

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. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WAYNE K. DUNSHEE and MARY LYNN BROWN

Appeal No. 2004-1372
Application No. 09/577,551

ON BRIEF

Before GARRIS, PAK, and DELMENDO, Administrative Patent Judges.
PAK, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the examiner's refusal to allow claims 11 through 13, 16 through 33, 35 through 37, 39 through 45 and 49 through 52, which are all of the claims pending in the above-identified application. Subsequent to the final Office action dated May 24, 2002, claims 11, 16, 25, 35, 37 and 39 were amended and claims 34 and 38 were canceled. We have jurisdiction pursuant to 35 U.S.C. §§ 6 and 134.

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APPEALED SUBJECT MATTER

According to the appellants (Specification, page 1), "[t]he present invention relates to printing ink compositions and in particular the invention relates to printing ink for flexible or elastomeric substrates." Further details of the appealed subject matter are recited in representative claim 49¹ which is reproduced below:

49. An elastomeric bandage comprising a printed image wherein the printed image is prepared from at least one ink composition comprising a stable aqueous dispersion of pigment and particles of a urethane polymer.

PRIOR ART

The examiner relies on the following prior art references:

Hassell	4,334,530	Jun. 15, 1982
Davey et al (Davey)	5,162,141	Nov. 10, 1992
Miyamoto et al (Miyamoto) (Published European Patent Application)	0 596 503 A1	May 11, 1994

¹ The appellants state that "claims 11-13, 16-33, 35-37, 39-45, and 49-52 stand or fall together." See the Brief, page 5. Therefore, for purposes of this appeal, we select claim 49 as representative of all of the claims on appeal and decide the propriety of the examiner's Section 103 rejection below based on this claim alone consistent with 37 CFR § 1.192(c)(7)(2003).

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REJECTION

The appealed claims stand rejected under 35 U.S.C. § 103 as unpatentable over the combined disclosures of Hassell, Davey, and Miyamoto.²

OPINION

We have carefully reviewed the claims, specification and prior art, including all of the evidence and arguments advanced by both the examiner and the appellants in support of their respective positions. This review has led us to conclude that the examiner's Section 103 rejection is well founded. Accordingly, we affirm the examiner's Section 103 rejection for the factual findings and conclusions set forth in the Answer dated December 19, 2003 (Paper No. 19) and below.

As found by the examiner (Answer, page 4), Hassell teaches bandages having indicia or markings indicating the direction of removal. See the abstract with Figures 5-9. These bandages are "per se known and of common usage in home" and are normally "'strip' type bandages wherein an absorbent protective pad or gauze dressing is carried by an adhesive-coated flexible backing." See

² The examiner has withdrawn the Section 102 rejection set forth in the final Office action dated May 24, 2002. See the Advisory action dated September 17, 2002 and the Brief, page 4.

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column 1, lines 7-10 and column 3, line 34 to column 4, line 1, together with Figure 1. The indicia and markings are placed on the flexible bandages by using any known printing techniques involving inks. See column 3, lines 20-29, together with Figures 1-9.

The appellants do not argue that these flexible bandages are not elastomeric bandages. Rather, the appellants argue that there is no motivation or suggestion to employ the claimed ink composition to prepare the indicia or markings in Hessel's flexible bandages. We do not agree.

The examiner has correctly found that both Miyamoto and Davey teach various advantages of using the claimed printing ink composition on plastic substrates or films. Miyamoto, for example, teaches water-based printing inks containing particles of a urethane polymer and a pigment for various flexible plastic films, inclusive of the flexible elastomeric backings used in Hessel's bandages. See page 2, lines 1-7, page 7, lines 9-20 and 45-48. These inks, according to Miyamoto, exhibit strong adhesion and peel strength to various kinds of plastic films and are good for occupational safety and food hygiene. See pages 2 and 21. Davey also teaches using a primer containing polyurethane resin and a pigment to improve adherence of an ink to a polymeric film and

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enhance smudge resistance. See column 1, lines 8-16, column 2, lines 56-63, column 3, lines 19-26 and column 5, lines 1-30.

Given the above teachings, we concur with the examiner that one of ordinary skill in the art would have been led to employ the claimed composition to provide indicia or markings in the bandages of the type described in Hassell, motivated by a reasonable expectation of obtaining the advantages stated in Miyamoto and/or Davey. This is especially true since Hassell clearly teaches employing any printing inks useful for plastic substrates, inclusive of those disclosed in Miyamoto and/or Davey.

Even if the appellants' motivation for employing the claimed ink composition on elastomeric bandages is slightly different from those taught in Miyamoto and/or Davey, our conclusion would not be altered. The motivation disclosed in the applied prior art need not be identical to that of the appellants so long as there is an incentive to employ the claimed composition to provide markings in Hassell's bandages. *In re Kemps*, 97 F.3d 1427, 1430, 40 USPQ2d 1309, 1311 (Fed. Cir. 1996); *In re Kronig*, 539 F.2d 1300, 1304, 190 USPQ 425, 1311 (Fed. Cir. 1996).

The appellants argue that both Davey and Miyamoto are from nonanalogous art and cannot be used in the examiner's Section 103 rejection. See, e.g., the Brief, page 9. We do not agree.

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As the court in *In re Clay*, 966 F.2d 656, 658-59, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992) stated:

Two criteria have evolved for determining whether prior art is analogous: (1) whether the art is from the same field of endeavor, regardless of the problem addressed, and (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved.

As is apparent from the appellants' own discussion of the "Background of Invention" at pages 1 through 4 of the specification, both Davey and Miyamoto meet either prong of the analogous art test set forth in *Clay*. We find that both Davey and Miyamoto, like the appellants' invention, are related to ink compositions for plastic or polymeric films in general, inclusive of the polymeric or plastic film used in Hassel's and the appellants' bandages. Compare the appellants' specification, page 1, with Davey, column 1, lines 8-11 and Miyamoto, page 1, line 5 and page 7, lines 11-13. Although both Miyamoto and Davey exemplify flexible packagings and floor tile products, respectively, they are not limited thereto as indicated *supra*. As such, we determine that Davey and Miyamoto are within the same field of endeavor, i.e., ink compositions for polymeric films, such as polymeric backings for bandages. This determination appears to

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be supported by the appellants in the "Background of the Invention" section of the specification.

Moreover, we find that both Davey and Miyamoto, like the appellants, are related to improving adhesion of printing ink compositions to polymeric or plastic films. As is apparent from the appellants' discussions of ink compositions for plastic or polymeric films at pages 1 through 4 of the specification, the inventors interested in improving adhesion of ink compositions to the polymeric or plastic backing of bandages would look to the teachings of Davey and Miyamoto. Thus, we concur with the examiner that Davey and Miyamoto are "reasonably pertinent to the particular problem with which the inventor[s] [are] involved."

In view of the foregoing, we affirm the examiner's decision rejecting the claims on appeal under 35 U.S.C. § 103.

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

AFFIRMED

BRADLEY R. GARRIS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
CHUNG K. PAK)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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ROMULO H. DELMENDO)	
Administrative Patent Judge)	

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