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14/189,935	02/25/2014	Matthias MAUSER	122391-5033	1571
157354	7590	09/30/2020	EXAMINER	
Morgan, Lewis & Bockius LLP (OC) 600 Anton Boulevard Suite 1800 Costa Mesa, CA 92626-7653			FIGG, LAURA B	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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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* MATTHIAS MAUSER and MICHAEL SCHUHMANN

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Appeal 2020–000022  
Application 14/189,935  
Technology Center 1700

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BEFORE BEVERLY A. FRANKLIN, JAMES C. HOUSEL, and  
MERRELL C. CASHION, JR., *Administrative Patent Judges*.

FRANKLIN, *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 10–17. 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 Infiana Germany GmbH & Co. KG. Appeal Br. 3.

### CLAIMED SUBJECT MATTER

Claim 10 is illustrative of Appellant's subject matter on appeal and is set forth below:

10. A label comprising:  
a foil with at least one first layer comprising at least 50 wt% of random heterophasic polypropylene (block) copolymer, paper and pressure-sensitive adhesive,  
wherein the thickness of the first layer is at least 5  $\mu\text{m}$  and the total thickness of the foil is at least 20  $\mu\text{m}$ , and  
wherein the label has a resistance against curling and the foil is recyclable.

### REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Breen	US 5,240,789	Aug. 31, 1993
Furst	US 2004/0109985 A1	Jun. 10, 2004
Torsdal	EP 1 561 782 A1	Oct. 8, 2005

### THE REJECTIONS

1. Claims 11, 12, 15, and 16 are rejected under 35 U.S.C. § 103 as being unpatentable over Furst in view of Torsdal.
2. Claims 10, 13, 14, and 17 are rejected under 35 U.S.C. § 103 as being unpatentable over Furst in view of Torsdal and further in view of Breen.

OPINION

We review the appealed rejections for error based upon the issues Appellant identifies, and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential) (cited with approval in *In re Jung*, 637 F.3d 1356, 1365 (Fed. Cir. 2011) (“[I]t has long been the Board’s practice to require an applicant to identify the alleged error in the examiner’s rejections.”). Upon review of the evidence and each of the respective positions set forth in the record, we find that the preponderance of evidence supports the Examiner’s position in the record. Accordingly, we affirm each of the Examiner’s rejections on appeal essentially for the reasons set forth in the record by the Examiner, and add the following for emphasis. We note our determinations with regard to Rejection 2 is dispositive for Rejection 1.

Appellant does not make separate arguments in support of patentability of any particular claim or claim grouping. Appeal Br. 9. Accordingly, the claims subject to each ground of rejection will stand or fall with claim 10. *See* 37 C.F.R. § 41.37(c)(1)(iv).

We refer to the Examiner’s statement of Rejection 2 as set forth on pages 5–7 of the Final Office Action.<sup>2</sup> The Examiner combines Furst in view of Torsdal, concluding that it would have been obvious to one of ordinary skill in the art to have modified the polypropylene layer of Furst with the 10–70% random heterophasic polypropylene of Torsdal because the random heterophasic polypropylene of Torsdal would provide the film

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<sup>2</sup> A discussion of the reference to Breen is unnecessary for disposition of this appeal.

of Furst with an improved surface by lacking irregularities, and providing high flexibility. Final Act. 6.

Appellant argues that combining Torsdal with Furst would render Furst unsatisfactory for its intended purpose. Appeal Br. 7–8. Appellant states that Furst relies on two layers, each having a different coefficient of thermal expansion in order to avoid curling. Appellant submits that replacing or supplementing the top layer (layer 6) of Furst with the thermoplastic alloy composition of Torsdal would necessarily change the coefficient of thermal expansion for one of the layers in Furst, and that this would no longer guarantee the avoidance of curling.

In response, the Examiner states that Furst is explicitly open to modifying the polypropylene of the top layer by including other polypropylene derivatives (Ans. 4; Furst, ¶34). Hence, the Examiner finds it obvious to employ the 10–70 wt% of the random heterophasic polypropylene taught by Torsdal. Ans. 4. Further, as the Examiner notes, Appellant does not direct attention to any evidence in the record in support of the position that combining Torsdal with Furst would render Furst unsatisfactory for its intended purpose. Ans. 4. As the Examiner explains, arguments of counsel cannot take the place of evidence in the record. *In re Schulze*, 346 F.2d 600, 602 (CCPA 1965); *In re Geisler*, 116 F.3d 1465 (Fed. Cir. 1997). Therefore, Appellant’s arguments do not identify reversible error in the Examiner’s determination of obviousness.

With regard to Appellant’s argument directed to unexpected results and criticality of the claimed range presented on pages 8–9 of the Appeal

Brief, we are unpersuaded by these arguments for the reasons provided by the Examiner on pages 5–7 of the Answer.

In view of the above, we affirm Rejections 1 and 2.

### CONCLUSION

We affirm the Examiner’s decision.

### 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>
11, 12, 15, 16	103	Furst, Torsdal	11, 12, 15, 16	
10,13, 14, 17	103	Modified Furst, Breen	10, 13, 14, 17	
<b>Overall Outcome</b>			10–17	

### 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**