

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. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* EUGENIO GO VARONA, MONICA LYNN BONTRAGER,  
JAIME BRAVERMAN, KUO-SHU EDWARD CHANG,  
MICHAEL ALLEN DALEY, KAREN LYNN ENGLISH,  
ARTHUR EDWARD GARAVAGLIA, HRISTO ANGELOV HRISTOV,  
NANCY DONALDSON KOLLIN, TAMARA LEE MACE,  
DAVID MICHAEL MATELA, SHARON RYMER,  
REGINALD SMITH, ROLAND COLUMBUS SMITH, JR.  
and MICHAEL DONALD SPERL

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Appeal No. 2003-1876  
Application No. 09/209,044

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ON BRIEF

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Before PAK, JEFFREY T. SMITH and PAWLIKOWSKI, *Administrative Patent Judges*.  
JEFFREY T. SMITH, *Administrative Patent Judge*.

***DECISION ON APPEAL***

Appellants appeal the Examiner's final rejection of claims 1-7 and 9-32, all of the pending claims in the application.<sup>1</sup> We have jurisdiction under 35 U.S.C. § 134.

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<sup>1</sup> In rendering our decision, we have considered Appellants' arguments presented in the Brief, filed June 12, 2002 and the Reply Brief, filed October 24, 2002.

***THE INVENTION***

Appellants' claimed invention relates to a three dimensional microfiber web. According to Appellants, the invention is useful for use as a liner for personal care products, such as absorbent underpants and bandages. (Specification, p. 1). Claim 1 which is representative of the subject matter on appeal is reproduced below:

1. A three dimensional material comprising an adhesively creped microfiber web having an upper and a lower surface, each having a surface energy, wherein said material has a  $f_r(\psi)$  of less than 0.87, a SA/VV of less than  $186 \text{ cm}^2/\text{cm}^3$ , and a caliper of less than 0.150 inches and wherein an average pore size for a first volume encompassing a top surface is not the same as an average pore size for a second volume encompassing a lower surface.

As evidence of unpatentability, the Examiner relies on the following references:

Grossman	4,063,995	Dec. 20, 1977
Kobayashi et al. (Kobayashi)	4,810,556	Mar. 07, 1989
Chen et al. (Chen)	5,037,409	Aug. 06, 1991
Warchol et al. (Warchol)	5,602,209	Feb. 11, 1997

***THE REJECTIONS***

The Examiner rejected claims 1-7, 9, 10 and 19-20 under 35 U.S.C. § 103(a) as unpatentable over the combination of Kobayashi and either Grossman or Warchol; claims 11-18 and 21-32 under 35 U.S.C. § 103(a) as unpatentable over the combination of Kobayashi, Chen and either Grossman or Warchol. (Answer, pp. 3-6).

***OPINION***

We reverse. We will limit our discussion to claim 1 which is the sole independent claim.

The review of the Examiner's rejection of the appealed claims necessarily entails the interpretation of the scope of the appealed claims, giving the broadest reasonable interpretation to the terms thereof consistent with the written description provided in Appellants' specification as it would be interpreted by one of ordinary skill in this art. *See In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). Thus, the terms in the appealed claims must be given their ordinary meaning unless another meaning is intended by appellants as established in the written description of their specification. See, e.g., *Morris*, supra; *In re Zletz*, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

Applying these principles, we note that appealed claim 1 is directed to a three dimensional material comprising a microfiber web. The material is described as having a fiber orientation factor ( $f_r(\psi)$ ) of less than 0.87; a surface area to void volume (SA/VV) of less than  $186 \text{ cm}^2/\text{cm}^3$ ; and a caliper of less than 0.150 inches. Claim 1 also specifies that the average pore size for a first volume encompassing a top surface is not the same as an average pore size for a second volume encompassing a lower surface. To reject the

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claimed subject matter properly, the Examiner must disclose where in the prior art each of the features of the claim is disclosed.

The Examiner asserts the difference between Kobayashi and the claimed invention is that “Kobayashi does not teach adhesive creping, but implies that any known creping technique may be used.” (Answer, p. 4). The Examiner asserts the properties recited in claim 1 would have been inherent in the material of Kobayashi formed by the adhesive creping process of Grossman or Warchol. Specifically the Examiner states that “the combination of Kobayashi and Grossman or Warchol is inherently disposed with these properties as said combination teaches all aspects of the structure and materials recited in applicant’s claims.” (Answer, p. 5).

The Examiner has not supplied sufficient evidence to support the assertion that the claimed properties would necessarily result from adhesive creping. The Examiner’s citation to Appellants’ specification, page 45, for support that other methods of creping could be used to crepe the web does not indicate that the claimed properties will necessarily result. From any and all creping conditions on this record, there is no reasonable basis to believe that the fiber orientation factor ( $f_r(\psi)$ ), the ratio of surface area to void volume (SA/VV) and a caliper properties of the claimed invention would inherently result from the material of Kobayashi formed by the adhesive creping process of Grossman or Warchol. (See Brief, p. 4). It is important to note that inherency cannot

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be established by probabilities or possibilities. *See In re Oelrich*, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981). Nor is there any suggestion to arrive at the above-notion properties. As stated in *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (quoting from *In re Spormann*, 363 F.2d 444, 448, 150 USPQ 449, 452 (CCPA 1966)), “That which may be inherent is not necessarily known. Obviousness cannot be predicated on what is unknown.”

The Examiner has not cited support for the assertion that the claimed properties are result effective variables. Accordingly, we reverse the Examiner’s rejections.

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**CONCLUSION**

The rejection of claims 1-7, 9, 10 and 19-20 under 35 U.S.C. § 103(a) as unpatentable over the combination of Kobayashi and either Grossman or Warchol; and claims 11-18 and 21-32 under 35 U.S.C. § 103(a) as unpatentable over the combination of Kobayashi, Chen and either Grossman or Warchol are reversed.

**REVERSED**

CHUNG K. PAK  
*Administrative Patent Judge*

JEFFREY T. SMITH  
*Administrative Patent Judge*

BEVERLY A. PAWLIKOWSKI  
*Administrative Patent Judge*

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Application No. 09/209,044

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