

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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

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Appeal No. 1999-0441  
Application No. 08/676,454

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ON BRIEF

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Before STAAB, NASE, and GONZALES, Administrative Patent Judges.

STAAB, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the examiner's final rejection of claims 1, 2, 5, 6, 8-11 and 13-18, all the claims currently pending in the application. An amendment filed

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subsequent to the Final Rejection has been entered. See the Advisory Action mailed January 12, 1998 (Paper No. 11).

Appellant's invention pertains to a sanitary absorbent product, such as a sanitary napkin, which is worn in contact with the skin of the wearer for the purpose of absorption and holding of body liquids, and to a method of making such a product. More particularly, the absorbent product includes tabs extending laterally for attachment to an undergarment of the wearer. A further understanding of the invention can be derived from a reading of exemplary claims 1 and 18, which appear in an appendix to appellant's Main Brief.

The references relied upon by the examiner in support of the rejections are:

Lavash et al. (Lavish)	5,389,094	Feb. 14, 1995
Pigneul <sup>1</sup> (PCT)	93/04651	Mar. 18, 1993

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<sup>1</sup>Our understanding of this foreign language document is derived from a translation prepared in the PTO, a copy of which is attached to this opinion.

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The following rejections are before us for review:<sup>2</sup>

(a) claims 1, 2, 6, 8-11, 13 and 17, rejected under 35 U.S.C. § 102(b) as being anticipated by Pigneul;

(b) claims 5 and 14-16, rejected under 35 U.S.C. § 103 as being unpatentable over Pigneul in view of Lavash; and

(c) claim 18, rejected under 35 U.S.C. § 103 as being unpatentable over Pigneul.

#### *Opinion*

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we cannot sustain the examiner's rejections.

An objective of appellant's invention is to provide an absorbent product that protects against leakage along the

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<sup>2</sup>A rejection of claims 1, 2, 5, 6, 8, 9 and 17 under 35 U.S.C. § 112, second paragraph, made in the Final Rejection has been withdrawn by the examiner in light of appellant's amendment filed subsequent to the Final Rejection. See the above noted Advisory Action.

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sides of the product. To this end, longitudinal edge portions of the main body of the product are folded over the cover layer 5 adjacent the longitudinal edges of the main body and thermally bonded to the cover layer along the length of the main body except in the vicinity of the tabs 3. The result is that liquid collecting pockets are formed where the tabs join the main body portion. This is depicted in appellant's drawing figures at bond areas 18, which extend along the longitudinal edges of the main body 2 except in the vicinity of tabs 3, and at pockets 20, which open toward the main body where the tabs 3 overlie the main body. As explained in the specification at page 4, lines 1-4, and as shown in Figure 3, "[w]hen the tabs are subjected to outward tensile force which occurs during the attachment of the tabs to the undergarment of the wearer, the tension is transmitted to the pockets and causes them to open-up."

Pigneul pertains to an absorbent product that includes an outer barrier layer 2 that extends beyond and is folded over an absorbent core 1 along longitudinal edge portions of the core to form side flaps 4 that function like appellant's tabs 3. The folded over portions of the barrier layer are

maintained in position by bonds at ends 6 and gluing points 8 (see Figure 4). Pigneul explains that "[t]he two large flaps [4] at each side of the center region remain free in order to be folded and glued underneath the pad or the supporting panty [10] during use, but one or several gluing or sealing points [8] arranged on each side of the pad will constitute a stop and thus ensure protection on the side of the cushion when the flaps are folded" (translation, paragraph bridging pages 1 and 2). Thus, it reasonably appears that, like appellant, an objective of Pigneul is to provide pockets that open to the main body portion of the product where the flaps 4 overlie the absorbent core to prevent side leakage. In this regard, see also page 3, lines 14-16, of the translation.

Independent claim 1 calls for, in part, the cover layer 5 and barrier layer 10 to be folded over and bonded to the cover layer "along each respective longitudinal edge of said main body with the exception of at least a portion of a line of intersection between each tab [3] and said main body [2] remains unbonded to form a pocket adjacent to each tab which is capable of collecting body exudate that may flow in a lateral direction . . . ." Independent claims 10 and 18

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contain similar limitations. The linchpin of the examiner's rejections is that this limitation reads on the folded over portions 4, 5 and 6 of Pigneul that are bonded to the main body portion at gluing points 8. In this regard, the examiner states that "[e]ach bond site [8] is a continuous point or line extending from one end of the pocket toward an extremity. It should be noted that the length of the line or the distance toward the extremity has not been claimed" (First Office Action (Paper No. 4), page 5).

Appellant's argument in opposition to this position may be summarized by the following quote from the Reply Brief (page 5):

Appellant has consistently maintained that the claim language "affixed to said main body along each respective longitudinal edge of said main body with the exception of at least a portion of a line of intersection between each tab and said main body remains unbonded" sufficiently distinguishes over the cited reference which is limited to single bond points at the intersection of the tab and the main body.

Appellant has enclosed herewith a copy of a dictionary definition of the word "along" as defined in The American Heritage College Dictionary, Third Edition, (1993). As defined therein, the word "along" is a preposition meaning "Over the length of." Thus, with regard to the present pending claims, the invention requires that the bonds extend "over the length" of each respective longitudinal

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edge of the main body. A bond which extends over the length of a longitudinal edge is clearly distinct from a single bond point as taught in the cited reference.

In keeping with the above argument, appellant directs us to certain portions of the specification for guidance in understanding the meaning of the claim language in question. Specifically, appellant states:

The cited portion of the Specification [i.e., page 8, lines 11-17] states that "the longitudinal peripheral edge portions of the main body are then folded over the cover layer side along the longitudinal edges of the napkin, and bonded to the cover layer 5 with either discrete or continuous elongated thermal bonds 18 which run from points near the end corners of the body 2 to points where the tabs 3 begin as illustrated." It is respectfully submitted that a "discrete or continuous elongated thermal bond" as defined above is consistent with "both layers being bonded to said cover layer along each respective longitudinal edge of said main body with the exception of at least a portion of a line of intersection between each tab and said main body remains unbonded to form a pocket adjacent to each tab" as required by the claims. [Reply Brief, paragraph bridging pages 3 and 4.]

In proceedings before it, the PTO applies to verbiage of claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the

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written description contained in appellant's specification.

*In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). In the present instance, we are in accord with appellant that one of ordinary skill in the art would not have viewed the folded over portions 4-6 of Pigneul, which are bonded to the cover layer at only two discrete gluing points 8 between the ends 6, as being bonded to the cover layer

along each respective longitudinal edge of said main body with the exception of at least a portion of a line of intersection between each tab and said main body remaining unbonded to form a pocket adjacent to each tab which is capable of collecting body exudate,

as called for in claim 1, or as called for in similar language found in independent claims 10 and 18. This is especially so when this claim language is read within the context of the underlying disclosure, which informs the artisan that the folded over portions are bonded to the edges of the main body with either discrete or continuous elongated thermal bonds 18 "which run from points near the end corners of the body 2 to points where the tabs 3" (specification, page 8). Given the generally accepted dictionary definition of "along" (i.e., "over the length of") posited by appellant on page 5 of the Reply Brief, and the enlightenment afforded by appellant's

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written description of the invention, the circumstance that, broadly speaking, the gluing points 8 of Pigneul have a finite dimension in the longitudinal direction of the main body portion does not justify the examiner's strained and unreasonable position that the reference structure corresponds to the claimed subject matter. In short, we can think of no circumstance under which the artisan, consistent with the appellant's specification, would construe the language of claims 1, 10 and 18 describing the bonding of the folded over barrier layer to the cover layer as reading on Pigneul with its pairs of discrete gluing points 8.

This being the case we will not sustain the examiner's rejection of claims 1, 2, 6, 8-11, 13 and 17, as being anticipated by Pigneul. Likewise, we will not sustain the examiner's rejection of claim 18 as being unpatentable over Pigneul, since Pigneul also does not teach or suggest modifying Pigneul in a matter that would have resulted in the "folding" step of that claim.

As to the standing § 103 rejection of claims 5 and 14-16 as being unpatentable over Pigneul in view of Lavash, we have

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carefully reviewed the reference to Lavash additionally relied upon by the examiner but find nothing therein that makes up for the deficiencies of Pigneul noted above. Therefore, we also will not sustain this rejection.

The decision of the examiner is reversed.

*REVERSED*

	Lawrence J. Staab	)	
	Administrative Patent Judge	)	
		)	
		)	
		)	
	Jeffrey V. Nase	)	BOARD OF
PATENT	Administrative Patent Judge	)	APPEALS AND
		)	INTERFERENCES
		)	
		)	
	John F. Gonzales	)	
	Administrative Patent Judge	)	

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