

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte Toshio Kobayashi,
Hideyuki Ishikawa and Satoshi Mitsuno

Appeal No. 2003-0437
Application 09/523,801

ON BRIEF

Before GARRIS, KRATZ, and PAWLIKOWSKI, Administrative Patent Judges.

PAWLIKOWSKI, Administrative Patent Judge.

DECISION ON APPEAL

This is decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1 through 4 and 8. Claims 5, 6 and 7 have been canceled.

Claims 1 is illustrative of the subject matter on appeal and is set forth below:

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1. A nonwoven fabric having first and second surfaces and formed by component fibers mechanically entangled between said first and second surfaces, regions of high fibers surface density and regions of low fibers surface density continuously or intermittently extend in parallel one to another in one direction so as to be alternatively arranged in a direction transversely of said one direction and to form undulations defined by crests corresponding to said regions of high fibers surface density and troughs corresponding to said regions of low fibers surface density; and

said nonwoven fabric further including bridge regions each extending transversely of said one direction between each pair of adjacent ones of said regions of high fibers surface density and said regions of low fibers surface density, said bridge regions having a density higher than that of said regions of low fibers surface density.

The examiner relies on the following references as evidence of unpatentability:

Hotchkiss et al. (Hotchkiss)	4,436,780	Mar. 13, 1984
Tomita et al. (Tomita)	5,618,610	Apr. 08, 1997

Claims 1 through 4 and 8 stand rejected under 35 U.S.C. § 103 as being unpatentable over Tomita in view of Hotchkiss.

OPINION

For the reasons emphasized below, we reverse the rejection.

As a preliminary matter, we note that the prior art can be modified or combined to reject claims as prima facie obvious as long as there is a reasonable expectation of success. In re Merck & Co., Inc., 800 F.2d 1091, 1097, 231 USPQ 375, 379 (Fed. Cir. 1986).

In the instant case, the examiner's position is that it would have been obvious to have modified Tomita by providing a geometrical or regular pattern as illustrated by Fig. 2 of Hotchkiss. (Answer, page 4). On page 5 of the answer, the examiner states "therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the Tomita nonwoven so that it had a geometrical pattern." On page 4 of the answer, the examiner states that in Tomita, the pattern is a result of the surface configuration of the second support roll and the examiner states that it could be varied according to the pattern desired. However, the examiner's rejection did not provide an explanation of how the surface configuration of the second support roll should be varied in such a way that a reasonable expectation of success of achieving appellants' claimed nonwoven fabric could be accomplished according to the process of Tomita. Hence, we determine that the examiner has not set forth a prima facie case of obviousness. Id.

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In view of the above, we therefore reverse the rejection.

REVERSED

BRADLEY R. GARRIS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
PETER F. KRATZ)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
)	
)	
)	
BEVERLY A. PAWLIKOWSKI)	
Administrative Patent Judge)	

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Baker & Daniels
111 East Wayne Street, Ste. 800
Fort Wayne, IN 46802