

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte FRANCISCO G. LOPEZ, ROSCOE M. FARRELL  
AND MELVIN EULISS

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Appeal No. 97-0747  
Application 08/443,258<sup>1</sup>

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ON BRIEF

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Before McCANDLISH, Senior Administrative Patent Judge, and McQUADE and CRAWFORD,  
Administrative Patent Judges.

McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Francisco G. Lopez et al. appeal from the final rejection of claims 15 through 21 and

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<sup>1</sup> Application for patent filed May 17, 1996. According to appellants, the application is a division of Application 08/101,360, filed August 03, 1993, now Patent No. 5,561,861, issued October 8, 1996.

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23 through 27. Claim 22, the only other claim pending in the application, stands objected to as depending from a rejected base claim.

The invention relates to a method for fabricating surgical gowns having circularly-knitted sleeve cuffs. A copy of the appealed claims appears in the appendix to the appellants' main brief (Paper No. 9).

The references relied upon by the examiner as evidence of obviousness are:

Bausher	1,873,811	Aug. 23, 1932
Wulsin	2,414,845	Jan. 28, 1947
Tames	3,011,172	Dec. 5, 1961
Neckerman et al. (Neckerman)	4,752,972	Jun. 28, 1988

The appealed claims stand rejected under 35 U.S.C. § 103 as follows:

a) claims 15, 16, 18 through 21 and 23 through 27 as being unpatentable over Neckerman in view of Tames and Bausher; and

b) claim 17 as being unpatentable over Neckerman in view of Tames and Bausher, and further in view of Wulsin.

Reference is made to the appellants' main and reply briefs (Paper Nos. 9 and 11) and to the examiner's final rejection and answer (Paper Nos. 7 and 10) for the respective positions of the appellants and the examiner with regard to the merits of these rejections. In the main brief, the

appellants state that “[w]ith respect to the issue on appeal, claims 15-21 and 23-27 stand or fall together” (page 3). Thus, for purposes of this appeal, claims 15 through 21, 23 through 25 and 27 shall stand or fall with representative claim 26.

Of particular importance to the issues presented in this appeal is the disclosure of Neckerman, the examiner’s primary reference. Neckerman relates to knit cuffs for garments such as surgical gowns. Figure 8 shows a pair of such cuffs 24 attached to the sleeves of surgical gown 26. Each cuff includes a two-ply front section 12, a single-ply middle section 14 and a two-ply back section 16. In the example described in columns 3 and 4, the front section is about 2 to 2½ inches long, the middle section is about 2 inches long and the back section is about 1 inch long. The front, middle and back sections are knit together on a circular knitting machine in one continuous step to form a discrete integral cuff which does not require any subsequent cutting or folding to achieve a finished state (see column 1, lines 42 through 53; and column 2, lines 57 through 65). As described by Neckerman,

[o]nce the present invention cuff has been knit no further steps have to be taken to finish the cuff. The present invention neither has to be cut nor folded to arrive at a finished cuff. This is not so with prior art because the prior art fabric must be cut or trimmed and then folded over onto itself to make a finished cuff. A distinct disadvantage.

The present invention is also more economical to produce than prior art because it takes fewer process steps to end up with finished material. Additionally, the back section of the present invention permits the cuff to be readily secured to a garment without further preparation. This is due to the fact that the back section once knit has a finished edge which facilitates attachment to a garment. Prior art on the other hand has to take an additional step to trim the cuff to size and then attach the cuff to a garment [column 3, lines 17 through 34].

In essence, the appellants' position on appeal is that the examiner's rejections are unsound because the prior art relied upon by the examiner to support the rejections would not have suggested, and in fact teaches away from, the attachment of a cuff to a surgical gown via a single ply portion of the cuff. In this regard, the appellants submit that Neckerman's cuffs are attached to their respective gowns at the two-ply back section and that this deficiency in the examiner's primary reference is not cured by the secondary references.

This line of argument is fatally flawed with respect to representative claim 26, however, because this claim does not require the step of attaching a cuff to a surgical gown via a single ply cuff portion.

More particularly, claim 26 recites a method for fabricating a surgical gown comprising, inter alia, the steps of (1) fabricating a pair of annular cuff blanks, with the fabricating of each blank comprising circularly-knitting a fabric tube having a main cuff body portion of a single ply knitted construction terminating at an outer end of the cuff in an integral turned welt forming a finished cuff edge, and (2) affixing each annular cuff blank to a respective one of the sleeves of the gown in surrounding relation to the respective wrist opening thereof for conforming to the wearer's wrists. These two steps find full response in Neckerman's steps of (1) circularly-knitting plural cuffs, each of which has a single-ply middle section (i.e., a main body portion) 14 and a two-ply front section (i.e., an integral turned welt) 12 and (2) attaching a pair of the cuffs to the sleeves of a surgical gown (see Figure

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8). As indicated above, claim 26 does not actually require the cuffs to be affixed to the sleeves of the gown via the single ply main body portion. Nor does claim 26 in any way exclude Neckerman's two-ply cuff back section 16 or the affixation of Neckerman's cuffs to the sleeves of the gown via their two-ply back sections. Thus, the appellants' position on appeal is not well taken with respect to representative claim 26.

Accordingly, we shall sustain the standing 35 U.S.C. § 103 rejection of claim 26, as well as the standing 35 U.S.C. § 103 rejections of claims 15 through 21, 23 through 25 and 27 which stand or fall therewith.

The decision of the examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

HARRISON E. McCANDLISH, Senior )  
Administrative Patent Judge )

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) BOARD OF PATENT

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Application 08/443,258

JOHN P. McQUADE  
Administrative Patent Judge

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) APPEALS AND  
)  
) INTERFERENCES

MURRIEL E. CRAWFORD  
Administrative Patent Judge

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