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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* RYAN A. BAILEY

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Appeal 2017-000691  
Application 13/965,638  
Technology Center 3700

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Before BRETT C. MARTIN, ANNETTE R. REIMERS, and  
THOMAS F. SMEGAL, *Administrative Patent Judges*.

SMEGAL, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant<sup>1</sup> seeks our review under 35 U.S.C. § 134 of the Examiner's rejections<sup>2</sup> under 35 U.S.C. § 102(b) of claims 12–15 and 17 as anticipated by both Albrecht (US 2012/0234701 A1, pub. Sept. 20, 2012) and Clarke (US 8,191,710 B2, iss. June 5, 2012); and under 35 U.S.C. § 103(a) of claim 16 as unpatentable over both Albrecht and Lee (US 2009/0134054 A1, pub.

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<sup>1</sup> Appellant is the Applicant, MeadWestvaco Calmar, Inc. According to the Appeal Brief, WestRock Dispensing Systems, Inc. is the real party in interest. Appeal Br. 3.

<sup>2</sup> Appeal is taken from the adverse decision of the Examiner, initially set forth in the Final Office Action, dated December 3, 2015 (“Final Act.”), and as modified in the Advisory Action dated March 11, 2016 (“Adv. Act.”).

May 28, 2009) and *Clarke and Lee*.<sup>3</sup> We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

#### CLAIMED SUBJECT MATTER

Claim 12, the sole independent claim, is reproduced below and illustrates the claimed subject matter, with disputed limitations emphasized.

12. A blister package, comprising:  
    an outer sleeve, comprising:  
        a closed rear end;  
        an open front end; and  
        a cavity between the closed rear end and open front end;  
    a blister receptacle, comprising:  
        a main body;  
        at least one blister formed in the main body; and  
        *a supporting mechanism formed contiguously with a blister proximate to a rear end of the main body;*  
        wherein the supporting mechanism supports the receptacle in the outer sleeve.

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<sup>3</sup> Claims 1–11 have been canceled by an Amendment filed November 9, 2015 and claims 18–20 have been cancelled by an Amendment filed February 29, 2016. In an Advisory Action dated March 11, 2016, the Examiner withdrew the rejection under 35 U.S.C. § 112, second paragraph, of claims 12–17 as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventors regard as the invention.

## ANALYSIS

### *Anticipation of claims 12–15 and 17 by Albrecht*

We are persuaded by Appellant’s arguments that the Examiner fails to establish anticipation of claims 12–15 and 17 by Albrecht. *See* Appeal Br. 6–8; Reply Br. 2–3.

The Examiner finds that Albrecht anticipates claim 12 by disclosing a package assembly having all the limitations of the claim, including, *inter alia*, “release button (162) (supporting mechanism) formed integrally with a blister (152) proximate a fixed end (156) (rear end) of the main body, resulting in the blister and release button (162) (supporting mechanism) *being contiguous*.” Final Act. 3 (emphasis added) (citing Albrecht ¶ 44, Figs. 2, 3, 8). The Examiner contends that “the rearmost blister (152) [of Albrecht] is contiguous with the release button (162) (supporting mechanism) as they are formed from the same material and next to each other in sequence.” *Id.* at 8.

In contesting the rejection of claims 12–15 and 17 as anticipated by Albrecht, Appellant observes while “the Office wishes to adopt a definition for ‘contiguous’ as being ‘formed from the same material and next to each other in sequence,’” that “this is not the accepted definition of ‘contiguous.’” Appeal Br. 7. Appellant explains “[t]he use of ‘contiguously’ in claim 12, the Specification, and the Drawings specifically refers to a structure being in actual contact with or sharing a boundary of the recited ‘blister,’” so that “‘a supporting mechanism formed *contiguously* with a blister’ as recited in claim 12 requires contact between the blister and the supporting mechanism as described in the Specification and illustrated in the Drawings.” *Id.* at 7–8.

In response, the Examiner contends that “no special definition of ‘contiguous’ was provided in the Specification,” referring to “original Figure 8 and paragraph [0045], to show [Appellant’s] intent was for the term to encompass the broader definition of ‘contiguous’ as ‘next or near in time or sequence.’” Ans. 5–6. However, the Examiner misreads the Specification. Thus, we agree with Appellant’s contention that in the Specification, “that ‘contiguous’ refers to a structure being in actual contact with or sharing a boundary of the recited ‘blister.’” Reply Br. 2.

As Appellant points out, the Specification “clearly states that ‘contiguous’ does **not** mean ‘next or near in time or sequence,’” explaining that “where a ‘supporting mechanism’ and a ‘product-holding blister’ are ‘*spaced apart from*’ each other, they are ‘*not contiguous*.’ See, Specification at ¶ [0048].” *Id.* Appellant is correct that “[t]he Specification references Figure 8 as an example of such configuration where ‘one or more false blisters . . . are formed as a separate false blister *that is not contiguous with*, and thus spaced apart from, a rear-most product-holding blister.’”<sup>4</sup> *Id.*

Furthermore, we agree with Appellant that “when the Specification is read as a whole, it is clear that the structures of Albrecht – ‘rearmost blister (152)[’] and ‘release buttons (162)’ – . . . do not anticipate the recitations of claim 12 because structures that are . . . ‘next or near in time or sequence’ are not ‘contiguous’ as recited by claim 12.” *Id.* at 3. Thus, Albrecht is

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<sup>4</sup> The Specification discloses that “According to some embodiments of the invention, the supporting mechanism 80 may comprise one or more false blisters that are formed as a separate false blister that is not contiguous with, and thus spaced apart from, a rear-most product-holding blister 78c. For example a lockable receptacle 70 having a supporting mechanism 80 separate from a blister 78 is illustrated in Figure 8.” See Spec. ¶ 48.

devoid of a supporting mechanism formed “contiguous” with a blister, as recited by claim 12.

[U]nless a reference discloses within the four corners of the document not only all of the limitations claimed but also all of the limitations arranged or combined in the same way as recited in the claim, it cannot be said to prove prior invention of the thing claimed and, thus, cannot anticipate under 35 U.S.C. § 102.

*Net MoneyIN, Inc., v. VeriSign, Inc.*, 545 F.3d 1359, 1371 (Fed. Cir. 2008).

For the foregoing reasons, we do not sustain the Examiner’s decision rejecting claims 12–15 and 17 as anticipated by Albrecht.

*Anticipation of claims 12–15 and 17 by Clarke*

We are persuaded by Appellant’s arguments that the Examiner fails to establish anticipation of claims 12–15 and 17 by Clarke. *See* Appeal Br. 9; Reply Br. 2–3.

The Examiner finds that Clarke anticipates claim 12 by disclosing a package having all the limitations of the claim, including, *inter alia*, “second blisters (44) (supporting mechanism) *formed contiguously* with one of the first blisters (42).” Final Act. 5 (emphasis added) (citing Clarke, Figs. 1, 3b).

However, as we have found in not sustaining the rejection of claim 12 as anticipated by Albrecht, “[Appellant’s] definition of ‘contiguous’ is consistent with the Specification . . . that “‘contiguous’ refers to a structure being in actual contact with or sharing a boundary of the recited ‘blister.’” Reply Br. 2. We agree with Appellant “it is clear that the structures of . . . Clarke – ‘first blisters 42’ and ‘second blisters 44’ – do not anticipate the recitations of claim 12 because structures that are ‘proximate’ to each other . . . are not ‘contiguous’ as recited in claim 12.” Reply Br. 3. Thus, we find

that Clarke is devoid of a supporting mechanism formed “contiguous” with a blister, as recited by claim 12.

For the foregoing reasons, we do not sustain the Examiner’s decision rejecting claims 12–15 and 17 as anticipated by Clarke.

*Obviousness of claim 16 over Albrecht and Lee*

Regarding the rejection of claim 16 over Albrecht and Lee, the Examiner’s rejection is based on the same unsupported findings discussed above with respect to the disclosure of Albrecht. *See* Final Act. 7. The addition of Lee does not remedy the deficiencies of Albrecht, as discussed *supra*.

Accordingly, for similar reasons as discussed above for claim 12, we do not sustain the Examiner’s decision rejecting claim 16 over Albrecht and Lee.

*Obviousness of claim 16 over Clarke and Lee*

Regarding the rejection of claim 16 over Clarke and Lee, the Examiner’s rejection is based on the same unsupported findings discussed above with respect to the disclosure of Clarke. *See* Final Act. 7. The addition of Lee does not remedy the deficiencies of Clarke, as discussed *supra*.

Accordingly, for similar reasons as discussed above for claim 12, we do not sustain the Examiner’s decision rejecting claim 16 over Clarke and Lee.

DECISION

We REVERSE the Examiner’s rejections.

REVERSED