

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

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SHERIF M. ALI and DEAN D. PETERSON

Appeal 2006-2929
Application 10/859,030
Technology Center 3600

Decided: March 29, 2007

Before TERRY J. OWENS, ANITA PELLMAN GROSS, and
JENNIFER D. BAHR, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Sherif M. Ali et al. (Appellants) appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1-13, 25-27, 29-31, 33, 34, and

44-55. Claims 14-24 and 35-43, the only other claims pending in the Application, stand withdrawn from consideration. We have jurisdiction over this appeal under 35 U.S.C. § 6.

Appellants invented identification bracelets designed so as not to require a removable release liner (Specification 1:7-8). Claim 1 is illustrative of the claimed invention and reads as follows:

1. A plurality of identification bracelets detachably connected to one another comprising:
 - a first bracelet including a first end having a cover tab and a second end defining a closure tab having an adhesive portion; and
 - a second bracelet removably attached to the first bracelet and including a first end having a cover tab and a second end defining a closure tab having an adhesive portion;

wherein the cover tab of the second bracelet removably overlies the adhesive portion of the closure tab of the first bracelet, whereby upon separating the first bracelet from the second bracelet, the adhesive portion of the closure tab of the first bracelet is exposed and the cover tab of the second bracelet remains with the second bracelet and an exposed adhesive portion of the closure tab of the first bracelet is adhered onto a portion of the first bracelet as it is moved from an open position to a closed position encircling an object to be identified.

The Examiner relies upon the following as evidence of unpatentability:

Amann	US 3,825,463	Jul. 23, 1974
Hofer	US 5,364,133	Nov. 15, 1994

Appellants seek review of the Examiner's rejection of claims 1-13, 25-27, 29-31, 33, 34, and 44-55 under 35 U.S.C. § 103(a) as being unpatentable over Amann in view of Hofer.

The Examiner provides reasoning in support of the rejection in the Answer (mailed March 10, 2006). Appellants present opposing arguments in the Brief (filed February 2, 2006) and Reply Brief (filed May 2, 2006).

OPINION

The Examiner finds that "Amann does not disclose making the labels/markers in the form of bracelets" (Answer 3)¹ as called for in each of Appellants' independent claims 1, 27, and 44. The Examiner contends, however, that, in view of the teachings of Hofer, it would have been obvious "to modify Amann by making the labels/markers in the form of bracelets since this would allow the labels/markers to be attached to a person in a more convenient manner, would allow bracelets to be made in an easier and less expensive manner, and would allow the devices to be used in a wider range of areas" (Answer 3).

Appellants argue there is absolutely no suggestion or motivation to make the combination proposed by the Examiner, other than hindsight gleaned from the invention itself (Br. 12). Accordingly, the issue presented to us is whether the combined teachings of Amann and Hofer would have

¹ Even assuming that Amann's articles could be considered "identification bracelets" within the context of Appellants' invention, they do not necessarily appear capable, without modification, of the use recited in the "whereby ..." clause at the end of each of Appellants' independent claims without the layers de-laminating.

suggested modifying Amann by making the labels/markers in the form of bracelets.

To establish obviousness based on a combination of elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by an applicant. The motivation, suggestion or teaching may come explicitly from statements in the prior art, the knowledge of one of ordinary skill in the art, or, in some cases, the nature of the problem to be solved. In addition, the teaching, motivation or suggestion may be implicit from the prior art as a whole, rather than expressly stated in the references. The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art. *See In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1316-17 (Fed. Cir. 2000). “However, rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006).

Hofer discloses an identification bracelet comprising an upper layer 5 adhered to a lower layer 6 with an adhesive layer 7, the lower layer 6 having die cuts 10 therein to form one or more removable sections 11. The bond between the lower layer 6 and the adhesive layer 7 is weaker than the bond between the upper layer 5 and the adhesive layer 7 (Hofer, col. 3, ll. 13-30). In other words, Hofer’s lower layer 6 is effectively a release layer removably adhered to the upper layer 5 and adhesive layer 7. The weaker bond

between the lower layer 6 and the adhesive layer 7 can be achieved either by choice of material for the lower layer 6 or by applying an appropriate coating to the lower layer 6 (Hofer, col. 3, ll. 33-37). Moreover, as illustrated in Fig. 6, Hofer discloses forming a plurality of bracelets in a continuous web separated by a plurality of perforations 16 and notches 17 (Hofer, col. 3, ll. 61-64).

While the Examiner is correct that Hofer evidences that it was known at the time of Appellants' invention to attach bracelets having an adhesive covered by a release liner end to end (Answer 3), Hofer also expressly discloses separating such bracelets by both perforations and notches. Hofer gives no hint or suggestion that it would be desirable to form cuts or perforations in the lower layer, or release layer, so that the lower layer of one bracelet overlaps with the upper layer and adhesive layer of the adjacent bracelet as called for in Appellants' claims. Further, as pointed out by Appellants (Br. 13), neither Amann nor Hofer evidences appreciation of the problem solved by Appellants' invention, namely, the problem of discardable release liners or removable sections traditionally associated with identification bracelets. Accordingly, Hofer would not have provided any suggestion to utilize the manufacturing technique of Amann to form identification bracelets of the type disclosed by Hofer to arrive at the subject matter recited in Appellants' independent claims 1, 27 and 44, absent hindsight gleaned from Appellants' disclosure.

In light of the above, we conclude that the combined teachings of Amann and Hofer would not have suggested modifying Amann by making the labels/markers in the form of bracelets. The rejection of independent

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claims 1, 27, and 44, and dependent claims 2-13, 25, 26, 29-31, 33, 34, and 45-55, cannot be sustained.

ORDER

The decision of the Examiner to reject claims 1-13, 25-27, 29-31, 33, 34, and 44-55 is reversed.

REVERSED

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