—that pigment is placed on the sign fabric—is the same as that claimed even though the method of placing the pigment on the fabric is different. *See Ans. 4, 10-11*. While Appellant asserts that a dye sublimated image has particular physical or structural attributes which distinguish it over other types of pigmented images, the only attribute cited by Appellant is that “images printed by non-dye sublimation techniques are not as commercially appealing once stretched” because, for example “they can exhibit a pixilated type appearance.” Amendment (filed Oct. 23, 2008) at 13-14; *see App. Br. 7*. A commercially appealing image, however, is an

aesthetic difference and Appellant has not persuaded us that it has a mechanical function. Thus, it does not patentably distinguish the claimed invention from the prior art. *See In re Seid*, 161 F.2d 229, 231 (CCPA 1947) (finding that a particular shape and arrangement lacks mechanical function and therefore cannot be relied on to distinguish structural claims over the prior art).

Third, the Examiner indicated that one of ordinary skill in the art would be prompted to substitute “the known apertures taught by Delamere for the ones disclosed by Bannister” to “achieve the predictable result of attaching the display panel to the frame.” Ans. 7. The Examiner further explained that the rationale “is merely the substitution of one known element for another to achieve a predictable result.” *Id.* at 11. Appellant has not persuaded us that the Examiner’s stated rationale was not reasonable, and Appellant has not provided evidence of any degree of unpredictability with respect to the result achieved. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007) (“when a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result”).

Finally, Appellant has not persuaded us that Brooks is non-analogous art. “A reference qualifies as prior art for an obviousness determination under § 103 only when it is analogous to the claimed invention.” *In re Klein*, 647 F.3d 1343, 1348 (Fed. Cir. 2011) (citing *Innovention Toys, LLC v. MGA Entm’t, Inc.*, 637 F.3d 1314, 1321 (Fed. Cir. 2011), and *In re Bigio*, 381 F.3d 1320, 1325 (Fed. Cir. 2004)). “Two separate tests define the scope of analogous art: (1) whether the art is from the same field of endeavor,

regardless of the problem addressed and, (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved." *Id.* (quoting *In re Bigio*, 381 F.3d at 1325). The "field of endeavor" test "requires the PTO to determine the appropriate field of endeavor by reference to explanations of the invention's subject matter in the patent application, including the embodiments, function, and structure of the claimed invention." *In re Bigio*, 381 F.3d at 1325. If the structure and function of the prior art would have been considered by a person of ordinary skill in the art because of similarity to the structure and function of the claimed invention as disclosed in the application, the prior art is properly considered within the same field of endeavor. *See id.* at 1325-26.

While Brooks relates to heavy duty signs, rather than signs used at trade shows or sales calls, Appellant's view of the field of endeavor is too narrowly defined. Brooks is generally directed to "display signs," *see* Brooks, Title, and specifically directed to "signs which employ a stretchable fabric as a display face," *id.* at col. 1, ll. 4-6. Appellant's claims are generally directed to "Fabric Display Panels," and are specifically directed to display apparatuses comprising a foldable frame and a display panel comprising a layer of stretch fabric. The display signs of Brooks would have been considered by a person of ordinary skill in the art because of the similarity in structure and function to the claimed subject matter as both are "concerned with fabric display surfaces." *See* Ans. 11. Accordingly, Appellant has not persuaded us that Brooks is non-analogous art.

Appeal 2010-012092  
Application 11/285,015

**DECISION**

We affirm the Examiner's decision rejecting claims 20-24, 26-28, 30, 31, 34-36, 38-40, 42, 43, and 46-52.

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).

**AFFIRMED**

Klh