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Avery Dennison Corporation Wendy A. Choi 8080 Norton Parkway, 22D Mentor, OH 44060			KIM, SHIN H	
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matsgroup_patentdocket@averydennison.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID J. SHUEY

Appeal 2020-000160
Application 15/502,386
Technology Center 3600

Before PHILLIP J. KAUFFMAN, TARA L. HUTCHINGS, and
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

KAUFFMAN, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1–4, 7, 12, 15, 17–23, 26, 31, 34, and 36–41. Final Act. 2–7. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ 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 Avery Dennison Corporation. Appeal Br. 1.

The claims relate to a system for securely attaching labels that provide product information to label channels or other assemblies in stores and retail environments. Spec. ¶¶ 3, 6. We reproduce independent claim 1 below.

1. A label stiffener system comprising:
 - a first support defining a front face and a rear face;
 - a second support defining a front face and a rear face;
 - a layer of a first adhesive disposed between the first and the second support; and
 - a patterned region of a second adhesive disposed on the front face of the first support;wherein the first support and the second support provide rigidity and stability for retaining one or more labels with a label channel or other display.

REJECTIONS

I. Claims 1–4, 12, 15, 17–23, 31, 34, and 36–41² are rejected under 35 U.S.C. § 103 as unpatentable over Valiulis and Whitehouse.³ Final Act. 2–7.

II. Claims 7 and 26 are rejected under 35 U.S.C. § 103 as unpatentable over Valiulis, Whitehouse, and Elzer.⁴ Final Act. 7.

² On page 2 of the Final Office Action, the Examiner lists claim 16 as rejected under 35 U.S.C. § 103 as unpatentable over Valiulis and Whitehouse; however, claim 16 is cancelled. Appeal Br. A2 (Claims Appx.). Consequently, claim 16 is not before us on appeal.

³ Valiulis (US 6,145,231, issued Nov. 14, 2000); Whitehouse (US 5,428,914, issued July 4, 1995).

⁴ Elzer (US 3,494,056, issued Feb. 10, 1970).

ANALYSIS

Claims 1–4, 12, 15, 17–23, 31, 34, and 36–41 over Valiulis and Whitehouse

The dispositive issue regarding this rejection is the rationale for the proposed modification.

The Examiner finds that Valiulis substantially discloses the claimed label stiffener, as recited in independent claim 1, and similarly recited in independent claims 20 and 39. Final Act. 2–3 (citing Valiulis Figs. 19–22, 24), 5, 6. However, the Examiner acknowledges that Valiulis does not teach the claimed patterned region of a second adhesive, and relies on Whitehouse for this limitation. *See id.* at 3, 5, 6. Specifically, the Examiner finds that Whitehouse discloses a front support having a patterned region of adhesive (adhesive layer 26, or adhesive layer 26 and tape 30) to facilitate adhering of a label. *Id.* at 3 (citing Whitehouse Figs. 1, 2), 5, 6; Ans. 3–4. The Examiner concludes that it would have been obvious to modify Valiulis to include Whitehouse’s adhesive on the front face of Valiulis’s first support, because such a modification would “provide an alternative arrangement of parts to secure a display on the support.” Final Act. 3.

The Examiner’s reason, i.e., “providing an alternate arrangement of parts to secure a display on the support” (Final Act. 3), does not sufficiently explain why one of ordinary skill in the art would modify Valiulis’s label stiffener system in the manner proposed. Valiulis, for example, discloses that an outward surface of outer lamina 243 is bonded to release layer 244. Valiulis 8:3–8, Figs. 19, 20, 22. Release layer 244 permits a mounted label to be removed by peeling off cleanly. *Id.* at 1:60–64, 5:4–12, 10:16–18 (release layer 244 is the same material as release layer 44).

Whitehouse, on the other hand, teaches that adhesive layer 26 and tape 30 facilitate adhering of a label (plaque 22). Whitehouse 3:17–24, 49–60, Figs. 1, 2.

It is unclear, and the Examiner does not sufficiently explain, why a person of ordinary skill in the art would add Whitehouse’s adhesive, which is designed to hold a label, to the top surface of Valiulis’s release layer, which is designed to permit a label to be removed. Put differently, the Examiner does not explain why a person of ordinary skill would turn a layer that releases a label into a layer that holds a label. Consequently, we agree with Appellant that the Examiner has not given a sufficient reason for the proposed modification. Appeal Br. 10–12. Therefore, we do not sustain the rejection of independent claims 1, 20, and 39, and dependent claims 2–4, 12, 15, 17–19, 21–23, 31, 34, 36–38, 40, and 41 under 35 U.S.C. § 103 as unpatentable over Valiulis and Whitehouse.

Claim 7 and 26 over Valiulis, Whitehouse, and Elzer

The Examiner concludes that the subject matter of claims 7 and 26 would have been obvious from the combined teachings of Valiulis, Whitehouse, and Elzer. Final Act. 7. The Examiner cites Elzer solely for the teaching that a display support system may include polymeric materials from 1–7 mils thick. *Id.* This additional finding fails to remedy the deficiencies in the Examiner’s rationale, as set forth above with respect to independent claims 1 and 20, from which claims 7 and 26 depend, respectively. Therefore, we do not sustain the rejection of claims 7 and 26 under 35 U.S.C. § 103 as unpatentable over Valiulis, Whitehouse, and Elzer.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	References/Basis	Affirmed	Reversed
1-4, 12, 15, 17-23, 31, 34, 36-41	103	Valiulis, Whitehouse		1-4, 12, 15, 17-23, 31, 34, 36-41
7, 26	103	Valiulis, Whitehouse, Elzer		7, 26
Overall Outcome				1-4, 7, 12, 15, 17-23, 26, 31, 34, 36-41

REVERSED