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Vorys, Sater, Seymour and Pease LLP 1909 K St., NW 9th Floor WASHINGTON, DC 20006-1152			CHANG, VICTOR S	
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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* KEITH MEDLEY<sup>1</sup>

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Appeal 2015-006248  
Application 10/579,786  
Technology Center 1700

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Before WESLEY B. DERRICK, JEFFREY W. ABRAHAM, and  
CHRISTOPHER L. OGDEN, *Administrative Patent Judges*.

OGDEN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's final decision<sup>2</sup> rejecting claim 1 in the above-identified application. We have jurisdiction pursuant to 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> According to Appellant, the real party in interest is Magnum Magnetics Corporation. Appeal Br. 1, Dec. 23, 2014.

<sup>2</sup> Office Action, Sept. 22, 2014 [hereinafter Final Action].

## BACKGROUND

Appellant's claimed invention "relates to magnetic labels and more particularly to a stock material for applying magnetic labels to a substrate." Spec. ¶ 1. An embodiment is depicted in Figure 3, which is reproduced below:

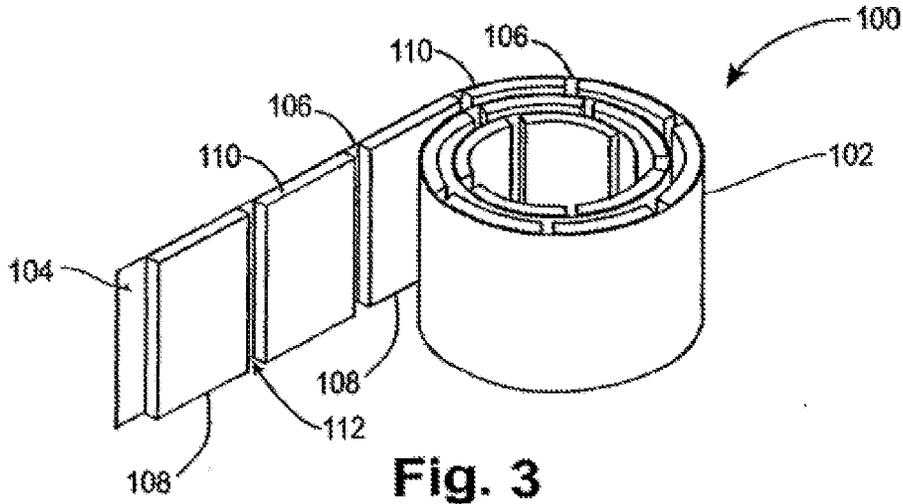


Figure 3 is a drawing illustrating "a coil of the magnetic label stock tape of the invention." *Id.* ¶ 11. "The stock tape 100 includes a flexible translucent substrate 102, which has a release surface at least on the upper surface 104 on which the magnetic labels 108 are carried." *Id.* ¶ 11. According to the Specification,

The magnetic labels 108 have a dimension in the lateral direction of the tape 102, i.e., at right angles to the longitudinal direction of the tape 102, that is generally equal to the width of the tape in the lateral direction. Accordingly, the labels are sized to extend substantially to the lateral edges 106 of the tape 102. Consequently, the relatively thin and delicate edges 106 of the tape 102 are supported along most of their length by the lateral edges 110 of the magnetic labels 108. This tends to prevent crushing, distortion, or tearing of the tape substrate 102 when a coil of the stock material 100 is distributed and handled.

*Id.* ¶ 15.

Claim 1 is the sole claim on appeal:

1. A stock tape for applying magnetic labels to a substrate comprising  
a translucent tape having a longitudinal direction and a transverse direction and a dimension in said transverse direction, and having at least one major release surface,  
a plurality of magnetic labels, each of said magnetic labels having at least one major surface at least partially covered with a pressure sensitive adhesive, said labels being fixed on said release surface by means of said pressure-sensitive adhesive,  
said labels being spaced in said longitudinal direction by a distance sufficient to permit transmission of an optical signal through said tape between said magnetic labels,  
*at least some of said magnetic labels having a dimension in said transverse direction substantially equal to said transverse dimension of said translucent tape.*

Appeal Br. 12 (emphasis added).

The Examiner rejects claim 1 under 35 U.S.C. § 103(a) as being unpatentable over admitted prior art (APA) in view of U.S. Patent No. 4,098,935 (issued July 4, 1978) [hereinafter Knudsen]. Final Action 2–4.

## DISCUSSION

The Examiner describes the APA as follows:

Thin flexible magnetic labels are **commonly distributed** in commerce as attachments to substrates such as paper, cardboard and the like. The magnetic labels are supplied with a **conventional** thin flexible release tape with the magnets arranged **sequentially** thereon. The magnetic labels have a pressure-sensitive adhesive coating on the side facing the release tape. The release tape may be a synthetic resin web, such as polyethylene, polypropylene, or polyester. The tape has a release surface which allows the adhesive magnet to be easily removed therefrom. The release tape may be treated with a silicone to provide release properties.



layers, including a pressure sensitive adhesive 24, a layer of magnetic recording material 26, and printed indicia 30. *Id.* at 2:37–53.

The Examiner finds that “Knudsen relates to a magnetic identification label tape.” Final Action 3. The Examiner also finds that the drawing of Knudsen clearly shows that “the widths of the labels are the same wi[d]th as the release tape (labels have a dimension in transverse direction substantially equal to transverse dimension of release liner).” Answer 6. In light of the above findings, the Examiner concludes as follows:

It would have been obvious to one of ordinary skill in the art to likewise form a label tape of APA with the same structural features taught by Knudsen, motivated by the desire to obtain the same beneficial effect of forming a roll for storage and transport and of being unwound in condition for printing, and/or application for the same end uses as the claimed invention.

Final Action 3.

Appellant argues that neither the APA nor Knudsen teaches or suggests a solution to the problem solved by the invention, which includes preventing the tape edges adjacent to the magnets on the roll from being “bent, crushed or torn in the course of handling and mounting the roll on a label dispenser.” Appeal Br. 4. In particular, Appellant argues that “Knudsen is silent with respect to any advantage or improvement in structure or function obtained by having the transverse dimension of labels 14, 16 and 18 coextensive with the transverse edges of the release liner 12 as appears to be shown in the figure,” *id.* at 6, and does not refer to the dimensions of the tape label, *see* Reply Br. 2, or indicate that the feature has any significance, *see* Appeal Br. 7–8. According to Appellant, the dimensions of labels 14, 16, and 18 in comparison to release liner 12 are “simply an artifact of the web coating, die-cutting and slitting process used

to make tape 10 as shown.” *Id.* Further, Appellant argues that the tape described in the APA is already wound in roll form, so the Examiner’s stated motivation for combining Knudsen with the APA does not constitute an improvement over the APA. *See* Appeal Br. 8; *see also* Reply Br. 4–5.

Appellant also argues that Knudsen is not analogous to the APA. *See* Appeal Br. 5–6, 9–11; Reply Br. 1–5. According to Appellant, the labels described in Knudsen are not “magnetic labels” as required by the claim. *See* Reply Br. 2. While the labels in Knudsen contain a magnetic recording material 26 that may be read by a magnetic pickup head, Appellant argues that the Knudsen labels are not “magnetic labels” because the recording material does not “cause the labels 14, 16, and 18 to be magnetically attached to a metal surface by a magnetic force, as is the case with the magnets of the APA.” Appeal Br. 5–6. Appellant argues that the Examiner has not shown that a stock tape containing magnetic labels (assuming the above definition) could have been made by the process disclosed by Knudsen. *See* Reply Br. 2–4.

Appellant’s arguments do not persuade us that the Examiner erred in rejecting claim 1. We give claims their broadest reasonable interpretation consistent with the specification. *In re Translogic Tech. Inc.*, 504 F.3d 1249, 1256 (Fed. Cir. 2007). According to the Specification, the magnetic labels 108 of the invention “may be any conventional flexible magnetic label. Such labels are made from suspensions of magnetizable material, e.g., an appropriate ferrite, dispersed in a flexible synthetic resin or rubber binder, and subsequently magnetized.” Spec. ¶ 12. This description of a magnetic label is consistent with Knudsen’s description of magnetic recording layer 26 as containing “a major proportion of magnetizable particles and a minor proportion of a polymeric binder.” Knudsen 2:4–6; *see also id.* at 4:61–5:26.

While the Specification refers to “flexible magnets for supporting papers and the like,” Spec. ¶ 2, it also refers to “[t]hin flexible magnetic labels” and refers generally to “thin flexible magnetic articles,” *id.* These descriptions are not explicitly limited to magnetic labels that are capable of being attached to a metal surface by a magnetic force. Thus, we determine that the broadest reasonable interpretation of the phrase *magnetic labels* includes the type of magnetic identification labels disclosed by Knudsen.

Because Knudsen relates to creating stock tapes for magnetic labels, it is within the same field of endeavor as claim 1, and is therefore analogous art. *See In re Bigio*, 381 F.3d 1320, 1325 (Fed. Cir. 2004) (art is analogous if it “is from the same field of endeavor, regardless of the problem addressed”). Independently of whether Knudsen is in the same field of endeavor, Knudsen is also analogous art because it is “reasonably pertinent to the particular problem with which the inventor is involved,” *id.*, which according to Appellant is the problem of protecting the edges of the roll from being bent, distorted, or torn. *See* Appeal Br. 2. The problem addressed by claim 1 is not restricted only to magnetic labels that may be attached to a metal surface by a magnetic force, but may also apply to any other type of magnetic label, such as that described by Knudsen. Thus, we are not persuaded of reversible error in the Examiner’s finding that Knudsen is an analogous reference.

We also find no reversible error in the Examiner’s stated reasons why a person of ordinary skill in the art would have combined the teachings of Knudsen with the APA. As the Examiner correctly finds, claim 1 is not limited by the process steps used in forming the claimed stock tape. *See* Answer 4. If 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,” then applying the technique to improve similar devices is obvious when it is within that person’s skill. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007). A person of ordinary skill in the art would have had reason to combine the APA with the teachings of Knudsen, by using the same or similar manufacturing process to that of Knudsen, which results in a stock tape in which the label widths are substantially equal in the transverse dimension to the widths of the tape. We have considered Appellant’s argument that Knudsen did not explicitly recognize that the stock tape formed by the process disclosed in Knudsen has the benefit of protecting the tape from being bent, distorted or torn during handling or use. However, “[i]t is not invention to perceive that the product which others had discovered had qualities they failed to detect.” *Gen. Elec. Co. v. Jewel Incandescent Lamp Co.*, 326 U.S. 242, 249 (1945). Because there was a reason for a person of ordinary skill in the art to combine the teachings of Knudsen with the APA to produce a stock tape with the relative dimensions required by claim 1, it does not matter whether or not Knudsen recognized the advantage of this arrangement that Appellant recognized.

For the above reasons, we affirm the Examiner’s decision to reject claim 1.

#### DECISION

The Examiner’s decision is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended. *See* 37 C.F.R. § 1.136(a)(1)(iv) (2013).

AFFIRMED