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EXAMINER
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BAXTER, GWENDOLYN WRENN

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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* BOB YUSUO CHANG and PETER J. MUELLER

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Appeal 2014-005621  
Application 13/614,688  
Technology Center 3600

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Before LINDA E. HORNER, BRANDON J. WARNER, and  
LEE L. STEPINA, *Administrative Patent Judges*.

HORNER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Bob Yusuo Chang and Peter J. Mueller (Appellants)<sup>1</sup> seek our review under 35 U.S.C. § 134 of the Examiner's decision rejecting claims 1, 3–12, 37, and 38, which are all of the pending claims. Appellants' counsel presented oral argument in this appeal on October 21, 2016. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

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<sup>1</sup> Appellants identify the real party in interest as Velcro BVBA. Mandatory Notice of Change of Real Party-in-Interest Pursuant to 37 C.F.R. § 41.8(a), filed January 28, 2016.

### CLAIMED SUBJECT MATTER

Appellants' claimed subject matter relates to "releasably and adjustably hanging objects on surfaces such as walls." Spec. 1, ll. 3–4. Claim 1 is the sole independent claim on appeal and is reproduced below.

1. A method of hanging an object on a vertical surface with a first field of touch fastener elements, the method comprising:

selecting a desired orientation of the object with respect to the vertical surface;

securing a second field of touch fastener elements to a back side of the object, one of the first and second touch fastener element fields comprising an array of male touch fastener elements each extending from a common base, the other of the first and second touch fastener element fields comprising a multiplicity of fibers distributed over an area and engageable by the male touch fastener elements; and

hanging the object on the vertical surface with the fibers releasably engaged by the male touch fastener elements,

wherein a significant majority of the male touch fastener elements are oriented to overhang the base in a single, common direction, each male touch fastener element of the significant majority extending from the base to a distal tip, and wherein the orientation of the significant majority of the male touch fastener elements is such that, with the object hanging on the vertical surface, the fastener elements of the significant majority bear the weight of the object in a downward direction and such that the significant majority of the male touch fastener elements are oriented so as to not inhibit lifting of the object in an upward direction.

## REJECTIONS

The Final Action, dated June 11, 2013 (“Final Act.”), from which this appeal is taken, includes the following grounds of rejection:

1. Claims 3–8, 10, and 12 under 35 U.S.C. § 112, second paragraph, as being indefinite.
2. Claims 1, 3–8, 11, 12, 37, and 38 under 35 U.S.C. § 102(b) as anticipated by Billarant (FR 64754, issued September 4, 1973).<sup>2</sup>
3. Claims 9 and 10 under 35 U.S.C. § 103(a) as unpatentable over Billarant.

## ANALYSIS

### *First Ground of Rejection*

The Examiner rejected dependent claims 3–8, 10, and 12 as being indefinite because they “provide[] for the use of [] fastener elements, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass.” Final Act. 2. We agree with Appellants that the Examiner erred in rejecting these dependent claims because each claim “refer[s] back to and further limit[s] claim 1 or an intervening claim.” Br. 4. The Examiner’s reliance (Ans. 5) on the guidance provided in the Manual of Patent Examining Procedure (“MPEP”) § 2173.05(q) is misplaced. Section 2173.05(q) is directed to “[a]ttempts to claim a process without setting forth any steps

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<sup>2</sup> Citations to Billarant refer to the English language translation provided by Appellants on March 22, 2013.

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involved in the process.” MPEP § 2173.05(q). In this case, claim 1 sets forth three steps of the claimed method (i.e., selecting, securing, and hanging). Dependent claims 3–8, 10, and 12 recite further limitations on the elements previously recited in claim 1 that are used to carry out the claimed method steps. For these reasons, we do not sustain the Examiner’s rejection of claims 3–8, 10, and 12 under 35 U.S.C. § 112, second paragraph.

*Second Ground of Rejection*

The Examiner found that Billarant discloses all the elements of the method of claim 1, including that a “significant majority of the male touch fastener elements [10] are oriented so as to not inhibit lifting of the object in an upward direction.” Final Act. 4. Appellants contest this finding and assert that “[i]f the drawings were interpreted as showing the actual facing direction of each of the male fastener elements 10, they would be facing across the wall, not up or down the wall.” Br. 8. For the reasons that follow, we agree with Appellants’ understanding of the orientation of the male touch fastener elements depicted in Billarant.

Figures 1 and 2 of Billarant are reproduced below.

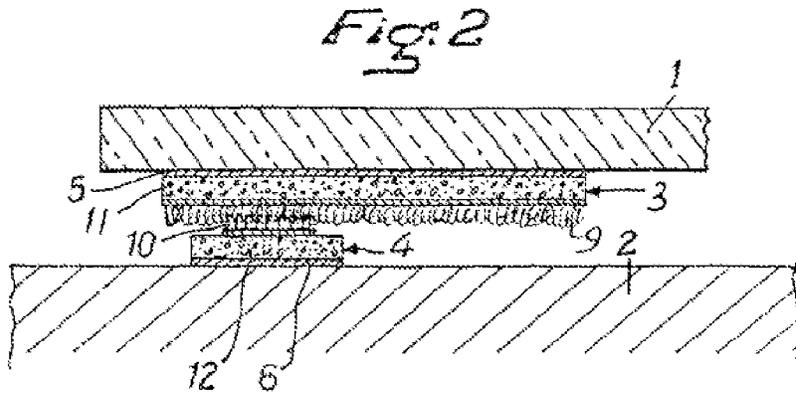
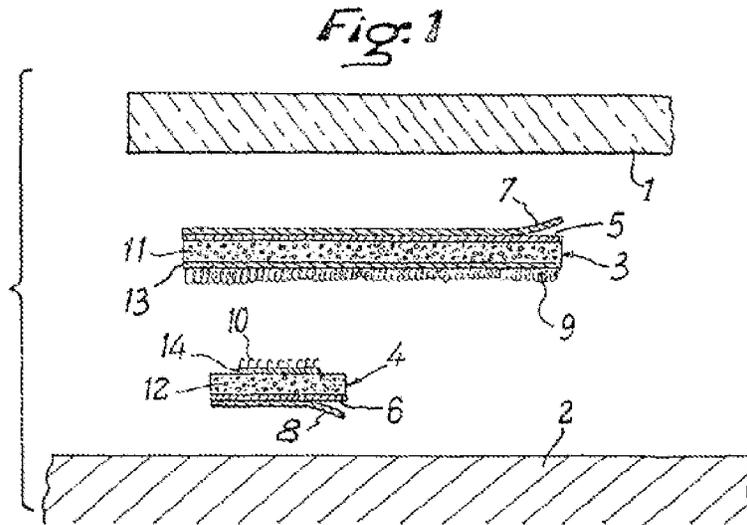


Figure 1 shows an “exploded horizontal cross section” view of the fastening device being used to mount a flat object on a support. Billarant 2, ll. 17–18. Figure 2 is a view similar to Figure 1 and shows the object mounted on the support. *Id.* at l. 19. We understand the perspective from which the view is taken in Figures 1 and 2 to be that of a top view, looking downwardly at the cross section of a wall 2, a mirror 1, and pieces 3, 4 of the

fastening device. *Id.* at ll. 24–25. Figures 1 and 2 show that male fastener elements 10 extend from base 14 outwardly and hooking to the right. *Id.*, Fig. 1. Thus, as noted by Appellants, male fastener elements 10 in Billarant face across the wall, as opposed to down the wall, as do Appellants’ male touch fastener elements 116. *See, e.g.*, Spec. 18, ll. 18 – 19, l. 6; Figs. 16A–16C. The Examiner failed to demonstrate sufficiently how such an orientation of the male touch fastener elements would not inhibit lifting of the mirror in an upward direction. As such, Billarant does not disclose by a preponderance of the evidence “that the significant majority of male touch fastener elements are oriented so as to not inhibit lifting of the object in an upward direction,” as called for in independent claim 1. For this reason, we do not sustain the rejection of claim 1, or its dependent claims 3–8, 11, 12, 37, and 38, under 35 U.S.C. § 102(b) as anticipated by Billarant.

*Third Ground of Rejection*

Claims 9 and 10 depend from claim 1. Br. 16 (Claims App.). For the same reasons set forth above in our analysis of the anticipation rejection, we likewise do not sustain the rejection of claims 9 and 10 under 35 U.S.C. § 103(a) as unpatentable over Billarant.

**DECISION**

The decision of the Examiner to reject claims 1, 3–12, 37, and 38 is REVERSED.

**REVERSED**