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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/483,690	01/12/2004	Christopher Robert Lawrence	03-1113	3842
20306	7590	02/08/2013	EXAMINER	
MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP			SHEWAREGED, BETELHEM	
300 S. WACKER DRIVE			ART UNIT	PAPER NUMBER
32ND FLOOR			1785	
CHICAGO, IL 60606			MAIL DATE	DELIVERY MODE
			02/08/2013	PAPER

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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 CHRISTOPHER ROBERT LAWRENCE and
EOIN SEIROSE O'KEEFE

Appeal 2011-012379
Application 10/483,690
Technology Center 1700

Before BRADLEY R. GARRIS, CHUNG K. PAK, and GRACE
KARAFFA OBERMANN, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1-4, 6, and 8-10. We have jurisdiction under 35 U.S.C. § 6.

We REVERSE.

Appellants claim a security label having a first layer to which is adhered a second layer such that light interacts with both layers and gives rise to a detectable pre-determined wavelength spectrum and wherein the second layer is detachable from the first layer "and giving rise on the

detachment of the second layer to a detectable and pre-determined angular change in the wavelength spectrum" (independent claim 1; *see also* independent claim 10).

Representative independent claim 1 reads as follows:

1. A security label wherein the label comprises a layered structure consisting of a first layer to which is adhered a second layer so arranged with respect to the first layer that light interacts with both the first layer and the second layer and gives rise to a detectable pre-determined wavelength spectrum and wherein said second layer is detachable from said first layer in the event of mechanical friction, chemical interaction, abrasion or any other form of material damage or structural alteration and giving rise on the detachment of the second layer to a detectable and pre-determined angular change in the wavelength spectrum.

The Examiner rejects claims 1 and 3 under 35 U.S.C. § 102(b) as anticipated by Becker (US 4,765,656, issued Aug. 23, 1988) and rejects remaining claims 2, 4, 6, and 8-10 under 35 U.S.C. § 103(a) as unpatentable over Becker alone or in combination with other prior art.

In contesting the § 102 rejection of independent claim 1, Appellants present the following argument:

“[T]he examiner has not shown that Becker discloses a first layer and a second layer that are associated with one another such that they ‘giv[e] rise on the detachment of the second layer to a detectable and pre-determined angular change in the wavelength spectrum.’” (App. Br. sentence bridging 14-15).

The Examiner responds to Appellants' argument with the rebuttal set forth below:

“Becker teaches testing after detachment and comparing tested value or information with original value or information (see paragraph

4 of rejection above, col. 12, line 32 thru col. 13, line 3 and FIG. 6 of Becker). If there is a difference between the tested value or information and original value or information, it is clear that the label has been tampered with.”
(Ans. 10).

In reply, Appellants reiterate the above argument and emphasize that the Examiner has not provided any factual basis for finding that detachment of Becker's second layer gives rise to the claimed pre-determined angular change in the wavelength spectrum (Reply Br. 3-4).

Appellants' argument is persuasive. We find nothing and the Examiner identifies nothing in the Becker disclosures cited in the Answer which teaches that detachment of Becker's second layer gives rise to a "pre-determined angular change in the wavelength spectrum" as required by independent claim 1 as well as independent claim 10. Furthermore, the Examiner does not attempt to cure this deficiency of Becker in the § 103 rejections on appeal.

It follows that the Examiner's § 102 and § 103 rejections will not be sustained.

The decision of the Examiner is reversed.

REVERSED

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