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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* BJÖRN LARSSON

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Appeal 2018-005595  
Application 14/131,744  
Technology Center 3600

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Before JOHN C. KERINS, WILLIAM A. CAPP and  
BRANDON J. WARNER, *Administrative Patent Judges*.

CAPP, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant<sup>1</sup> seeks our review under 35 U.S.C. § 134(a) of the final rejection of claims 1–7, 9, 10, 13, 14, and 18–29. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

THE INVENTION

Appellant's invention is a dispenser for paper napkins (or some other, similar stack of sheet products). Spec. ¶ 1. Claim 1, reproduced below, is illustrative of the subject matter on appeal.

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<sup>1</sup> SCA Hygiene Products AB is the real party in interest. Appeal Br. 2.

Claim 1. A dispenser, comprising:

at least one stack of interfolded webs, wherein the stack comprises at least two webs, including:

a first elongate web divided into sheet products defined between longitudinally separated lines of weakness extending across the first web; and

a second elongate web divided into sheet products defined between longitudinally separated lines of weakness extending across the second web;

wherein the webs are interfolded to form the stack so that the lines of weakness of the first web are offset from the lines of weakness of the second web in a longitudinal direction of the first web;

a housing defining a product reservoir, wherein the at least one stack of interfolded webs is contained in the product reservoir;

a dispensing opening at a front of the housing, wherein the housing comprises a front wall forming a front wall of the product reservoir, wherein the front wall has a front surface facing the front of the housing, and a rear surface facing a rear of the housing, wherein

the front surface of the front wall is revealed by opening a refill door of the dispenser;

wherein a leading portion of the webs of the stack is supported in a dispensing path from the product reservoir to the dispensing opening;

wherein the weight of the stack is downwardly oriented to bare against a bottom of the stack and the leading portion of the first and second webs extends from a top of the stack,

wherein the webs extend upwardly from the top of the stack, are supported at a guide portion disposed above the dispensing opening and having a curved apex portion followed by a substantially planar portion along the dispensing path, and then extend downwardly to the dispensing opening, with respect to a dispensing direction along the dispensing path.

### THE REJECTIONS

The Examiner relies upon the following as evidence in support of the rejections:

NAME	REFERENCE	DATE
Marcuse	US 2,809,082	Oct. 8, 1957
Skerrett	US 6,213,346 B1	Apr. 10, 2001
Granger	US 2011/0101020 A1	May 5, 2011

The following rejections are before us for review:<sup>2, 3</sup>

1. Claims 1–6, 9, 10, 13, 14, and 18–29 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Granger and Skerrett.
2. Claim 7 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Granger, Skerrett, and Marcuse.

### OPINION

#### *Unpatentability of Claims 1–6, 9, 10, 13, 14, and 18–29 over Granger and Skerrett*

Appellant argues claims 1–6, 9, 10, 13, 14, and 18–29 as a group. Appeal Br. 12–21. We select claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner finds that Granger discloses the invention substantially as claimed except for using two webs with offset perforations, for which the Examiner relies on Skerrett. Final Action 4–6. The Examiner concludes that it would have been obvious to a person of ordinary skill in the art at the

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<sup>2</sup> At the time of the Final Action, claims 1–7 and 9–30 were pending. Claims 12 and 16 are allowed. Claims 11, 15, 17, and 30 are objected to as being dependent upon a rejected base claim. Final Action 12.

<sup>3</sup> A rejection of claim 10 under 35 U.S.C. § 112, second paragraph, has been withdrawn by the Examiner. Final Action 3–4, Ans. 3.

time of the invention to replace Granger's single web with two interfolded webs as taught by Skerrett and so achieve the claimed invention. *Id.* at 6. According to the Examiner, a person of ordinary skill in the art would have done this to provide an improved means for cleaning a surface. *Id.*

Appellant argues that Granger fails to teach a stack comprising at least two, interfolded webs as claimed, a point already conceded by the Examiner. Appeal Br. 12. Appellant further argues that the rejection ignores "important facts and context" that militate against combining the two references. *Id.* at 13.

First, Appellant points out that Granger feeds the web from the top of the stack whereas Skerrett feeds from the bottom of the stack. *Id.* Appellant characterizes the function of the two dispensers as completely different with each dispenser imposing "completely different" demands on the material being dispensed. *Id.* Appellant argues that such difference is "significant" and has "meaningful implications" in the design of the dispenser and stack of webs inserted therein. *Id.* at 14. More particularly, Appellant argues that, in the bottom feeding dispenser of Skerrett, the weight of the stack is on the web when it is being pulled out, which produces substantial pressure on the napkin being dispensed that needs to be overcome.

In response, the Examiner points out that the proposed combination results in the material feeding from the top of the stack and, consequently, Appellant's "bottom of the stack" argument is irrelevant. Ans. 5. The Examiner further explains that feeding Skerrett's stack from the top results in a less demanding mode of operation and thus would have no ill effects for dispensing from the top as argued by the Appellant. *Id.* at 6.

In reply, Appellant accuses the Examiner of improperly relying on Official Notice with respect to finding that feeding from the top of the stack is less demanding. Reply Br. 3.

Appellant's arguments are not persuasive. The Examiner's finding that feeding from the top of the stack is less demanding merely echoes Appellant's argument that, when feeding from the bottom of the stack:

[T]he weight of the entire stack is on the web when it is being pulled out. There is substantial pressure on the napkin being dispensed, which must be overcome. Thus, the stack arrangement . . . must allow for this weight and pressure, which cause difficulty in dispensing.

Appeal Br. 15. Otherwise, the Examiner's finding that feeding from the top of the stack is less demanding than feeding from the bottom of the stack appears to be based on sound technical reasoning that is well within the Examiner's scope of expertise. *See In re Berg*, 320 F.3d 1310, 1315 (Fed. Cir. 2003) (explaining that examiners are considered to be persons of scientific competence in the fields in which they work).

Next, Appellant argues that Granger and Skerrett dispense different types of web materials. Appeal Br. 15. Appellant notes that Granger dispenses wipe materials used in bathrooms whereas Skerrett dispenses napkins. *Id.*

In response, the Examiner observes that claim 1 does not recite any limitation pertaining to material used in the web. Ans. 6. The Examiner further finds that Granger, as modified by Skerrett, would be expected to be operable in a broader range of applications than merely in bathrooms. *Id.*

In reply, Appellant accuses the Examiner of exhibiting a "complete lack of understanding" of the arguments at issue. Appeal Br. 4. Appellant

argues that, since Granger and Skerrett have two different uses, there is no reason to combine the teachings of the two references.

Appellant’s argument that paper product dispensers have “different uses,” is not persuasive. It is common sense that familiar items may have obvious uses beyond their primary purposes, and a person of ordinary skill often will be able to fit the teachings of multiple patents together like pieces of a puzzle. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 420 (2007). Consequently, it is well settled that a “reference may be read for all that it teaches, including uses beyond its primary purpose.” *In re Mouttet*, 686 F.3d 1322, 1331 (Fed. Cir. 2012), citing *KSR*, at 418–421. Therefore, a “reference must be considered for everything that it teaches, not simply the described invention or a preferred embodiment.” *In re Applied Materials, Inc.*, 692 F.3d 1289, 1298 (Fed. Cir. 2012). Granger and Skerrett both dispense paper products. A person of ordinary skill in the art would readily understand that their respective teachings could be used in a variety of product applications. *KSR*, 550 U.S. at 421 (“A person of ordinary skill is also a person of ordinary creativity, not an automaton.”).

Appellant next argues that the Examiner fails to supply any discussion or reason as to why a skilled artisan would modify Granger by the teachings of Skerrett. Appeal Br. 16. Appellant argues that “[w]ithout this analysis, the entire rejection lacks a ***rational underpinning that would be followed by one skilled in the art.***” *Id.* Appellant accuses the Examiner of creating a reason to combine or a problem “where none existed.” Appeal Br. 18.

In response, the Examiner reiterates the rationale previously expressed in the Final Action. *See* Ans. 4 (improved surface cleaning, thicker materials can be separated without requiring a large force); *see also* Final

Action 6. The Examiner further finds that modifying Skerrett to dispense upwardly results in a less demanding mode of operation. *Id.*

In reply, Appellant challenges the Examiner's reasoning that the proposed modification would result in dispensing a double thickness of web material. Reply Br. 2. According to Appellant:

The Examiner confuses a "double ply" web, with a web of offset sheets. A "double ply" web has two layers (plies) that are glued, quilted, or otherwise connected together. When dispensed, the "double ply" web remains together (a web material with 2 layers).

The offset sheets of Skerrett are actually two different sheets, which are not connected together by gluing or quilting (they are simply interfolded).

...

Once the offset sheets of Skerrett are dispensed, the sheets separate from each other. The resultant material for use is only one sheet thick; the same as Granger.

... Thus the alleged advantages from the modification (improved surface cleaning, etc.) are simply non-existent.

*Id.* at 2–3.

Appellant's reason to modify arguments are not persuasive. Appellant's "Background" section discusses a number of alleged problems that are known in the art that are purportedly overcome by the invention. Spec. ¶¶ 2–5. It is well settled that a motivation to combine can be found in "any need or problem known in the field of endeavor at the time of the invention and addressed by the patent." *KSR*, 550 U.S. at 420. Furthermore, a reason to modify a prior art reference may be found explicitly or implicitly in market forces; design incentives; the "interrelated teachings of multiple patents"; and the background knowledge, creativity, and common sense of the person of ordinary skill. *Perfect Web Techs., Inc. v. InfoUSA, Inc.*, 587

F.3d 1324, 1328–29 (Fed. Cir. 2009) (quoting *KSR*, 550 U.S. at 418–21)). Moreover, an implicit motivation to combine exists when the improvement is technology-independent and the combination of references results in a product or process that is more desirable, for example because it is stronger, cheaper, cleaner, faster, lighter, smaller, more durable, or more efficient. *Dystar Textilfarben GmbH & Co. v. C.H. Patrick Co.*, 464 F.3d 1356, 1368 (Fed. Cir. 2006). In appropriate circumstances a motivation to combine may be found inferentially based on the entirety of the evidentiary record. *Wyers v. Master Lock Co.*, 616 F.3d 1231, 1239–40 (Fed. Cir. 2010), citing *KSR*, 550 U.S. at 427 (explaining that the motivation to combine references may boil down to a question of common sense).

In the rejection under review, the Examiner finds that Granger discloses the invention as claimed except for using two webs of interfolded material, for which the Examiner relies on Skerrett. Final Action 5. The Examiner merely substitutes Skerrett’s two, interfolded webs for Granger’s single web. In essence, therefore, the rejection amounts to a mere substitution of one known element for another, yielding a predictable result. *KSR*, 550 U.S. at 416, quoting *United States v. Adams*, 383 U.S. 39, 50–51 (1966). Similarly, when a patent “simply arranges old elements with each performing the same function it had been known to perform” and yields no more than one would expect from such an arrangement, the combination is obvious. *KSR*, 550 U.S. at 417, quoting *Sakraida v. Ag Pro, Inc.*, 425 U.S. 273, 282 (1976). In the instant case, Appellant presents no evidence or persuasive technical reasoning that substituting Skerrett’s two interfolded webs for Granger’s single web requires more than ordinary skill or produces unexpected results. Taking the foregoing considerations into account,

Appellant's challenge to the Examiner's reasons for combining Granger and Skerrett does not rise to the level of establishing reversible error.

Appellant next takes the position that modifying Granger as proposed would change its principle of operation. Appeal Br. 17. Appellant focuses on Granger's feature of dispensing from the top of the stack, a feature that is shared with Appellant's invention. *Id.*, Claims App., claim 1. Appellant notes that dispensing from the top of the stack requires continuity as a break in the web material, inside of the dispenser, will cause a dispensing failure. Appeal Br. 15. Appellant further argues that Granger uses a special type of refill stack that can interconnect with the existing stack to continue dispensing from the top. According to Appellant, "[w]ithout this interconnection, the dispensing would fail and require intervention." *Id.* at 17.

In response, the Examiner points out that the special refill stack feature of Granger is not claimed by Appellant. Ans. 6. Thus, at most, the Examiner's proposed combination omits a feature of Granger that is not claimed by Appellant. It is well settled that merely omitting an element and its function in a combination where the remaining elements perform the same functions as before involves only routine skill in the art. *In re Karlson*, 311 F.2d 581, 584 (CCPA 1963). Omitting the special refill stack feature would merely change how and when Granger's device is refilled. For example, an operator might wait until the dispenser is empty before installing a refill stack. However, it would still function as a dispenser both before and after the refilling. We do not agree with Appellant's position that the principle of operation would change.

Appellant accuses the Examiner of engaging in impermissible hindsight. Appeal Br. 18. We disagree. *See In re Cree, Inc.*, 818 F.3d 694, 702 n.3 (Fed. Cir. 2016) (explaining that a hindsight argument is of no moment where the Examiner provides a sufficient, non-hindsight reason to combine the references). Here, the Examiner’s stated reasons for combining the references is sufficient to defeat Appellant’s hindsight argument. Final Action 6, Ans. 4, 6.

Next, Appellant argues that claim 1 is patentable because it achieves “synergistic effects.” Appeal Br. 20.

*Surprisingly*, the claimed offset webs, loaded in the claimed dispenser, tend to support one another along the upward dispensing path.

*Id.* (emphasis added). We are not persuaded that such naked attorney argument rises to the level of evidence of unexpected results to support a claim of patentability. “It is well settled that unexpected results must be established by factual evidence. Mere argument or conclusory statements in the specification does not suffice.” *In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984); *see also In re Wood*, 582 F.2d 638, 642 (CCPA 1978) (“Mere lawyer’s arguments and conclusory statements in the specification, unsupported by objective evidence, are insufficient to establish unexpected results.”).

Finally, Appellant argues that claim 1 recites that a front surface of the front wall is revealed by opening a refill door of the dispenser and then asserts that such feature is not taught or suggested by the cited art. Appeal Br. 20–21. No further analysis or discussion as to how the recited element is distinguishable from the prior art is provided. *Id.* Appellant’s argument does not rise to the level of a separate argument for the patentability of the

claim. 37 C.F.R. § 41.37(c)(1)(iv) (“A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim”); *see also In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011) (Rule 41.37 requires more than recitation of the claim elements and a naked assertion that the elements are not found in the prior art).

We have considered Appellant’s remaining arguments and find them to be without merit. In view of the foregoing discussion, we determine the Examiner’s findings of fact are supported by a preponderance of the evidence and that the Examiner’s legal conclusion of unpatentability is well-founded. Accordingly, we sustain the Examiner’s unpatentability rejection of claims 1–6, 9, 10, 13, 14, and 18–29.

*Unpatentability of Claim 7  
over Granger, Skerrett, and Marcuse*

Claim 7 depends from claim 1 and is not separately argued. Appellant has waived the right to separately argue this claim and we, therefore, sustain its rejection. *See* 37 C.F.R. §41.37(c)(1)(iv).

CONCLUSION

<b>Claims Rejected</b>	<b>§</b>	<b>Reference(s)/Basis</b>	<b>Aff’d</b>	<b>Rev’d</b>
1-6, 9, 10, 13, 14, 18-29	103	Granger, Skerrett	1-6, 9, 10, 13, 14, 18-29	
7	103	Granger, Skerrett, Marcuse	7	
<b>Overall Outcome</b>			1-7, 9, 10, 13, 14, 18-29	

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**