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81029	7590	01/24/2020	EXAMINER	
Avery Dennison Corporation Brian G. Bembenick 8080 Norton Parkway, 22D Mentor, OH 44060			MATTEI, BRIAN DAVID	
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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* JEFFREY A. RAYMOND and DANIEL GILBERTSON

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Appeal 2019-002151  
Application 14/472,547  
Technology Center 3600

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BEFORE MICHAEL L. HOELTER, JEREMY M. PLENZLER, and  
LISA M. GUIJT, *Administrative Patent Judges*.

PLENZLER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 1–3, 5–8, 10–16, 18, and 20. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as Avery Dennison Retail Information Services, LLC. Appeal Br. 1.

### CLAIMED SUBJECT MATTER

The claims are directed to a fastener. Claim 1, reproduced below with modified formatting, is illustrative of the claimed subject matter:

1. A fastener comprising:
  - (a) a pawl to include an elongated strap accepting channel, the pawl comprising a locking tang which is disposed to project into the strap accepting channel;
  - (b) a strap having a first end and a second end, the first end being formed onto a head, the strap being dimensioned for insertion into the strap accepting channel so the cable tie forms a closed loop, the strap being adapted to be engaged by the locking tang when the tie is formed into a closed loop; and
  - (c) an aperture head formed onto at least one of the pawl and the strap, the fastener comprising,
    - (i) a platform shaped to define a transverse opening and the platform includes a substantially flat front surface and a substantially flat rear surface with a pair of spring tabs formed onto opposing sides of the rear surface,
    - (ii) a support member formed onto the platform, and
    - (iii) a first retention wing having an elongated release arm with a free end, wherein at least a portion of the first retention wing extends vertically upward through the transverse opening and is positioned above the front surface of the platform such that the first retention wing is pivotally coupled to the support member; and

wherein the first retention wing is generally triangular blade with an inwardly curved back surface having a series of steps formed on an outer surface of the first retention wing[;]

wherein the first retention wing is configured to receive an inward compressive force on the inwardly curved back

surface to disengage the fastener from either side of a panel.

#### REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Omata	US 4,490,886	Jan. 1, 1985
Gordon	US 6,474,921 B1	Nov. 5 2002
Igarashi	US 2006/0130286 A1	June 22, 2006
Sano	US 2011/0239412 A1	Oct. 6, 2011
Yoshitake	JP 2010276041	Dec. 9, 2010

#### REJECTIONS

Claims 15, 16, 18, and 20 are rejected under 35 U.S.C. § 103 as being unpatentable over Gordon and Sano.

Claims 1–3, 6–8, and 10–14 are rejected under 35 U.S.C. § 103 as being unpatentable over Omata, Yoshitake, and Igarashi.

Claim 5 is rejected under 35 U.S.C. § 103 as being unpatentable over Omata, Yoshitake, Igarashi, and Gordon.

#### OPINION

*Claims 15, 16, 18, and 20*

Claim 15 is independent. Claims 16, 18, and 20 depend from claim 15. The Examiner finds that Gordon teaches everything recited in claim 15, other than “the first and second retention wings being laterally offset from one another.” Final Act. 2. The Examiner finds that Sano teaches this missing feature and proposes modifying Gordon’s teachings accordingly. *Id.* at 3.

Appellant does not dispute the Examiner’s findings related to Gordon, other than contending that “[u]nlike the Current Application, Gordon has

legs connected to a knob . . . which would not provide a ‘free’ end,” as required by claim 15. Appeal Br. 11.

Figure 2 of Gordon is reproduced below.

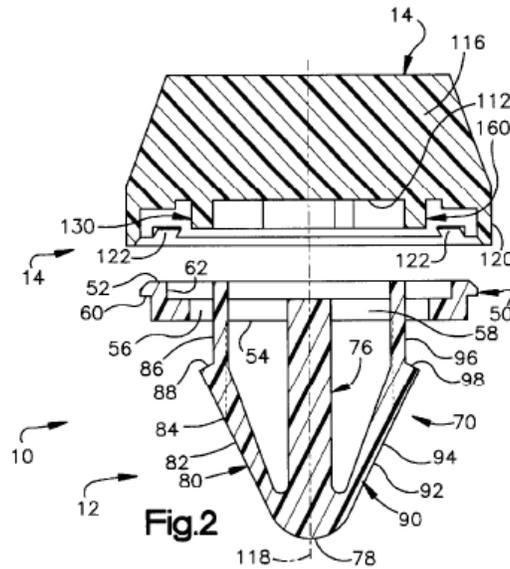


Figure 2 is an exploded section view of Gordon’s fastener. The Examiner finds that upper end portions 86, 96 of Gordon’s retaining legs 80, 90 correspond to the recited “release arm[s],” which Appellant does not dispute. Final Act. 2. The Examiner explains that “[t]he elongated release arms of Gordon have ‘free ends’ because they are not fixed in any way to the actuator or any other element.” Ans. 3–4. The Examiner explains that “[a]s is clearly seen in [Gordon’s] figures, the ‘free ends’ are guided through slots by projections in the actuator to an inward or outward position and are in no way fastened or connected to the actuator.” *Id.* at 4.

The Examiner’s explanation of Gordon’s “free ends” is supported by Gordon’s teachings. *See, e.g.*, Gordon Fig. 2. Moreover, the Examiner’s finding is not rebutted by Appellant because Appellant did not file a Reply

Brief responding to the Answer. Accordingly, Appellant fails to apprise us of error in the Examiner's findings related to Gordon.

Appellant does not dispute the Examiner's findings related to Sano or the rationale for the proposed modification to Gordon's teachings. Appellant contends that "both Gordon and Sano restrict a user from accessing the fastener from both sides, effectively teaching away from the ability to remove the fastener from either side." Appeal Br. 11. This, too, is unpersuasive of Examiner error, because, as the Examiner explains, "the feature upon which Appellant relies (i.e., the device being removed from a front of a panel or a rear of a panel) is not recited in the rejected claim 15." Ans. 3. Appellant does not argue dependent claims 16, 18, and 20 separately.

For at least these reasons, we are not apprised of error in the rejection of claims 15, 16, 18, and 20.

*Claims 1–3, 6–8, and 10–14*

Claim 1 is independent. Claims 2, 3, 6–8, and 10–14 depend from claim 1. The Examiner finds that Omata teaches everything recited in claim 1, other than "the first retention wing being generally triangular with an inwardly curved back surface and a series of steps on an outer surface and at least a portion of the first retention wing extend[ing] through the transverse opening in the platform." Final Act. 4. The Examiner finds that Yoshitake and Igarashi teach the missing limitations and proposes modifying the teachings of Omata accordingly. *Id.*

Appellant contends that "Omata does not disclose . . . the elongated release arm extending through the opening . . . including the ability to remove the aperture from either side of the panel after insertion." Appeal

Br. 13. Specifically, Appellant contends that “[b]ecause the release arms are not elongated, there is no ability to remove the fastener from the front surface . . . of a panel in Omata.” *Id.* Appellant further contends that “the engaging member disclosed in Omata would not permit a user to disengage it from both sides of a panel” and “Omata teaches away from what is disclosed in the Current Application.” *Id.*

Appellant’s contentions are unpersuasive. The Examiner explains that although “Appellant argues that Omata does not disclose the elongated release arms extending through the opening . . . the examiner modified the elongated release arms of Omata to extend them beyond the opening as taught by Yoshitake.” Ans. 5. With respect to the ability to disengage Omata’s modified fastener from either side of the panel, the Examiner explains that “[w]hen the release arms of Omata are modified to extend beyond the upper surface as taught by Yoshitake, the combination clearly allows the device to be removed from the upper side of a panel,” and because “the wings could be squeezed together by a user from the lower side of a panel it is configured to be disengaged from either side of a panel.” *Id.* Because Appellant’s contentions do not address the actual findings made by the Examiner, those contentions are not persuasive of error. As for Appellant’s teaching away contention, we note that Appellant does not allege that Omata teaches away from any particular modification proposed by the Examiner.

Appellant does not dispute the Examiner’s findings related to Yoshitake or Igarashi, or the rationale for the modifications to Omata’s teachings proposed by the Examiner. *See* Appeal Br. 13–14 (contending that

Yoshitake and Igarashi do not cure alleged deficiencies in the Examiner's findings related to Omata).

For at least these reasons, we are not apprised of error in the rejection of claims 1–3, 6–8, and 10–14.

*Claim 5*

Claim 5 depends from claim 1, and further recites that “the support member comprises: (a) a pair of parallel arms that are formed onto and extend orthogonally out from the rear surface of the platform; and (b) a cross-member that extends transversely between the pair of parallel arms.” The Examiner finds that Gordon teaches these additional features and proposes further modifying Omata's teachings accordingly. Final Act. 6.

Appellant's contentions are not persuasive because they do not address the particular findings or rationale presented by the Examiner. *See* Appeal Br. 14–15.

For at least these reasons, we are not apprised of error in the rejection of claim 5.

CONCLUSION

The Examiner's rejections are affirmed.

DECISION SUMMARY

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
15, 16, 18, 20	103	Gordon, Sano	15, 16, 18, 20	
1-3, 6-8, 10-14	103	Omata, Yoshitake, Igarashi	1-3, 6-8, 10-14	
5	103	Omata, Yoshitake, Igarashi, Gordon	5	
<b>Overall Outcome</b>			1-3, 5-8, 10-16, 18, 20	

TIME PERIOD FOR RESPONSE

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

AFFIRMED