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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/398,335	03/05/2009	David Goodrich	GOOD.04.C2	9885
62152	7590	02/21/2013	EXAMINER	
PARKER INTELLLECTUAL PROPERTY LAW OFFICE, plc 536 PANTOPS CENTER # 234 CHARLOTTESVILLE, VA 22911			SIMONE, CATHERINE A	
			ART UNIT	PAPER NUMBER
			1781	
			NOTIFICATION DATE	DELIVERY MODE
			02/21/2013	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL
AND APPEAL BOARD

Ex parte DAVID GOODRICH

Appeal 2012-000792
Application 12/398,335
Technology Center 1700

Before ROMULO H. DELMENDO, MICHAEL P. COLAIANNI, and
GEORGE C. BEST, *Administrative Patent Judges*.

COLAIANNI, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134 the final rejection of claims 1-22. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

We REVERSE.

Appellant's invention is directed to a packaging material formed from a combination of a layer of pleated sheet material which is creased at the apex of each pleat and a planar layer of sheet material, such as tissue paper, adhered to the pleated material (Spec. 1:19-21, 2:1-2).

Claim 21, the broadest claim on appeal according to Appellant (App. Br. 9), is illustrative:

21. A packaging material comprising a pleated sheet bonded to a planar sheet, said planar sheet being formed of a material substantially lighter in weight than said pleated sheet and having sufficient tensile strength to maintain said pleated sheet in its pleated form but not having significant structural strength other than tensile strength, the pleats of said pleated sheet having apices of at least about six inches and said pleated material comprising a series of parallel uninterrupted pleats having a length of at least six inches in length, and wherein said planar sheet is bonded to apices of said pleated sheet.

Appellant appeals the following rejections¹:

1. Claim 1 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Snyder (U.S. 1,470,200, issued Oct. 9, 1923) in view of George (U.S. 3,235,432, issued Feb. 15, 1966).
2. Claims 2-4, and 6 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Snyder in view of George and Anderson (U.S. 2,985,553, issued May 23, 1961).
3. Claims 5, 7, 10, 15, 21, and 22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Snyder in view of George and Brody (U.S. 2,227,294, issued Dec. 31, 1940).
4. Claims 8, 9, 11-14, and 16-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Snyder in view of George and Brody and Anderson.

¹ The following list includes new rejections of claims 16-22 made by the Examiner in the Answer (Ans. 4).

ISSUE

Did the Examiner reversibly err in concluding that it would have been obvious to substitute George's pleated paper structure for the corrugated structure in Snyder's packaging material that adheres a tissue paper planar sheet to the corrugated structure in order to avoid visible "wash boarding" effect on the planar sheet and for the other strengthening properties disclosed by George? We decide this issue in the affirmative.

FINDINGS OF FACT AND ANALYSES

Appellant contends that George teaches forming a rigid bond between the pleated paper structure and the planar sheet material and one of ordinary skill in the art would not have used an extremely light weight paper (i.e., limp material having a weight in the range from about 10 to 20 pounds, such as tissue paper) to achieve a "rigid determination of the angle of juncture" (Reply Br. 5, App. Br. 18-19). Appellant submits Exhibits A to D in the Evidence Appendix to the Brief, which were presented to the Examiner during an October 13, 2010 interview (App. Br. 15). Appellant contends that Exhibits A to D show that the "wash board" effect is still present with Appellant's claimed invention that uses a very light weight planar paper material and a pleated paper structure which is opposite the smoothing effect sought by George (App. Br. 15-16). Thus, Appellant asserts, there is no credible reason for making the substitution of George's pleated structure with Snyder's tissue paper planar material (*id.*).

The preponderance of the evidence favors Appellant's argument of nonobviousness. The Examiner responds to Appellant's argument regarding

the presence of a wash board effect in the product resulting from the Examiner's proposed substitution of George's pleated material for Snyder's corrugated material by finding that Appellant is arguing limitations not in the claims (i.e., the presence or absence of wash boarding) (Ans. 23-24). However, Appellant is not arguing the features of the claims as the Examiner contends, but rather that the Examiner's stated reason for making the substitution is flawed because the alleged result (i.e., a smooth surface) would not have been achieved. The Examiner never specifically responds to Appellant's attack on the Examiner's reason for making the proposed substitution or specifically addresses Appellant's evidence as presented by Exhibits A to D in the Answer.

In any event, we agree with Appellant that the Examiner has not established that one of ordinary skill in the art would have reasonably expected to produce a smooth, wash board effect-free surface packaging material by substituting George's pleated layer for Snyder's corrugated layer in the packaging material made with a tissue paper planar sheet. George seeks to provide a rigid bond between the pleated sheet and the planar sheet material (George, col. 3, ll. 23-33, col. 5, ll. 5-16). George discloses forming a smoother, wash board-free surface and unusual strength qualities by using planar sheet material that are not tissue paper (e.g., linerboard, kraft paper, or chipboard) (col. 2, ll. 63-71; col. 3, ll. 1-33; col. 9, ll. 35-55).

Based on George's disclosure, we determine that the Examiner has not established that there is a reasonable expectation of successfully achieving a wash board-free smooth surface or a material with unusual strength characteristics by combining George's pleated paper structure with Snyder's tissue paper planar sheet material. To the contrary, Appellant's

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evidence shows that a pleated structure adhesively attached to a tissue paper planar surface yields a product with a wash board-like surface. As the Examiner has not provided a credible reason for making the substitution, we reverse all of the Examiner's § 103 rejections based on the combination of Snyder and George.

DECISION

The Examiner's decision is reversed.

ORDER
REVERSED

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