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Christopher M. Goff (27839) ARMSTRONG TEASDALE LLP 7700 Forsyth Boulevard Suite 1800 St. Louis, MO 63105			DULKO, MARTA S	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERT L. POPP, DEBRA DURRANCE, PAUL VANGOMPEL,
MICHAEL T. MORMAN, and PAUL M. LINKER¹

Appeal 2015-006763
Application 13/187,025
Technology Center 1700

Before BRADLEY R. GARRIS, PETER F. KRATZ, and
AVELYN M. ROSS, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134, Appellants appeal from the Examiner's rejections under 35 U.S.C. § 103(a) of independent claims 1, 7, and 14 as unpatentable over McCormack et al. (US 6,589,638 B1; July 8, 2003) in view of Sugita et al. (US 5,702,798; Dec. 30, 1997) and Allen et al. (US 5,647,864; July 15, 1997) and of dependent claims 2–6, 8–13, and 15–23 as unpatentable over these references alone or in combination with additional prior art. We have jurisdiction under 35 U.S.C. § 6.

We AFFIRM.

¹ Kimberly-Clark Worldwide, Inc. is identified as the real party in interest. App. Br. 1.

Appellants claim a method of making a mechanical fastening system for an article comprising forming a nonwoven loop material from a drawn nonwoven web and disposing the drawn nonwoven web of loop material on a body-facing surface of a disposable absorbent article (e.g., a diaper) (independent claims 1, 7, and 14).

A copy of representative claim 1, taken from the Claims Appendix of the Appeal Brief, appears below.

1. A method of making a mechanical fastening system for an article, comprising:

forming an oriented nonwoven loop material from a nonwoven web of substantially continuous fibers by drawing the nonwoven web using an applied force to align a greater number of the constituent fibers of the nonwoven web in a machine direction and without substantial necking or gathering of the nonwoven web in a direction perpendicular to the machine direction; and

disposing the drawn nonwoven web on a body-facing surface of a disposable absorbent article.

Appellants present the same arguments regarding the independent claims and do not present separate arguments specifically directed to the dependent claims (Amended Appeal Brief, dated February 10, 2015, (“App. Br.”) 5–14). Therefore, we will focus on representative independent claim 1 with which the other claims on appeal will stand or fall.

We sustain the Examiner’s rejections for the reasons expressed in the Final Action, the Answer, and below.

ANALYSIS

The Examiner finds that McCormack’s web of loop material is not disposed on the body-facing surface of the absorbent article as claimed but that Allen discloses disposing loop material on either the outer (i.e. garment-facing) surface or the body-facing surface of an absorbent article (Final Action 4). The Examiner concludes that it would have been obvious to dispose McCormack’s web of loop material on the body-facing surface of the article “because reversing the position of the loop fastener is a well-known technique in the art of diaper-making (Allen, Fig[s]. 7 and 8, C 12, L 60-64)” (Final Action 4–5).

Appellants argue McCormack teaches away from the Examiner’s proposed combination by disclosing that providing loop material on the entire garment-facing surface advantageously yields an almost infinite number of positions for fastening with hook elements (App. Br. 11).

“A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.” *In re Urbanski*, 809 F.3d 1237, 1244 (Fed. Cir. 2016) (quoting *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994)).

Appellants’ argument is not persuasive for multiple reasons.

First, Appellants do not explain why they believe McCormack would discourage an artisan from making the proposed modification even if the result were less than an almost infinite number of fastening positions. In this regard, we emphasize that McCormack explicitly teaches “the loop fastener

component may be substantially the entire backing to provide comfort, protection and highly variable fit” (Abstract (emphasis added)), thereby indicating that the loop material need not be disposed on the backing (i.e., the garment-facing surface).

Second, Appellants do not explain why the Examiner’s proposed modification would eliminate the advantage of an almost infinite number of fastening positions. This advantage seemingly would be retained by reversing McCormack’s loop and hook dispositions, as proposed, whereby the loop material would be disposed on the body-facing surface and the hook material would be disposed on the entire backing (i.e., the garment-facing surface).

Third, even if the modification eliminated the advantage of an almost infinite number of fastening positions, the loss of an advantage or benefit does not necessarily establish that an artisan would lack motivation to pursue the modification. *See Urbanski*, 809 F.3d at 1243 (“[T]he Board properly found that one of ordinary skill would have been motivated to pursue the desirable properties taught by Wong, even at the expense of foregoing the benefit taught by Gross.”). Here, an artisan would have been motivated to dispose McCormack’s loop material on the body-facing surface and hook material on the garment-facing surface in order to obtain an effective fastening system having an adequate number of fastening positions as evinced by Allen, even at the expense of foregoing the advantage of an almost infinite number of fastening positions.

For the reasons stated above and given by the Examiner, Appellants fail to show error in the rejections of the appealed claims.

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DECISION

The decision of the Examiner is affirmed.

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).

AFFIRMED