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Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO.
Row 1: 12/185,242, 08/04/2008, Harold Ochs, MCP5169USCIP1, 8998
Row 2: 27777, 7590, 11/14/2016, JOSEPH F. SHIRTZ, JOHNSON & JOHNSON, ONE JOHNSON & JOHNSON PLAZA, NEW BRUNSWICK, NJ 08933-7003, EXAMINER, KURPLE, KARL
Row 3: ART UNIT, PAPER NUMBER, 1717
Row 4: NOTIFICATION DATE, DELIVERY MODE, 11/14/2016, ELECTRONIC

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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* HAROLD OCHS and JOHN CHODZKO

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Appeal 2015-005247  
Application 12/185,242  
Technology Center 1700

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Before LINDA M. GAUDETTE, AVELYN M. ROSS, and  
JENNIFER R. GUPTA, *Administrative Patent Judges*.

GAUDETTE, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants<sup>1</sup> appeal under 35 U.S.C. § 134(a) from the Examiner's decision<sup>2</sup> finally rejecting claims 1–4, 6, 7, and 9–14. Br. 2. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

The “invention relates to an apparatus for evenly and uniformly coating dental tape.” Specification filed Aug. 4, 2008, 1:11–12. Claim 1 is representative of the claimed invention, and is reproduced below:

1. A coating die, comprising:
  - a. a base;
  - b. an entrance block having a length attached to the base, the entrance block comprising:
    - i. a slot for orienting an elastomeric tape such that upon entering the slot the tape is oriented in a vertical orientation, the tape having an upper portion and a lower portion, the slot extending across the length of the entrance block, the slot having a first side and a second side, the first side being opposite and parallel with the second side for maintaining the vertical orientation of the tape; and
    - ii. at least two passage bores having an inlet and an outlet for receiving a coating composition, the outlet of the passage bores in fluid communication with the slot for delivering the coating composition to the tape as the tape moves through the slot, the at least two passage bores comprising:
      - A. a first passage bore extending through the first side of the slot and oriented upwardly and toward or horizontally level with and toward the sides of the tape and;
      - B. a second passage bore extending through the second side of the slot and oriented upwardly and toward

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<sup>1</sup> Appellants identify the real party in interest as McNeil-PPC. Appeal Brief filed Oct. 27, 2014 (“Br.”), 2.

<sup>2</sup> Final Office Action mailed June 11, 2014 (“Final Act.”).

or horizontally level with and toward the sides of the tape;

c. at least two rollers positioned to receive coated tape from the slot of the entrance block; and

d. an exit block having a length attached to the base, the exit block comprising a slot positioned to receive the coated tape from the rollers and to uniformly spread the coating onto the tape.

The claims stand rejected under 35 U.S.C. § 103(a) as follows (Final Act. 2–12)<sup>3</sup>:

1. claims 1, 4, 10, 13, and 14 over Fellers et al (US 6,045,876, iss. Apr. 4, 2000 (“Fellers”)) in view of Stuart (US 3,694,131, iss. Sept. 26, 1972) and Foster et al. (US 5,863,332, iss. Jan. 26, 1999 (“Foster”));

2. claims 6 and 7 over Fellers, Stuart, and Foster, further in view of Schiraldi et al. (US 2001/0003587 A1, pub. June 14, 2001);

3. claims 2 and 9 over Fellers, Stuart, and Foster, further in view of Ohls (US 4,294,190, iss. Oct. 13, 1981);

4. claim 11 over Fellers, Stuart, and Foster, further in view of Ochs et al. (US 7,398,784 B2, iss. July 15, 2008); and

5. claims 3 and 12 over Fellers, Stuart, and Foster, further in view of Oliphant (US 5,501,734, iss. Mar. 26, 1996).

The Examiner finds Fellers discloses a coating die having base 38, entrance block 35 with slot 42, and two rollers 54, 56 for receiving coated tape. Ans. 2.

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<sup>3</sup> The rejection of claims 1–4, 6, 7, and 9–14 under 35 U.S.C. § 112(b) or pre-AIA 35 U.S.C. § 112, second paragraph, as indefinite (Final Act.) is not maintained by the Examiner. See Examiner’s Answer filed Feb. 13, 2015 (“Ans.”), 2–10. See Advisory Action mailed July 30, 2014 (entering the July 11, 2014 amendment in response to the Final Office Action, wherein the claims were amended and arguments presented to overcome the rejection under 35 U.S.C. § 112).

Fellers discloses a passage bore (opening 44) through which coating (polymer melt 36) is delivered to a tape (strand 22) entering slot 42. Fellers 3:8–10. The Examiner finds Fellers does not describe first and second passage bores extending through opposite sides of slot 42, as required by independent claims 1 and 14. Ans. 2, 5.

The Examiner finds Stuart discloses a die for coating filamentary material having slot 14 that extends across the length of entrance block 12. *Id.* at 5. The Examiner further finds Stuart discloses two passage bores (openings 17, 18) extending through first and second sides of slot 14 for delivery of a coating composition, and teaches that multiple openings are advantageous for impregnating the coating into the filamentary material. Ans. 3, 11. The Examiner finds Foster discloses an impregnating and coating device that includes parallel liquid applicators and metering rollers, and teaches that “coating the substrate from two sides allows penetration and complete saturating of the substrate with the coating material.” *Id.*

Based on the teachings of Stuart and Foster, the Examiner finds one of ordinary skill in the art at the time of the invention would have modified Feller’s coating die by locating passage bores for delivery of the coating composition on both sides of slot 42, for the purpose of improving penetration of the coating into the tape. *Id.* at 11 (citing Stuart 3:51–56; Foster 2:32–38).

Appellants contend the Examiner’s rejection of claims 1 and 14 is based on improper hindsight reasoning. Appellants argue, more specifically, that

there is no recognition nor need identified in Fellers to apply coating to two sides of fiber strand through passage bores on opposite sides of a coating passage as in the claimed invention because Fellers operates to solve its problem of coating strands by applying polymer on one side and urging the polymer through the strand using its key scrubber assembly element.

Br. 6–7. Appellants argue further that the ordinary artisan would not have had a reasonable expectation of success in modifying Feller’s apparatus to include a second passage bore because such modification would interfere with Feller’s required scrubber assembly. *See id.* at 7–8.

Appellants’ arguments are not persuasive of reversible error in the Examiner’s obviousness determination for the reasons explained in the Answer. *See* Ans. 10–14. Appellants argue modification of Fellers’ device is unnecessary because the device already applies coating to two sides of a fiber. Appellants’ argument fails to show error, however, in the Examiner’s reasoned finding that the ordinary artisan would have understood from Stuart and Foster that addition of a second coating passage would increase the efficiency of Feller’s device (*see* Ans. 14). *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007) (“[I]f a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.”).

Appellants’ argument that, due to the presence of a scrubber, Feller’s device could not be modified easily to include a second coating passage is likewise unconvincing because Appellants have not identified persuasive evidence showing error in the Examiner’s finding that it would have been within the level of skill of the ordinary artisan to make the necessary modifications. Ans. 11–12 (citing Foster 2:32–38 for a teaching of “supplying coating from both sides . . . in combination with rolling devices (scrubber) to control the final thickness of the coating on the fiber”). *See In re Sneed*, 710 F.2d 1544, 1550 (Fed. Cir. 1983) (“[I]t is not necessary that the inventions of the references be physically combinable to render obvious the invention under review.”); *In re Nievelt*, 482 F.2d 965, 968

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(CCPA 1973) (“Combining the *teachings* of references does not involve an ability to combine their specific structures.”).

Appellants do not present separate arguments in support of patentability of any dependent claims. Br. 8. Accordingly, for the reasons expressed above and in the Final Office Action and the Answer we affirm the Examiner’s decision to reject claims 1–4, 6, 7, and 9–14.

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