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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/265,714	04/30/2014	Marcus Schonbeck	12873M	7737
27752	7590	02/16/2018	EXAMINER	
THE PROCTER & GAMBLE COMPANY			VASAT, PETER S	
Global IP Services			ART UNIT	
Central Building, C9			PAPER NUMBER	
One Procter and Gamble Plaza			3778	
CINCINNATI, OH 45202			NOTIFICATION DATE	
			DELIVERY MODE	
			02/16/2018	
			ELECTRONIC	

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MARCUS SCHONBECK, HENNER SOLLMANN,
DIETER HOMOLLE, GEORG BALDAUF,
URMISH POPATLAL DALAL,
MIGUEL ALBERTO HERRERA, ERICA LYNNE LOCKE,
LINDA ANN SAUER, and JAMES THOMAS BADER

Appeal 2017-000550
Application 14/265,714
Technology Center 3700

Before: MICHAEL L. HOELTER, BENJAMIN D. M. WOOD and
ANNETTE R. REIMERS, *Administrative Patent Judges*.

WOOD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from a rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

THE INVENTION

The claims are directed to an absorbent article comprising stretch laminates. Claim 1, reproduced below, is illustrative of the claimed subject matter:

- 1 An absorbent article comprising:
 - i) a chassis comprising a topsheet, a backsheet, and an absorbent core disposed between the topsheet and the backsheet; and
 - ii) at least one elastically elongatable panel joined to the chassis, wherein the elastically elongatable panel comprises a stretch laminate comprising:
 - a. at least one cover layer; and
 - b. a pre-activated elastomeric film attached to the cover layer, the elastomeric film having two surfaces and a skin on at least one of the surfaces; and
 - c. an adhesive disposed between the skin and the cover layer;
wherein the skin has a plurality of wrinkles;
wherein the wrinkles have furrows, and an ink is disposed in at least some of the furrows; and
wherein at least some of the ink is covered by the adhesive such that at least some of the ink is disposed between the skin and the adhesive.

REFERENCES

Krueger	US 5,691,034	Nov. 25, 1997
Muslet	US 2007/0003764 A1	Jan. 4, 2007

Autran	US 2009/0264844 A1	Oct. 22, 2009
Jaeger	US 2010/0104830 A1	Apr. 29, 2010
Pip	US 2011/0189495 A1	Aug. 4, 2011

REJECTIONS

Claim 1 stands provisionally rejected on the ground of non-statutory double patenting as unpatentable over claims 3 and 13 of co-pending Application No. 14/268,364. Final Act. 4.

Claims 1–6, 8–16, and 18–20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Jaeger, Autran, Muslet, and Krueger. *Id.* at 6–25.

Claims 7 and 17 stand rejection under 35 U.S.C. § 103(a) as unpatentable over Jaeger, Autran, Muslet, Krueger, and Pip. *Id.* at 25–26.

ANALYSIS

Claim 1—Non-statutory double patenting

Appellants have not responded to the Examiner’s provisional rejection of claim 1 on the ground of non-statutory double patenting over claims 3 and 13 of co-pending Application No. 14/268,364. Therefore, Appellants have waived any argument of error, and we summarily sustain this rejection. *See In re Berger*, 279 F.3d 975, 984, 985 (Fed. Cir. 2002) (holding that the Board did not err in sustaining a rejection under 35 U.S.C. § 112, second paragraph, when the applicant failed to contest the rejection on appeal).

Claims 1–6, 8–16, and 18–20—Unpatentable over Jaeger, Autran, Muslet, and Krueger

Appellants do not separately argue the patentability of the claims subject to this rejection. App. Br. 5–6. We select claim 1 as representative of the claims, and decide the appeal of these claims on the basis of claim 1 alone. 37 C.F.R. § 41.37(c)(1)(iv).

Appellants do not contest any of the Examiner's findings regarding what the prior-art references teach, and, in particular, do not contest that all of claim 1's limitations are found in the cited references. Instead, Appellants assert that the Examiner used "impermissible hindsight" in formulating this rejection. App. Br. 5. Appellants also assert that the Examiner has not provided a reason that would have prompted a person of ordinary skill to combine the prior-art teachings. *Id.* at 6; Reply Br. 2.

We are not persuaded of Examiner error. First, we are not persuaded that the Examiner relies on impermissible hindsight in rejecting claim 1 as obvious. As our reviewing court has stated:

Any judgment on obviousness is in a sense necessarily a reconstruction based on hindsight reasoning, but so long as it takes into account only knowledge which was within the level of ordinary skill in the art at the time the claimed invention was made and does not include knowledge gleaned only from applicant's disclosure, such a reconstruction is proper.

In re McLaughlin 443 F.2d 1392, 1395 (CCPA 1971). Appellants have not alleged that the Examiner relies on any knowledge gleaned only from Appellants' disclosure in formulating this rejection.

Second, we disagree that the Examiner failed to provide a reason to combine the references. On the contrary, the Examiner identifies a reason for each proposed combination. For example, regarding the combination of Jaeger and Autran, the Examiner states:

It would have been obvious to one of ordinary skill in the art before the effective filing date of the claimed invention to provide the absorbent article of Jaeger with a chassis comprising a topsheet, a backsheet, and an absorbent core disposed between the topsheet and the backsheet, as taught by Autran, to provide the benefit of receiving and containing urine and/or other body exudates.

Final Act. 7. Likewise, the Examiner explains why one of ordinary skill in the art would have combined Muslet (*id.* at 8) and Krueger (*id.* at 9) with Jaeger. Appellants do not address these statements at all, much less explain why they are erroneous. Because Appellants do not apprise us of error in the Examiner's determination that the subject matter of claim 1 would have been obvious, we sustain the rejection of claim 1—as well as claims 2–6, 8–16, and 18–20—as unpatentable over Jaeger, Autran, Muslet, and Krueger.

*Claims 7 and 17—Unpatentable over
Jaeger, Autran, Muslet, Krueger, and Pip*

Appellants do not separately address this rejection, but instead rely on the arguments made with respect to the previous rejection. App. Br. 5–6. Because we found these arguments unpersuasive, we sustain the Examiner's rejection of claims 7 and 17 as unpatentable over Jaeger, Autran, Muslet, Krueger, and Pip.

DECISION

For the above reasons, the Examiner's rejection of claims 1–20 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)(iv).

AFFIRMED