



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. |
|-----------------------------|-------------|----------------------|---------------------|------------------|
| 11/321,825 | 12/29/2005 | William H. Shepard | 05918-133003 | 2096 |
| 26161 | 7590 | 02/20/2013 | EXAMINER | |
| FISH & RICHARDSON P.C. (BO) | | | OSELE, MARK A | |
| P.O. BOX 1022 | | | ART UNIT | PAPER NUMBER |
| MINNEAPOLIS, MN 55440-1022 | | | 1745 | |
| | | | NOTIFICATION DATE | DELIVERY MODE |
| | | | 02/20/2013 | ELECTRONIC |

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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte WILLIAM H. SHEPARD and GEORGE A. PROVOST

Appeal 2012-000719
Application 11/321,825
Technology Center 1700

Before CHUNG K. PAK, CHARLES F. WARREN, and
JEFFREY T. SMITH, *Administrative Patent Judges*.

PAK, *Administrative Patent Judge*

DECISION ON APPEAL

The named inventors (hereinafter “Appellants”)¹ appeal under 35 U.S.C. § 134(a) from the Examiner’s final rejection of claims 51 through 60. An oral hearing was held on February 4, 2013. We have jurisdiction under 35 U.S.C. § 6(b).

STATEMENT OF THE CASE

The subject matter on appeal is directed to methods of manufacturing “displays and decorations that employ detachable hook fastening.” (Spec.

¹ Appellants identify the real party in interest as “Velcro Industries B.V., Curacao.” (See Appeal Brief filed March 28, 2011 (“App. Br.”) at 1.

Appeal 2012-000719
Application 11/321,825

1, ll. 7-9 and claim 51.) These displays and decorations include “a laminate comprising a substrate having at least one broad surface to which is laminated a layer of light-weight hook-engageable material having a basis weight of less than about 4 ounces per square yard” and a graphic design comprising “printing residing on the hook-engageable fibers or yarns of the hook-engageable material, or on the surface of the web body from which the hook-engageable fibers or yarns extend, or on the opposite surface of the web body, or on the outer broad surface of the substrate, or on combinations of these surfaces.” (Spec. 2, ll. 3-5 and 26-29.) Details of the appealed subject matter are recited in illustrative independent claim 51 reproduced below from the “CLAIMS APPENDIX” in the Appeal Brief:

51. A method of forming a hook-engageable loop material, the method comprising:

needle-punching a non-woven material to form a loop material having a basis weight of less than about 4 ounces per square yard and comprising a generally sheet-form web body having first and second oppositely directed surfaces and yarns or fibers extending through the web body to form hook-engageable loops on the first surface of the web body; and

depositing ink or dye directly on yarns or fibers of the non-woven material such that a graphic design is visible by viewing the first surface of the web body,

wherein the ink or dye does not substantially effect hook engageability of the loops.

(See App. Br. 14-15 (Claims App’x).)

Appellants seek review of the following grounds of rejection maintained by the Examiner in the Answer:

1. Claims 51 through 53, 57, 58, and 60 under 35 U.S.C. § 103(a) as unpatentable over Lawless² in view of Lowinger³ and Schleinz;⁴
 2. Claims 54 and 55 under 35 U.S.C. § 103(a) as unpatentable over Lawless in view of Lowinger, Schleinz, and Ishizaki;⁵
 3. Claim 56 under 35 U.S.C. § 103(a) as unpatentable over Lawless in view of Lowinger, Schleinz, and Kovach;⁶ and
 4. Claim 59 under 35 U.S.C. § 103(a) as unpatentable over Lawless in view of Lowinger, Schleinz, and Varona;⁷
- (See App. Br. 2-3 and Examiner's Answer mailed June 13, 2011 ("Ans.") at 4-8.)

DISCUSSION

I. REJECTION 1

We initially note that Appellants do not separately argue claims 51 through 53, 57, 58, and 60 which are rejected under 35 U.S.C. § 103(a) as unpatentable over Lawless in view of Lowinger, Schleinz, and Ishizaki.

² U.S. Patent 5,891,547 issued to Lawless on April 6, 1999.

³ U.S. Patent 5,528,773 issued to Lowinger on June 25, 1996.

⁴ U.S. Patent 5,458,590 issued to Schleinz et al. on October 17, 1995.

⁵ Japanese Patent Kokai Publication 2-283305 published in the name of Ishizaki on November 20, 1990. We refer to the translation of Ishizak of record.

⁶ U.S. Patent 4,997,452 issued to Kovach et al. on March 5, 1991.

⁷ U.S. Patent 6,197,404 B1 issued to Varona on March 6, 2001.

Appeal 2012-000719
Application 11/321,825

Therefore, for purposes of this appeal, we select independent claim 51 and decide the propriety of this rejection based on claim 51 alone. *See* 37 C.F.R. § 41.37(c)(1)(vii) (“When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone.”).

We find that Lawless teaches a method of producing a hook and loop fastening system which includes “needlepunching a batt of fibers to form a [nonwoven] fabric with loops on its surface,” wherein the fabric has a weight of “about 1.5 to about 4.0 ounces/sq. yd.” (*See* Abstract, col. 1, ll. 6-15, and col. 4, ll. 4-31 and 63-65.) We find that Lawless also teaches (col. 5, ll. 48-52) that:

[The] needlepunched fabric, either with or without a binder finish, may optionally be placed on a backing layer or substrate before being attached to the article which is to be fastened. The backing layer may be attached to the needlepunch[ed] fabric with an adhesive layer.

The “article,” according to column 9, lines 60-64, of Lawless, includes gloves and disposable or nondisposable diapers.

Appellants contend that one of ordinary skill in the art would not have been led to employ a visible graphic design directly on either the hook and loop side or the opposite side of the hook and loop side of Lawless’s nonwoven fabric. (App. Br. 3-7 and Reply Brief filed August 15, 2011 (“Reply Br.”) at 1-2). In support of this contention, Appellants argue that

“[n]one of the cited references discloses or suggests that ultra-light weight loop material can practically, usefully be provided with a visible graphic design, while, at the same time, retaining its functionality for hook engageability.” (App. Br. 3.) Appellants also rely on the Rule 132 Declaration executed by James R. Barker on June 2, 2010, to show that one of ordinary skill in the art would not have been led to employ a visual graphic design directly on either the hook and loop side or the opposite side of the hook and loop side of the nonwoven fabric taught by Lawless. (App. Br. 3-7.)

Thus, the dispositive question is:

Has the Examiner reversibly erred in determining that one of ordinary skill in the art would have been led to employ a visual graphic design directly on the opposite side of the hook and loop side of Lawless’s nonwoven fabric, with a reasonable expectation of not “substantially effect[ing] hook engageability of the loops”⁸ within the meaning of 35 U.S.C. §103(a)? On this record, we answer this question in the negative.

As acknowledged by Appellants at pages 3 and 4 of the Appeal Brief, Lawless teaches (col. 4, ll. 44-48) that:

Clear fibers, for example made without titanium dioxide, may be used to improve the clarity of the product. A clear loop component may add marketability to the hook and loop product

⁸ The Specification does not define or limit the meaning of the phrase “*not substantially effect* hook engageability of the loops” recited in claim 1 (emphasis added). Thus, we give this phrase the broadest reasonable meaning in light of the Specification.

Appeal 2012-000719
Application 11/321,825

by allowing the consumer to see a printed film placed beneath the loop component.

Although Lawless does not indicate that a print or graphic design can be placed on the backside of its hook and loop product useful for gloves or diapers, the Examiner has correctly found at page 5 of the Answer that Lowinger teaches placing a print or graphic design (writing) on the backside of its transparent hook and loop product (closure) useful for gloves for visual observation of the writing from the hook and loop side of the hook and loop product, without substantially affecting the hook engageability of the loops (i.e., without substantially affecting closure or fastening functionality). (*See also* Lowinger, col. 2, ll. 3-15.) According to Lowinger, its transparent hook and loop product (closure) for gloves is said to be a hook or loop pad made of a transparent hook or loop material. (*Id.*) Moreover, the Examiner has found, and Appellants do not dispute, that:

Schleinz et al. teach that low basis weight nonwoven fibrous webs of basis weight of 10-105 grams per square meter (0.3-3 ounces per square yard) can be printed such as by flexographic printing, rotogravure printing or ink jet printing.

(Col. 3, line 58-col. 4, line 65, [and] col. 8, lines 10-17.) (*Compare* Ans. 5 with App. Br. 3-7 and Reply Br. 1-2.)

Given that a graphic design can be placed on the backside of a transparent hook and loop product for visualization, without damaging the fastening functionality of the hook and loop side of such product and can be printed on an ultra-light weight nonwoven material, without damaging the fibers of the ultra-light weight nonwoven material, we concur with the

Appeal 2012-000719
Application 11/321,825

Examiner that the collective teachings of Lawless, Lowinger, and Schleinzi would have led one of ordinary skill in the art to employ a visual graphic design directly on the ultra-light weight nonwoven material, such as the opposite side of the hook and loop side of the ultra-light weight nonwoven fabric taught by Lawless, e.g., beneath the hook and loop side of the nonwoven fabric taught by Lawless, with reasonable expectation of not “substantially affecting the hook engageability of the loops” within the meaning of 35 U.S.C. §103(a).

Appellants’ reliance on the Rule 132 Declaration of James R. Barker does not overcome the prima facie case of obviousness established by the Examiner based on the collective teachings of Lawless, Lowinger, and Schleinzi, when considered in light of the evidence in the totality of the record. In particular, Appellants have not shown that the Declaration demonstrates that one of ordinary skill in the art, at the time of the invention, would not have printed a graphic design on the opposite side of the hook and loop side of Lawless’ nonwoven fabric for fear of substantially impairing the hook-engageability of the nonwoven product taught by Lawless as found by the Examiner. (Ans. 10.) Although the Declaration refers to an ultra-low weight, 3-dimensional loop polyester fiber material having an unidentified weight per square yard (designated as Exhibit A) as being “extremely open and permeable,” there is no evidence that one of ordinary skill in the art would have reasonably expected that the printing would have caused damage to such material regardless of where a graphic design is printed (loop side or backside). In fact, the Declaration shows that a graphic design

Appeal 2012-000719
Application 11/321,825

can be provided to such material using flexographic printing without damaging the material as shown by Exhibit 2 consistent with the teachings of Schleinz. As correctly found by the Examiner at pages 5 and 10 of the Answer, Schleinz teaches printing a graphic design on an ultra-light weight nonwoven fibrous webs of basis weight of 10-105 grams per square meter (0.3-3 ounces per square yard) via flexographic printing. Nowhere does Schleinz indicate that the fibers of the ultra-light weight nonwoven fibrous webs were damaged or expected to be damaged due to the printing. In other words, contrary to the declarant's opinion, one of ordinary skill in the art reading the collective teachings of Lawless, Lowinger, and Schleinz would have reasonably expected that a graphic design can be printed on the backside of the ultra-light weight nonwoven product taught by Lawless, without substantially affecting the fastening function of the hook and loop features of such product. *See, e.g., In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1368 (Fed. Cir. 2004) (“[T]he Board is entitled to weigh the declarations and conclude that the lack of factual corroboration warrants discounting the opinions expressed in the declarations.”); *Velandier v. Garner*, 348 F.3d 1359, 1371 (Fed. Cir. 2003) (“In giving more weight to prior publications than to subsequent conclusory statements by experts, the Board acted well within [its] discretion.”)

Accordingly, having carefully and fully considered the evidence of obviousness and nonobviousness proffered by both the Examiner and Appellants, we determine that the preponderance of evidence weighs most heavily in favor of obviousness of the subject matter recited in claims 51

Appeal 2012-000719
Application 11/321,825

through 53, 57, 58, and 60 within the meaning of 35 U.S.C. § 103(a). *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992) (“After evidence or argument is submitted by the applicant in response, patentability is determined on the totality of the record, by a preponderance of evidence with due consideration to persuasiveness of argument.”) (*citing, inter alia, In re Spada*, 911 F.2d 705, 707 n.3 (Fed. Cir. 1990)).

II. REJECTIONS 2, 3, AND 4

Appellants do not question the Examiner’s determination of obviousness regarding the specific limitations recited in claims 54 through 56 and 59. (App. Br. 8-9.) Rather, Appellants reiterate the same arguments advanced in connection with Rejection 1 discussed above. (*Id.*). Thus, based on the reasons discussed above and in the Answer, we determine that the preponderance of evidence weighs most heavily in favor of obviousness of the subject matter recited in claims 54 through 56 and 59 within the meaning of 35 U.S.C. § 103(a).

ORDER

Upon consideration of the record, and for the reasons given, it is ORDERED that the decision of the Examiner rejecting claims 51 through 60 under 35 U.S.C. § 103(a) is AFFIRMED; and,

Appeal 2012-000719
Application 11/321,825

FURTHER ORDERED that 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

cam