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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* LINDA R. FRANKLIN

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Appeal 2019-003838  
Application 13/930,014  
Technology Center 3600

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Before EDWARD A. BROWN, JAMES P. CALVE, and  
PAUL J. KORNICZKY, *Administrative Patent Judges*.

CALVE, *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 decision of the Examiner to reject claims 1–4, 6–8, and 21–28. Br. 8, 14. Claims 5, 9–20, 29, and 30 are cancelled. *See id.* at 16–17 (Claims App.). We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> “Appellant” refers to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies Linda R. Franklin as the real party in interest. Br. 3.

CLAIMED SUBJECT MATTER

The claims are directed to “tissue dispensers having integral waste receptacles for soiled tissues and other debris.” Spec. ¶ 6. Claim 1, the sole independent claim, is reproduced below.

1. A tissue dispenser comprising, in combination:
  - a container having a plurality of walls forming a rectangular-shaped hollow interior space for holding clean tissues and a dispensing opening for removing clean tissues from the interior space;
    - wherein the plurality of walls of the container comprise plastic film;
    - a plastic bag having opposed inner and outer walls forming an interior cavity between the outer and inner walls, and an access opening for inserting soiled tissues into the interior cavity;
      - wherein the inner and outer walls of the plastic bag comprise plastic film;
      - wherein the inner wall of the plastic bag is fully secured to an exterior surface of the container so that the inner wall lays fully flat against the exterior surface of the container when the interior space of the plastic bag is empty and when soiled tissues are within the interior space of the plastic bag;
      - wherein at least a portion of the plastic film of the outer wall is stretchable so that the plastic film of the outer wall elastically expands when soiled tissues are in the interior cavity of the plastic bag to generally conform the outer wall to a shape of the soiled tissues in the interior cavity and to resiliently hold the soiled tissues within the interior cavity;
      - wherein the inner wall of the plastic bag is fully secured to the exterior surface of the container with adhesive; and
      - wherein substantially an entire outer surface of the inner wall of the plastic bag is secured to the exterior surface of the container with the adhesive.

## REJECTION<sup>2</sup>

Claims 1–4, 6–8, and 21–28 are rejected under 35 U.S.C. § 103 as unpatentable over Campbell (US 2002/0175094 A1, pub. Nov. 28, 2002), Bando (US 8,960,439 B2, iss. Feb. 24, 2015), Yokoi (JP 2002302172A, pub. Oct. 15, 2002), and Saggar (US 2011/0164835 A1, pub. July 7, 2011).<sup>3</sup>

## ANALYSIS

Appellant argues the rejected claims as a group. Br. 8–14. We select claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(iv).

As to claim 1, the Examiner cites Campbell for its teaching of a tissue dispenser comprising container 12 with plural walls for holding tissues 13 and plastic bag 1 fully secured to container 12. Final Act. 3; Ans. 4. The Examiner also finds that plastic bag 1 comprises inner and outer opposing walls made of plastic film to form a cavity that can be expanded by opening the bag to insert soiled tissues inside. Final Act. 3–4; Ans. 4. The Examiner also finds that the inner wall of plastic bag 1 is secured fully to an exterior surface of container 1 with adhesive as claimed. Final Act. 3; Ans. 4.

The Examiner relies on Bando to teach package or container walls made of a plastic film (a thermoplastic resin film), as claimed. Final Act. 4; Ans. 5. The Examiner determines it would have been obvious to a skilled artisan to include Bando's plastic in Campbell to reduce the cost of the container, prevent moisture from entering the dispenser, and maintain the contents in a sanitary condition. Final Act. 4; Ans. 5.

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<sup>2</sup> The rejection of claim 1 under 35 U.S.C. § 112(b) is withdrawn. Ans. 3.

<sup>3</sup> Although the caption of this rejection cites 35 U.S.C. § 102(a)(1), we understand the rejection to be made under 35 U.S.C. § 103 based on the references applied. *See* Br. 8 (characterizing the rejection as being under 35 U.S.C. § 103(a)). We do not review the rejection of claims 29 and 30 because they are cancelled. *See* Br. 17 (Claims App.).

The Examiner cites Yokoi to teach a pocket tissue dispenser and trash bag 2 wherein an outer surface of the inner wall of bag 2 is secured fully to an exterior surface of container 1 as illustrated in Figure 1 of Yokoi. The Examiner finds that Figure 1 illustrates substantially an entire outer surface of the interior wall of bag 2 lying flat against an exterior surface to indicate that it is secured fully to the exterior surface of container 1 with adhesive as claimed. Final Act. 4–5; Ans. 5. The Examiner finds that garbage bag 2 is described as “bonded” to the main body of the tissue dispenser and a *pasted* plastic bag 2 having the *same size* as the pocket tissue body 1. Ans. 9 (citing translation at <https://patents.google.com/patent/JP2002302172Nen>). The Examiner determines that it would have been obvious to a skilled artisan to position the interior wall of the expandable plastic bag of Campbell flatly against the surface of the container to “reduce the overall footprint of the dispenser and . . . the [aesthetic] appeal of the dispenser would be improved by positioning the bag tightly against the side surface.” Final Act. 5; Ans. 6.

The Examiner finds that Campbell teaches an *expandable* plastic bag but does not expressly teach an expandable plastic bag where “the outer wall *elastically expands*” as claimed. Ans. 8. Thus, the Examiner considers the teachings of Saggar to make a plastic film based material that is registered with texturing to form a structurally *elastic-like* film web substrate that has inherent elongation properties that allow bag material to expand elastically as claimed. Final Act. 5; Ans. 6. The Examiner determines it would have been obvious to a skilled artisan to modify the *expandable* bag of Campbell in view of Yokoi to *expand elastically* as Saggar teaches so the plastic film elastically expands to conform the outer wall to the shape of the contained articles and to form a minimum allowable size while holding soiled articles that are placed therein to consume the least volume. Final Act. 6; Ans. 6–7.

*Plastic Bag Fully Attached with Adhesive*

Appellant argues that “Yokoi appears to be silent as to whether the inner side of the bag is fully attached with adhesive let alone substantially its entire inner surface.” Appeal Br. 11; *see also id.* at 10 (“Saggar does not have a bag attached to the container.”). In particular, Appellant argues that

[j]ust because the bag initially lies against the container does not disclose that the bag inner wall is fully secured to the container with adhesive or that substantially an entire outer surface of the inner wall of the plastic bag is secured to the exterior surface of the container with the adhesive.

Appeal Br. 12 (“The Examiner’s recitation of FIG. 1 of Yokoi clearly does not disclose the limitations as asserted.”).

The Examiner has the better position. We reproduce Figures 1 and 3 of Yokoi below to illustrate the Examiner’s findings.

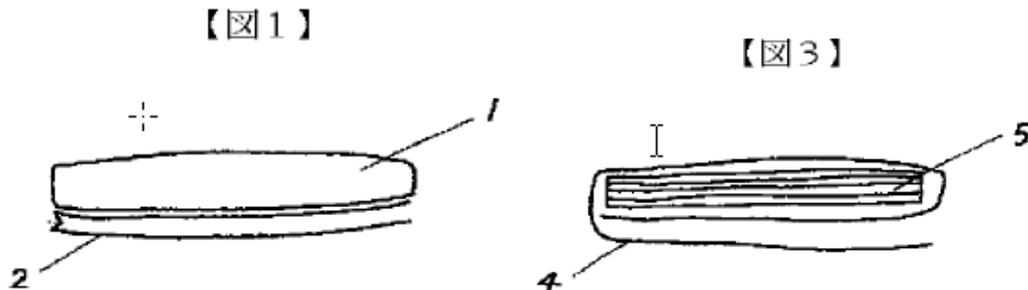


Figure 1 of Yokoi illustrates bag 2 (for putting used tissue therein as trash) attached to a pocket tissue main body 1. Yokoi, Abstract (“To solve problems incidental to carrying of pocket tissue and disposal of used tissue which normally requires a trash box . . . not necessarily found anywhere.”). Figure 3 of Yokoi illustrates how tissues 5 are arranged inside main body 1.

Yokoi teaches plastic garbage bag 2 is *bonded* to tissue main body 1. Yokoi ¶ 4 (cited in Ans. 9). Plastic bag 2 is a *pasted plastic bag 2* having the same size as pocket tissue body 1. *Id.* Example 1 (cited in Ans. 9).

Drawings in a utility or design patent can be cited against claims of a utility patent application. *See In re Aslanian*, 590 F.2d 911, 913–14 (CCPA 1979). Prior art teachings, including the drawings, are evaluated on the basis of what they reasonably disclose and suggest to a skilled artisan. *Id.* at 914. “[A] claimed invention may be anticipated or rendered obvious by a drawing in a reference, whether the drawing disclosure be accidental or intentional.” *In re Meng*, 492 F.2d 843, 847 (CCPA 1974) (citation omitted); *Aslanian*, 590 F.2d at 914 (holding “a drawing in a utility patent can be cited against the claims of a utility patent application even though the feature shown in the drawing was unintended or unexplained in the specification of the reference patent.”); *In re Mraz*, 455 F.2d 1069, 1072 (CCPA 1972) (holding that things shown clearly in patent drawings are not to be disregarded).

As persons of scientific competence in the fields in which they work, examiners and administrative patent judges on the Board are responsible for making findings, informed by their scientific knowledge, as to the meaning of prior art references to persons of ordinary skill in the art and the motivation those references would provide to such persons. Absent legal error or contrary factual evidence, those findings can establish a prima facie case of obviousness.

*In re Berg*, 320 F.3d 1310, 1315 (Fed. Cir. 2003).

The Examiner reasonably interprets Figure 1 of Yokoi as teaching a plastic bag 2 fully secured to an exterior surface of container 1 with adhesive across substantially an entire outer surface of the inner wall of plastic bag 2. The drawings reasonably convey to a skilled artisan that the bonded, pasted plastic bag 2 is adhered to main body 1 across substantially the entire outer surface of the inner wall of plastic bag 2 as evidenced by the fact that their respective surfaces contact one another along the entire extent of their length in Figure 1 to form a minimal size as a pocket tissue pack. Yokoi, Abstract.

Furthermore, Yokoi's written description supports this finding by the Examiner by describing plastic bag as "pasted plastic bag 2" in an English language translation. *See* Ans. 9 (citing Yokoi, Example 1). Yokoi further describes plastic bag 2 as being *bonded* to the tissue main body. *Id.* (citing Yokoi ¶ 4). Therefore, we agree with the Examiner that a skilled artisan would understand these teachings of Yokoi in Figure 1 and the specification to mean that the inner wall of plastic bag 2 is secured fully to the exterior surface of main tissue body 1 with adhesive (pasted) so that substantially an entire outer surface of the inner wall is secured to the exterior surface of the container as claimed to form a compact pocket tissue packet and trash box.

Appellant admits that Figure 1 illustrates bag 2 against the container in Figure 1 of Yokoi but argues that bag 2 is not fully secured with adhesive across substantially an entire outer surface of the inner wall of the bag.

Appeal Br. 12. This argument is not persuasive in view of Yokoi's teaching of bag 2 as a "pasted plastic bag 2" having the same size as pocket tissue body 1 and being *bonded* to tissue main body. These teachings indicate that plastic bag 2 is adhered (bonded, pasted) along its entire inner wall to main body 1 (the container) as illustrated in Yokoi, Figure 1.

Claim 1 does not recite any particular type of adhesive. Appellant's Specification indicates plastic bag 22 can be secured to tissue container 12 with a pressure sensitive adhesive *or* alternatively "with any other suitable adhesive and/or in any other suitable manner." Spec. ¶ 47. Claim 6, which depends from claim 1, recites "wherein the adhesive is a pressure sensitive adhesive." Appeal Br. 16 (Claims App.). This recital in a dependent claim indicates that claim 1 covers other types of adhesive, which the Specification indicates can include any suitable adhesive. *See Inline Plastics Corp. v. EasyPak, LLC*, 799 F.3d 1364, 1371 (Fed. Cir. 2015).

Figure 4 of Campbell teaches plastic film outer bag 1 attached to the (tissue box 12) by adhesive attachment strip 10. Campbell ¶ 13, Fig. 4. The Examiner proposes to improve Campbell by attaching plastic bag 1 across substantially all of its inner wall to container 12 to improve the aesthetic appeal of the dispenser by positioning the bag tightly against the side surface and thereby also reduce the overall footprint of the dispenser. Final Act. 5; Ans. 6. This teaching of Yokoi would improve Campbell similarly. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007) (holding that using a known technique in similar devices for similar benefits is obvious unless its application is beyond the level of ordinary skill in the art); *see also DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1368 (Fed. Cir. 2006) (holding that an implicit motivation to combine exists when an “improvement” makes a product stronger, cheaper, faster, lighter, smaller, more durable, or more efficient). Appellant does not apprise us of error in the Examiner’s obviousness determination, which is supported by rational underpinnings as discussed above. *See* Appeal Br. 11–12.

*Stretchable Outer Wall of Plastic Bag Film Elastically Expands*

Appellant argues that Campbell’s plastic bag expands, but has entirely different structure that expands in entirely different ways than elastically as claimed. Appeal Br. 13. Appellant also argues that the inventive insight was to secure an inner wall of the plastic bag fully to a container to lie flatly against a tissue container so the expandable plastic bag has minimal impact during shipping, handling, and storage prior to being used to hold tissues. *Id.* Appellant argues that Saggar is asserted to have inherent elongation but textures the container to inform the consumer rather than to have elastic properties and therefore the Examiner uses impermissible hindsight. *Id.*

The Examiner has the better position. First, the Examiner relies on Campbell to teach an expandable bag but recognizes Campbell's bag is not *elastically* expandable as claimed. Final Act. 3–5; Ans. 4, 6. The Examiner proposes to improve Campbell's plastic bag by making it expand elastically as taught by Saggar “so that the plastic film elastically expands to conform the outer wall to a shape of the contained articles . . . to comprise a minimum allowable size as soiled articles are placed into the bag thus assuring the disposed bag consumes a smallest volume while holding soiled articles.” Ans. 6–7; Final Act. 7 (same). This reasoning is supported by a rational underpinning of improving Campbell similarly as Saggar. *KSR*, 550 U.S. at 417 (use of known technique discussed above); *DyStar*, 464 F.3d at 1368 (implicit motivation to make a product stronger, cheaper, faster, lighter, smaller, more durable, or more efficient).

Saggar also teaches that textured plastic film made by embossing or SELFING techniques conveys to consumers the texture of products in the package by mimicking the texture of the product. Saggar ¶ 5. However, the Examiner is not relying on this purpose/use of Saggar's textured packaging film. More pertinent to the plastic film bag of the claimed tissue dispenser is Saggar's teaching that such film packaging material “has several advantages over cardboard or other packaging, such as the ability to tightly wrap the enclosed products so as to minimize the footprint on retail shelving” and “be moisture impermeable, thereby protecting the packaged products from external elements and retaining moisture of pre-wetted articles stored in the packaging.” *Id.* ¶ 2. Furthermore, Saggar teaches that textured web material is “intended for *collecting refuse* because of the increased strength properties of the resulting film.” *Id.* ¶ 7 (emphasis added).

Saggar’s teachings that film packaging minimizes the footprint of a package (Saggar ¶ 2) supports the Examiner’s rationale that its use on the bag of Campbell would help to minimize the footprint/size of the tissue bag to the smallest volume possible while holding tissues. Saggar’s teaching of the use of embossed/SELFING plastic film to collect refuse because of the increased strength properties supports the Examiner’s second rationale that Saggar’s embossed film would improve Campbell’s plastic bag similarly by expanding to conform to the shape of tissues placed therein while holding the tissues in the smallest volume possible due to its inherent elastic properties. In other words, the *elastic properties* of the embossed material cause the bag to expand while placing a compressive force on the contained contents to reduce the size of the bag to the smallest volume possible. The Examiner’s reasons do not have to be the same as Appellant’s to support a rejection as long as those reasons are supported by rational underpinnings. *In re Kahn*, 441 F.3d 977, 988, 990 (Fed. Cir. 2006) (“[T]he skilled artisan need not be motivated to combine [the prior art] for the same reason contemplated by [the inventor].”) (citation omitted); *In re Beattie*, 974 F.2d 1309, 1312 (Fed. Cir. 1992) (“As long as some motivation or suggestion to combine the references is provided by the prior art taken as a whole, the law does not require that the references be combined for the reasons contemplated by the inventor.”) (citation omitted).

Appellant’s argument regarding impermissible hindsight restates the argument that there is insufficient evidence to combine the teachings of Saggar and Campbell. This argument is answered fully by the presence of articulated reasons supported by rational underpinnings. *See In re Cree, Inc.*, 818 F.3d 694, 702 n.3 (Fed. Cir. 2016).

The Examiner's finding that Saggar's textured plastic packaging has inherent elastic, elongation properties also is supported by a preponderance of evidence. First, Saggar describes this textured material as being made by a SELFING process that improves its "inherent elongation properties" and strength for uses such as collecting refuse. Saggar ¶¶ 5–7. A skilled artisan would understand this teaching to mean, among other things, that the bag has improved elastic properties and strength to contain refuse.

Second, Saggar teaches that the "inherent elongation properties" are imparted by a SELFING process described in U.S. Patent No. 7,270,861 to Broering, which is incorporated by reference in Saggar. *Id.* ¶¶ 6, 7. Saggar teaches that SELFING modifies the inherent elongation properties of web materials by imparting texture/protruberances to the web material. *Id.* ¶ 6; *see* Final Act. 5 (Saggar's substrate comprises inherent elongate properties).

Broering describes this SELFING process as providing web materials with differential *elastic-like behavior* in the direction of applied elongation. The web material extends in a direction of applied elongation and returns to a substantial degree to its untensioned condition when the applied elongation is released. Broering, 1:55–65. A skilled artisan would understand these elastic material properties to disclose "the outer wall elastically expands" as recited in claim 1 and as the Examiner correctly finds. Ans. 6; Final Act. 5.

Moreover, Appellant's own Specification describes the claimed plastic bag 22 as formed by SELFING to increase its elasticity. Spec. ¶ 45. The Specification thus admits that SELFING improves the *elasticity* of the plastic film so it stretches around objects instead of puncturing/tearing. *Id.* (citing US patents describing SELFING). This disclosure that SELFING provides the claimed elastic expansion of the outer wall also supports the Examiner's finding that Saggar teaches this features.

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In view of the foregoing, we determine that the Examiner's findings are supported by a preponderance of evidence, and the Examiner's determinations of obviousness are supported by rational underpinnings. Appellant's arguments do not apprise us of error in any of these elements of the rejection.

Thus, we sustain the rejection of claim 1 and claims 2-4, 6-8, and 21-28, which fall therewith.

### CONCLUSION

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1-4, 6-8, 21-28	103	Campbell, Bando, Yokoi, Saggar	1-4, 6-8, 21-28	

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