

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

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Ex parte ARMANDO ALVITE and LEONARD I. HOREY

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Appeal No. 2005-1331  
Application No. 10/215,414

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ON BRIEF

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Before FRANKFORT, MCQUADE, and NASE, Administrative Patent Judges.  
FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 3, 6 through 12, 14, 16 through 22 and 24. Claim 13 stands allowed. Claim 23, the only other claim remaining in the application, has been objected to as being dependent upon a rejected base claim, but is indicated to be allowable if rewritten in independent form. Claims 4, 5 and 15 have been cancelled.

Appellants' invention relates to electric heating fabrics such as warming blankets. As noted on page 4 of the specification, the invention provides a warming fabric that

utilizes a multiplex circuit to provide heat to at least two different zones of the warming fabric. Independent claims 1 and 16 are representative of the subject matter on appeal, and a copy of those claims can be found in Appendix A of appellants' brief.

The prior art references of record relied upon by the examiner as evidence of obviousness under 35 U.S.C. § 103 are:

Shomphe et al. (Shomphe)	3,417,229	Dec. 17, 1968
Krackow	3,489,882	Jan. 13, 1970
Balboni	4,162,393	Jul. 24, 1979
Yoshio (Japanese Patent Publication)	6-132069	May 13, 1994

Claims 1, 2, 6, 7, 9 through 12, 14, 16, 17, 19, 21, 22 and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Yoshio in view of Balboni.

Claims 8 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Yoshio in view of Balboni as applied above and further in view of Shomphe.

Claims 3 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Yoshio in view of Balboni as applied above and further in view of Krackow.<sup>1</sup>

Rather than reiterate the examiner's statement of the above-noted rejections and the conflicting viewpoints advanced by appellants and the examiner regarding those rejections, we refer to the examiner's answer (mailed December 3, 2004) for the reasoning in support of the above-noted rejections and to the brief (filed June 4, 2004) and reply brief (filed January 27, 2005) for appellants' arguments to the contrary.

#### OPINION

Our evaluation of the obviousness issues raised in this appeal has included a careful assessment of appellants' specification and claims, the applied prior art references, and the respective positions advanced by appellants and the examiner. As a consequence of our review, we have made the determination that the evidence relied upon by the examiner is not sufficient to support a conclusion of obviousness under 35 U.S.C. § 103 with respect to appellants' claims 1 through 3, 6 through 12, 14, 16 through 22 and 24 on appeal. Our reasoning for this determination follows.

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<sup>1</sup>A rejection of claim 19 under 35 U.S.C. § 112, second paragraph, set forth on page 2 of the final rejection, has now been withdrawn in light of the amendment after final filed with the brief on June 4, 2004.

In rejecting claims 1, 2, 6, 7, 9 through 12, 14, 16, 17, 19, 21, 22 and 24 under 35 U.S.C. § 103(a) as being unpatentable over Yoshio in view of Balboni, the examiner has found that Yoshio discloses a warming blanket comprising a fabric (1), first and second heating elements (2 and 4, respectively), and a single controller (5) for cycling power individually and alternatively between the heating elements with a fixed duty cycle ratio. In the examiner's view, the claimed warming fabric differs from the warming blanket of Yoshio by calling for first and second non-overlapping zones to be adjacent the lower and upper portions of the user respectively, and providing more power to the first heating element compared to the second heating element. To account for these differences, the examiner points to Balboni and makes the determination that,

Providing selectively-activated heaters with different power ratings in a flexible heating pad is conventional and well known in the art as evidenced by Balboni (US4162393) noting heaters 14, 20, and 24 that heat respective zones and activated selectively. The zones correspond to the head, torso, and feet. See Fig. 5. Heater 14 is 30W and heaters 20 and 24 are 60W respectively. See col. 1, line 62 - col. 2, line 3. Such an arrangement ensures that different heating intensities are applied to different parts of the body, thus reducing the heating intensity for those parts of the body that do not cool as fast as others (e.g., the head). In view of Balboni (US4162393), it would have been obvious to one of ordinary skill in the art to (1) provide longitudinally separate heating zones, and (2) provide different heating powers corresponding to those zones in JP6-132069 so that different parts of the body were heated differently to compensate for the diverse cooling rates along the body (answer, page 4).

For the reasons adequately set forth by appellants in their brief (pages 6-11) and reply brief, we find that the examiner's proposed modification of the particular form of

heating blanket disclosed in Yoshio (Fig. 1) in the manner proposed in the rejection (based on Balboni) is the result of impermissible hindsight derived from first having read appellants' disclosure and claims, and amounts to an improper reconstruction of appellants' claimed invention using appellants' own disclosure as a roadmap for selectively combining the applied prior art references. As our court of review indicated in In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992), it is impermissible to use the claimed invention as an instruction manual or "template" in attempting to piece together isolated disclosures and teachings of the prior art so that the claimed invention is rendered obvious. Thus, the examiner's rejection of claims 1, 2, 6, 7, 9 through 12, 14, 16, 17, 19, 21, 22 and 24 under 35 U.S.C. § 103(a) as being unpatentable over Yoshio in view of Balboni will not be sustained.

We have additionally reviewed the patents to Shomphe and Krackow applied by the examiner in rejections of dependent claims 8 and 20, and claims 3 and 18, respectively, under 35 U.S.C. § 103(a). However, we find nothing in those patents which would overcome or provide for the teaching/suggestion we have found lacking in the basic combination of Yoshio and Balboni. Accordingly, the examiner's rejections of dependent claims 3, 8, 18 and 20 under 35 U.S.C. § 103(a) will likewise not be sustained.

In light of the foregoing, the decision of the examiner to reject claims 1 through 3, 6 through 12, 14, 16 through 22 and 24 of the present application under 35 U.S.C. § 103(a) is reversed.

In addition, we find it necessary to REMAND this application to the examiner under 37 CFR § 41.50 for consideration of the following issues.

1) During any further prosecution of the application, the examiner should obtain a copy of JP 62-190330 described briefly on page 4 of Yoshio and make a determination of its relevance to the presently claimed subject matter. According to Yoshio, JP 62-190330 apparently describes an electric blanket wherein multiple heaters are positioned "in a manner such that the heating area is actually divided" and also includes a control unit which energizes those heaters either at the same time or alternately.

2) The examiner should also consider whether the electric blanket shown in Figure 1 of Yoshio actually anticipates the subject matter set forth in independent claims 1 and 16, and/or any other claims on appeal. In that regard, we note that Yoshio shows an electric blanket in Figure 1 wherein the blanket comprises a fabric (1), a first heating element (2) aligned along the fabric and configured to heat a first zone of the fabric (foot end) adjacent a lower portion of the user, a second heating element (4) aligned along

the fabric and configured to heat a second zone of the fabric (head end) adjacent an upper portion of the user, and a single multiplex controller (5) for cycling power individually and alternatively between the heating elements (2) and (4). The first (foot end) zone and second (head end) zone of the blanket in Yoshio are clearly separated from one another and do not substantially overlap. From our reading, it appears that claims 1 and 16 on appeal do not preclude an arrangement like that shown in Yoshio wherein the first and second heating elements each also heat additional “zones” of the electric blanket. In that regard, we observe that claims 1 and 16 on appeal do not mandate that each zone of the fabric therein be heated by only one heating element.

REVERSED AND REMANDED

CHARLES E. FRANKFORT  
Administrative Patent Judge

JOHN P. MCQUADE  
Administrative Patent Judge

JEFFREY V. NASE  
Administrative Patent Judge

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