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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* PATRICK G. LENNON

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Appeal 2019-002685  
Application 14/925,833  
Technology Center 1700

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Before JEFFREY T. SMITH, JEFFREY B. ROBERTSON, and  
N. WHITNEY WILSON, *Administrative Patent Judges*.

SMITH *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 1–6 and 8–11. 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. Appellant identifies the real party in interest as Coating Excellence International, LLC. Appeal Br. 1.

## STATEMENT OF THE CASE

Appellant's invention relates generally to adhesives applied to a substrate material and includes the addition of an antiblock agent applied over the top of a hot melt or other adhesive applied to a substrate material, such as woven polypropylene structures, poly laminates, etc., for the purpose of eliminating the tackiness of the adhesive resulting in elimination of double bag feeds during the process of filling bags that have adhesives applied to them. (Spec. ¶¶ 3, 4. 15)

Claim 1 illustrates the subject matter on appeal and is reproduced below:

1. In the manufacture of a polymeric woven bag for bulk packaging of granular or finely ground materials, comprising: a polymeric outer layer; an inner polymeric woven bag layer laminated to or adhesively adhered to the outer layer; a first panel and a second panel and an open end of the bag to be pinched closed between the first panel and the second panel after filling the bag with contents; a heat activated first adhesive layer on a portion of the first panel to form an adhesive-to adhesive seal by contact with a heat activated second adhesive layer on a portion of the second panel, wherein the first adhesive layer and the second adhesive layer have respective heat activation temperatures below the softening point temperature of the polymeric material, and wherein the first adhesive layer and the second adhesive layer are dried and impervious to water and are separate from each other to open the bag end for filling with contents, and wherein after filling the bag with contents the first adhesive layer and the second adhesive layer are activatable to adhesive states to form the adhesive-to-adhesive seal by an application of heat at a temperature below the softening point temperature of the polymeric material;

a method for reducing the tackiness of adhesives applied to the polymeric woven bag during manufacture and eliminating double bag feeds during filling of the bags, while

allowing reactivation of the adhesives to form adhesive-to-adhesive bonds of a bag closure system once a pinch end of the bag is folded and sealed on itself, comprising applying an anti block agent over the adhesives applied to the polymeric woven bag, wherein said antiblock agent is a food grade starch powder, and wherein the polymeric woven bag is a polywoven pinch bag.

Appeal Br. 6, Claims Appendix.

The following rejection is presented for our review:<sup>2</sup>

Claims 1–6 and 8–11 are rejected under 35 U.S.C. § 103(a) as unpatentable over Jansen (US 2013/0047555 A1, published Feb. 28, 2013) in view of McBride et al. (US 5,217,803, issued June 8, 1993).

### OPINION<sup>3</sup>

Upon consideration of the evidence of record and each of Appellant's contentions as set forth in the Appeal Brief, as well as the Reply Brief, we determine that Appellant has not demonstrated reversible error in the Examiner's rejections of claims 1–6 and 8–11. *In re Jung*, 637 F.3d 1356, 1365–66 (Fed. Cir. 2011) (explaining the Board's long-held practice of requiring Appellant(s) to identify the alleged error in the Examiner's rejection). We have reviewed each of Appellant's arguments for patentability. We sustain the rejections of these claims generally for the

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<sup>2</sup> The complete statement of the rejection on appeal appears in the Final Office Action. (Final Act. 2–4.)

<sup>3</sup> We limit our discussion to the independent claim 1 as argued by Appellant. 37 C.F.R. § 41.37(c)(1)(iv). Claims 2–6 and 8–11 stand or fall with independent claim 1.

reasons expressed by the Examiner in the Final Office Action and the Answer. (Ans. 3–6; Final Act. 2–4.) We add the following primarily for emphasis.

The Examiner rejected claims 1–6 and 8–11 as obvious over the combination of Jansen and McBride. The Examiner finds Jansen discloses a method of making a bag wherein a first layer of heat activated adhesive material is on a portion of a bag to form an adhesive-to-adhesive seal by contact with a second layer of heat activated adhesive material on a portion of the bag second panel as required by the independent claim 1. (Final Act. 2.) The Examiner determines Jansen does not teach applying an antiblock agent over the adhesive portion of the polymeric woven bag as required by the independent claim 1. (Final Act. 3.) The Examiner finds McBride teaches antiblocking agents act to prevent film layers from sticking to one another. (Final Act. 3.) The Examiner determines it would have been obvious to apply antiblocking agents, e.g., starch powder, to the adhesive of Jansen to reduce blocking between film layers. (Final Act. 3.)

Appellant argues Jansen does not teach applying an antiblock agent over the adhesive applied to the polymeric woven bag and McBride teaches applying antiblocking agents to prevent film layers from sticking to one another. (Appeal Br. 4.) Appellant further argues a person of ordinary skill in the art would not look to the teachings of McBride to suggest applying antiblocking agents to the adhesive portion of the bag described by Jansen because McBride relates to disposable absorbent articles. (Appeal Br. 4.)

It has been established that the predictable use of known prior art elements performing the same functions they have been known to perform is normally obvious, and the combination of familiar elements is likely to be obvious when it does no more than yield predictable results. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007); *see also KSR*, 550 U.S. at 418 (“the [obviousness] analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.”). *See also In re Fritch*, 972 F.2d 1260, 1264–65 (Fed. Cir. 1992) (a reference stands for all of the specific teachings thereof as well as the inferences one of ordinary skill in the art would have reasonably been expected to draw therefrom).

Appellant’s argument that a person of ordinary skill in the art would not have looked to the teachings of McBride are without persuasive merit. Appellant’s argument is essentially that McBride is nonanalogous art. Whether a prior art reference is analogous is a question of fact. *See In re Clay*, 966 F.2d 656, 658 (Fed. Cir. 1992). The determination that a reference is from non-analogous art is two-fold. First we must determine if the reference is within the field of the inventor’s endeavor. If the reference is not within the field of the inventor’s endeavor, we determine whether the reference is reasonably pertinent to the particular problems with which the inventor was involved. *See In re GPAC Inc.*, 57 F.3d 1573, 1577 (Fed. Cir. 1995). In the present case, we agree with Appellant that McBride is not directed to bags useful for bulk packaging. (Appeal Br. 5.) However, McBride is concerned with the application of antiblocking agents to prevent

adjacent polymeric layers from sticking to one another. (McBride 7, ll. 52–64.) Consequently, McBride is reasonably pertinent to the problem addressed by the present invention which is the sticking together of adjacent layers.

Appellant does not dispute the Examiner's finding that McBride describes the application of starch antiblocking agents to substrates to prevent adjacent layers from sticking to one another. (Final Act. 3.) Appellant has not disputed the Examiner's finding that Jansen describes a method of making a bag having the heat activated adhesive layers required by the claimed invention. A person of ordinary skill in the art would have recognized that the application of a heat activated adhesive to bag substrates could have created conditions wherein the adjacent substance would stick to one another. A person of ordinary skill in the art would have recognized that the heat activated adhesive layer of Jansen would achieve complete adhesive force only after the application of heat. Consequently, a person of ordinary skill in the art would have looked to prevent adjacent heat activatable layers from sticking to one another until the appropriate time. As such, a person of ordinary skill in the art would have looked to relevant prior art, such as McBride, which provides solutions to the issue of adjacent polymeric substrates sticking to one another. Appellant has not provided a technical explanation why the solution provided by McBride for preventing adjacent polymeric layers from sticking to one another would have been unsuitable for the invention of Jansen.

It has been established that obviousness does not require absolute predictability of success; all that is required is a reasonable expectation of

success. *In re Kubin*, 561 F.3d 1351, 1360 (Fed. Cir. 2009). Furthermore, inasmuch as the application of starch anti-blocking agents was known to persons of ordinary skill in the art to prevent adjacent polymeric layers from sticking to one another, it is incumbent upon Appellant to establish that the present inventors had to resort to more than routine experimentation to determine if the known anti-blocking agents would have been effective to prevent adjacent polymeric layers containing an heat activated adhesive from sticking to one another, particularly in light of the teachings of the references cited by the Examiner. However, no such evidence is of record.

Thus, Appellant has not shown reversible error in the Examiner's obviousness determination of claims 1–6 and 8–11. *See KSR*, 550 U.S. at 417 (the predictable use of known prior art elements or steps performing the same functions they have been known to perform is normally obvious; the combination of familiar elements/steps is likely to be obvious when it does no more than yield predictable results); *see also In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (“Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references.”) and *In re Sneed*, 710 F.2d 1544, 1550 (Fed. Cir. 1983) (“[I]t is not necessary that the inventions of the references be physically combinable to render obvious the invention under review.”).

## CONCLUSION

In summary:

Appeal 2019-002685  
Application 14/925,833

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1-6, 8-11	103	Jansen, McBride	1-6, 8-11	

**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**