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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* RODERICK NEAL MORRIS,  
JESSICA THACHER CROLICK ROLPH,  
SARA RICHINS, and PHILIP J. FOUTS

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Appeal 2020-001301  
Application 15/946,713  
Technology Center 3700

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Before PHILLIP J. KAUFFMAN, ANNETTE R. REIMERS, and  
TARA L. HUTCHINGS, *Administrative Patent Judges*.

KAUFFMAN, *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 1–21, which constitute all the claims pending in this application. Final Act. 2–9. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

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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 Lovevery, Inc. Appeal Br. 1.

The claims are directed to an early childhood development toy that is safe, durable, and cleanable. Spec. 1:6–8, 2:23–29. Claims 1 and 21 are independent. We reproduce claim 1 below.

1. A child development toy comprising:

a box defining an interior compartment and an aperture extending into the interior compartment through a side of the box; and

a set of flexible sheets, each sheet having a corner and defining a bounded slit surrounded by material of the sheet and configured to receive the corner of another sheet inserted therethrough, such that the set of sheets is configurable as a chain of sheets, each two adjacent sheets of the chain being releasably connected by a connection formed by a corner of one of the two adjacent sheets inserted into the slit of the other of the two adjacent sheets, such that with the chain of sheets disposed within the interior compartment of the box with a last sheet of the chain extending through the aperture, a corner of a next-to-last sheet of the chain may be pulled through the aperture, followed by separation of the last sheet of the chain from the next-to-last sheet of the chain, by pulling on the last sheet of the chain.

Claim 21 recites a method of setting up a child development toy for play including the step of “interconnecting a set of flexible sheets to form a chain of sheets, by pulling a corner of each of all but one of the sheets through a slit of another of the sheets.”

## REJECTIONS

- I. Claims 1–8, 15–17, and 21 are rejected under 35 U.S.C. § 103 as unpatentable over McGinn<sup>2</sup> and Bujalski.<sup>3</sup> Final Act. 2–6.
- II. Claims 9–12 are rejected under 35 U.S.C. § 103 as unpatentable over McGinn, Bujalski, and Heldibridle.<sup>4</sup> Final Act. 6–7.
- III. Claims 13 and 14 are rejected under 35 U.S.C. § 103 as unpatentable over McGinn, Bujalski, and Rappa.<sup>5</sup> Final Act. 7–8.
- IV. Claim 18 is rejected under 35 U.S.C. § 103 as unpatentable over McGinn, Bujalski, and Amundson.<sup>6</sup> Final Act. 8.
- V. Claims 19 and 20 are rejected under 35 U.S.C. § 103 as unpatentable over McGinn, Bujalski, and Var.<sup>7</sup> Final Act. 8–9.

## ANALYSIS

Each of the four rejections relies on Bujalski. The sole issue with regard to each rejection is whether Bujalski is analogous art.

### *Rejection I*

The Examiner concludes that the subject matter of independent claims 1 and 21 would have been obvious from the combined teachings of McGinn and Bujalski. Final Act. 2–6; Ans. 10–15. It is uncontested that McGinn teaches interconnecting a set of flexible sheets to form a chain of sheets by

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<sup>2</sup> McGinn (US 6,083,077, issued July 4, 2000)

<sup>3</sup> Bujalski (US 6,228,459 B1, issued May 8, 2001).

<sup>4</sup> Heldibridle et al. (US 7,192,632 B2, issued Mar. 20, 2007). (“Heldibridle”)

<sup>5</sup> Rappa (US 2013/0164729 A1, published June 27, 2013).

<sup>6</sup> Amundson (US 6,840,401 B2, issued Jan. 11, 2005).

<sup>7</sup> Var (US 5,720,617, issued Feb. 24, 1998).

means of hook-and-loop material, magnets, or the like. McGinn 4:26–36, Figs. 4–6. The Examiner acknowledges that McGinn does not disclose “each two adjacent sheets of the chain being releasably connected by a connection formed by a corner of one of the two adjacent sheets inserted into the slit of the other of the two adjacent sheets,” as recited in claim 1, and similarly, does not disclose “pulling a corner of each of all but one of the sheets through a slit of another of the sheets,” as recited in claim 21. Final Act. 3, 6. The Examiner relies on Bujalski for these limitations. *Id.*

Appellant argues that the Examiner’s reliance is misplaced because Bujalski is non-analogous art. Appeal Br. 3–9.

Whether proposed prior art is non-analogous is a factual question. *In re Clay*, 966 F.2d 656, 658 (Fed. Cir. 1992). Where disputed, the Examiner must demonstrate, through evidence or technical reasoning, that a reference on which the Examiner relies is analogous. *See In re Oetiker*, 977 F.2d 1443, 1447 (Fed. Cir. 1992) (reversing an obviousness rejection because the art had not been shown to be analogous). To be analogous art, the art must either be: (1) in the same field of endeavor, or (2) reasonably pertinent to the particular problem with which the inventor is involved. *See, e.g., In re Bigio*, 381 F.3d 1320, 1325 (Fed. Cir. 2004).

Here, the Examiner does not find that Bujalski is within the same field of endeavor as the subject matter of claims 1 and 21. *See* Final Act. 10; Ans. 10–15; *see also* Appeal Br. 4 (“Applicant is in agreement with the implication from the Office Action that Bujalski is not from Applicant’s field of endeavor”). Consequently, our question narrows to whether the Examiner has sufficiently demonstrated, through evidence or technical reasoning, that Bujalski is reasonably pertinent to the problem with which

Appellant is involved. A reference is reasonably pertinent if “it is one which, because of the matter with which it deals, logically would have commended itself to an inventor’s attention in considering his problem.” *In re Clay*, 966 F.2d 656, 659 (Fed. Cir. 1992).

Before directly addressing the problem involved, we address three related issues.

First, the Examiner’s analysis incorrectly focuses on how McGinn is analogous to Bujalski.<sup>8</sup> *See* Final Act. 10; Ans. 10–15; *see also* Appeal Br. 8 (noting that an analogous art determination has nothing to do with comparing the two prior art references). For example, the Examiner notes similarities between the structure and function of McGinn’s toy and Bujalski’s absorbent wrap. The term “analogous art” refers to the pertinence of the teachings of the prior art to the claimed subject matter and not to structural or operational differences between the disclosures of prior art references. *In re Sovish*, 769 F.2d 738, 741 (Fed. Cir. 1985); *see also In re Kahn*, 441 F.3d 977, 986–87 (Fed. Cir. 2006) (citing *In re Oetiker*, 977 F.2d 1443, 1447 (Fed. Cir. 1992) (holding that the correct focus of the analogous art test is not whether the prior art references are analogous to each other; rather, the correct focus is whether the reference is analogous art to the claimed subject matter). Consequently, we agree with Appellant that similarities between McGinn and Bujalski are not relevant as to whether Bujalski is analogous art to the claimed subject matter. *See* Appeal Br. 8.

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<sup>8</sup> The Examiner states that Appellant argues “that McGinn and Bujalski are nonanalogous art” (*see* Ans. 10) when actually, Appellant argues only that Bujalski is nonanalogous art (*see* Appeal Br. 3).

Second, the Examiner focuses on how Bujalski is classified. *See* Ans. 10–11. We agree with Appellant that classification of the prior art is weak evidence with regard to the problem being solved. Reply Br. 2 (citing *In re Mlot-Fijalkowski*, 676 F.2d 666 (CCPA 1982), for the proposition that classification evidence is of little value when determining if a reference is analogous art). Further, “the similarities and differences in structure and function of the inventions disclosed in the references carry far greater weight” than patent classification. *In re Ellis*, 476 F.2d 1370, 1372 (CCPA 1973).

Third, the Examiner mentions that Appellant cited Bujalski on their Information Disclosure Statement. Ans. 11. We agree with Appellant that citation to Bujalski is not an admission that Bujalski is prior art. Reply Br. 1 (citing MANUAL OF PATENT EXAMINING PROCEDURE § 2129 ¶ 4).

Turning to the problem addressed, the Examiner determines that Appellant sought out “other known flexible cloth sheet coupling means.” Ans. 10; *see also* Final Act. 10. The Examiner finds that Bujalski discloses an equivalent sheet coupling means, namely, a means to couple a portion of a sheet to itself. Final Act. 10.

As an initial matter, the finding that Bujalski teaches an equivalent sheet coupling means is inaccurate in that Bujalski discloses a means of coupling a flexible sheet to itself; while in contrast, the claimed subject matter couples a flexible sheet to another flexible sheet. *Compare* Bujalski, 1:57–66, Figs. 3, 4, *with* Spec. 1:12–14, Fig. 3A.

Somewhat more importantly, Appellant argues, and we agree, that the Examiner defined the problem too broadly. *See* Appeal Br. 6–9. Under the Examiner’s determination that the problem is to seek other sheet coupling

means, every sheet coupling means would be reasonably pertinent to Appellant's problem. Such reasoning is too broad. *See In re Oetiker*, 977 F.2d 1443 (Fed. Cir. 1992) (criticizing the Board as defining the problem so broadly that all hooking problems are analogous).

As Appellant explains, with supporting citations to the Specification, the problem faced had both a connection aspect and a disconnection aspect. The connection aspect was to permit quickly and easily making a chain of sheets. Appeal Br. 7 (citing Spec. 2:26–28, claim 1, Fig 3C); Reply Br. 2. The disconnection aspect was that the sheets only separate under certain circumstances; namely, the last sheet disconnects from the next to last sheet of the chain by pulling the last sheet of the chain through the aperture of a box. *Id.* The Examiner's definition does not acknowledge the connection and disconnection aspects of the problem and the associated details.

Consequently, the Examiner has not met the burden of demonstrating that Bujalski is reasonably pertinent to the particular problem with which the named inventors were involved. Therefore, the Examiner has not shown that Bujalski is analogous art. Accordingly, we do not sustain the rejection of claims 1–8, 15–17, and 21 under 35 U.S.C. § 103 as unpatentable over McGinn and Bujalski.

#### *Rejections II–V*

As noted above, each of these rejections relies on Buljalski. *See* Final Act. 6–9. In other words, none of the added references are relied on as an alternative to Buljalski. Consequently, each of these rejections suffers from the same shortcomings as the first rejection.

Therefore, we do not sustain the remaining rejections.



CONCLUSION

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1–8, 15–17, 21	103	McGinn, Bujalski		1–8, 15–17, 21
9–12	103	McGinn, Bujalski, Heldibridle		9–12
13, 14	103	McGinn, Bujalski, Rappa		13, 14
18	103	McGinn, Bujalski, Amundson		18
19, 20	103	McGinn, Bujalski, Var		19, 20
<b>Overall Outcome</b>				1–21

REVERSED