

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte KRISTINA MICHELLE BOUDRY et al.

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Appeal No. 2000-1978  
Application No. 08/898,905

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ON BRIEF

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Before CALVERT, McQUADE, and NASE, Administrative Patent Judges.  
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 31, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellants' invention relates to a disposable absorbent article having an improved fastenability about the waist of a wearer (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Le Bolt 1953	2,649,858	Aug. 25,
Polski 1991	5,066,289	Nov. 19,
Takemoto 1991	5,071,415	Dec. 10,

Claims 19 to 23 and 29 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Takemoto.

Claims 19 and 31 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Le Bolt.

Claims 19 to 23 and 31 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Polski.

Claims 1 to 9, 11, 12, 17, 18, 24 to 28 and 30 stand rejected under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103 as obvious over Takemoto.

Claims 10 and 13 to 16 stand rejected under 35 U.S.C. § 103 as being unpatentable over Takemoto.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer (Paper No. 18, mailed September 13, 1999) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 17, filed June 28, 1999) for the appellants' arguments thereagainst.

#### OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the

examiner. As a consequence of our review, we make the determinations which follow.

**The anticipation rejections based upon Takemoto**

We will not sustain the rejection of claims 1 to 9, 11, 12 and 17 to 30 under 35 U.S.C. § 102(b) as being anticipated by Takemoto.

To support a rejection of a claim under 35 U.S.C. § 102(b), it must be shown that each element of the claim is found, either expressly described or under principles of inherency, in a single prior art reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

Claims 1 to 9, 11, 12 and 17 to 30 are drawn to an absorbent article or diaper comprising, inter alia, an outer cover; a bodyside liner; an absorbent core located between the outer cover and the bodyside liner; and an adhesive located on a bodyfacing surface of the absorbent article or diaper wherein the adhesive is configured to contact a wearer's body

during use to at least temporarily secure the bodyfacing surface of the absorbent article or diaper directly to the wearer's body.

Takemoto discloses an adhesive system for releasably fastening or securing superposed portions of a disposable diaper or other articles. Takemoto teaches (column 3, lines 4-11) that disposable diapers are generally of a three-piece structure: an inner liner or so-called top sheet of a non-woven material such as polyethylene, polypropylene, a polyester and the like; an outer polyolefin liner or so-called back sheet; and, sandwiched therebetween, the porous, absorbent material, generally referred to in the art as "fluff pulp", "wood fluff", or simply as "pulp". The closure system of Takemoto is shown in Figures 1-3 to comprise a pair of adhesive patches 24 secured to the inner surface 20 adjacent opposed edges of end portion 12. Patch 24 consists essentially of a sheet material 26 coated on either side with adhesive layers 28, 30. Adhesive layer 28 is a permanent adhesive adapted to secure the patch to porous material 20; while adhesive layer 30 is a repositionable adhesive adapted

to releasably engage the other plastic liner 22 adjacent end portion 14 when the diaper is folded into place on the body.

The appellants argue (brief, pp. 5-6 and 10-11) that Takemoto does not disclose a diaper or absorbent article which includes an adhesive which is configured to contact the wearer's body in use to at least temporarily secure the bodyfacing surface of the diaper or absorbent article directly to the wearer's body. We agree. Additionally, we agree with the appellants that the limitation that the adhesive be configured to contact the wearer's body in use to at least temporarily secure the bodyfacing surface of the diaper or absorbent article directly to the wearer's body is a structural limitation in that it requires placement of the adhesive in a location on the bodyfacing surface of the diaper or absorbent article such that it contacts the wearer's body when the diaper or absorbent article is in use (i.e., on the wearer). Clearly, when Takemoto's diaper is in use, the adhesive patches 24 contact the plastic liner 22 adjacent end portion 14, not the wearer's body. Accordingly, Takemoto's adhesive patches 24 are not configured to contact the wearer's

body in use to at least temporarily secure the bodyfacing surface of the diaper directly to the wearer's body.

For the reasons set forth above all the limitations of claims 1 to 9, 11, 12 and 17 to 30 are not disclosed in Takemoto, consequently, the decision of the examiner to reject claims 1 to 9, 11, 12 and 17 to 30 under 35 U.S.C. § 102(b) as being anticipated by Takemoto is reversed.

**The anticipation rejection based upon Le Bolt**

We will not sustain the rejection of claims 19 and 31 under 35 U.S.C. § 102(b) as being anticipated by Le Bolt.

Le Bolt discloses a disposable diaper. As shown in Figures 1-3, the diaper includes two long strips of self-sealing adhesive 17 applied to the outer surface of the diaper so they cannot contact the baby's skin and two small areas of self-sealing adhesive 18 located on the inside surface of the diaper. As shown in Figure 3, the two long strips of self-sealing adhesive 17 and the two small areas of self-sealing adhesive 18 cooperate together to fasten the diaper on a baby.

The appellants argue (brief, pp. 7-8) that Le Bolt does not disclose a diaper which includes an adhesive which is configured to contact the wearer's body in use to at least temporarily secure the bodyfacing surface of the diaper directly to the wearer's body. We agree. As set forth previously, the limitation that the adhesive be configured to contact the wearer's body in use to at least temporarily secure the bodyfacing surface of the diaper directly to the wearer's body is a structural limitation in that it requires placement of the adhesive in a location on the bodyfacing surface of the diaper such that it contacts the wearer's body when the diaper is in use (i.e., on the wearer). Clearly, when Le Bolt's diaper is in use, no adhesive contacts the wearer's body. Accordingly, Le Bolt's adhesive areas are not configured to contact the wearer's body in use to at least temporarily secure the bodyfacing surface of the diaper directly to the wearer's body.

For the reasons set forth above all the limitations of claims 19 and 31 are not disclosed in Le Bolt, consequently, the decision of the examiner to reject claims 19 and 31 under

35 U.S.C. § 102(b) as being anticipated by Le Bolt is reversed.

**The anticipation rejection based upon Polski**

We will not sustain the rejection of claims 19 to 23 and 31 under 35 U.S.C. § 102(b) as being anticipated by Polski.

Polski's invention is concerned with a side closure system for disposable diapers comprised of two separate fastening systems, one adhesive type fastening system and one nonadhesive fastening system. Figure 2 shows the disposable diaper as it would appear while being worn. As shown in Figures 1 and 2, the disposable diaper 10 is a three-layer composite including a liquid permeable, user contacting top sheet 12, a liquid-impervious outer shell or back sheet 14 and an absorbent layer 16. At the back 18 of the diaper are corners 20 that overlap with corresponding corners 21 at the front panel 22 of the diaper when the diaper is worn. On the top sheet side of the diaper at each of the corners 20 is located a release treated, non-woven release tab 24 and on the outer shell or backsheet 14 at the front corners 21 of the

diaper 10 are mechanical type fasteners 26. Each of the release treated non-woven tabs 24, at the back corners 20, will be able to contact and engage with one of the mechanical fasteners 26 at the front corners 21 of the diaper 10.

Fastening tabs 28 are located at the back sheet 18 of the diaper 10. During non-use the tabs 28 would be located on the non-woven release treated tabs 24. When in use, the fastening tabs 28 would be removed from the release treated non-woven tabs 24 and attached to a front panel 22 of the diaper back sheet 18. Generally, the diaper front panel 22 is provided with a landing or frontal strip 25 which reinforces the diaper at the waist portion of the front diaper panel 22, allowing removal and replacement of the fastening tab as necessary.

The appellants argue (brief, pp. 8-10) that Polski does not disclose a diaper which includes an adhesive which is configured to contact the wearer's body in use to at least temporarily secure the bodyfacing surface of the diaper directly to the wearer's body. We agree. As set forth above, the limitation that the adhesive be configured to contact the wearer's body in use to at least temporarily secure the

bodyfacing surface of the diaper directly to the wearer's body is a structural limitation in that it requires placement of the adhesive in a location on the bodyfacing surface of the diaper such that it contacts the wearer's body when the diaper is in use (i.e., on the wearer). Clearly, when Polski's diaper is in use, no adhesive contacts the wearer's body. Accordingly, Polski's adhesive is not configured to contact the wearer's body in use to at least temporarily secure the bodyfacing surface of the diaper directly to the wearer's body.

For the reasons set forth above all the limitations of claims 19 to 23 and 31 are not disclosed in Polski, consequently, the decision of the examiner to reject claims 19 to 23 and 31 under 35 U.S.C. § 102(b) as being anticipated by Polski is reversed.

**The obviousness rejections based upon Takemoto**

We will not sustain the rejection of claims 1 to 18, 24 to 28 and 30 under 35 U.S.C. § 103 as being unpatentable over Takemoto.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of obviousness is established by presenting evidence that the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed combination or other modification. See In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972). Furthermore, the conclusion that the claimed subject matter is prima facie obvious must be supported by evidence, as shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led that individual to combine the relevant teachings of the references to arrive

at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

As set forth above, all the limitations of independent claims 1, 17 and 19 are not disclosed in Takemoto since Takemoto's adhesive patches 24 are not configured to contact the wearer's body in use to at least temporarily secure the bodyfacing surface of the diaper directly to the wearer's body. In the rejections under 35 U.S.C. § 103, the examiner has not cited any evidence that would have led a person having ordinary skill in the art to modify Takemoto's diaper to arrive at the claimed invention. Accordingly, the decision of the examiner to reject claims 1 to 18, 24 to 28 and 30 under 35 U.S.C. § 103 as being unpatentable over Takemoto is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 31 is reversed.

REVERSED

IAN A. CALVERT	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
JOHN P. McQUADE	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
JEFFREY V. NASE	)	
Administrative Patent Judge	)	

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