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 THOMAS E. VALIULIS and ROBERT LOUIS NORTHRUP JR.

Appeal 2006-3003
Application 10/390,444
Technology Center 3600

Decided: May 16, 2007

Before TERRY J. OWENS, JENNIFER D. BAHR, and
LINDA E. HORNER, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Thomas E. Valiulis and Robert Louis Northrup Jr. (Appellants) appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1, 4, 7, 9, 11-13, 16, 17, and 19-23. Claims 3 and 5 stand allowed and claims 2, 10, 14, and 18 stand objected to as depending from a rejected claim. No other

claims are pending. We have jurisdiction over this appeal under 35 U.S.C. § 6 (2002).

Appellants invented a display hook and assembly with reduced drag (Specification [0001]). Claim 11 is illustrative of the claimed invention and reads as follows:

> 11. A display hook for attachment to a vertical support for displaying merchandise, the display hook comprising:
>
> a back end member structured for attachment to a vertical support;
>
> a product arm member supported by and extending forwardly from the back end member toward a retainer member, the product arm member structured to display the merchandise via a self-facing configuration such that merchandise when displayed on the product arm member migrates forwardly toward the retainer member with the retainer member preventing merchandise from falling off the product arm member; and
>
> a fluoropolymer surface on at least a portion of the product arm member, the fluoropolymer surface configured to provide an approximate near zero static coefficient of friction for merchandise being self-faced on the product arm member.

The Examiner relies upon the following as evidence of unpatentability:

Willius	US 4,898,406	Feb. 06, 1990
Brozak	US 5,626,243	May 06, 1997
Kump	US 5,906,283	May 25, 1999
Mattesky	US 2002/0113183 A1	Aug. 22, 2002

Appellants seek review of the Examiner's rejections under 35 U.S.C. § 103(a) of claims 1, 7, 9, 11, 12, 19, and 20 as unpatentable over Mattesky

in view of Willius, claims 1, 7, 11, 12, 17, and 23 as unpatentable over Brozak in view of Mattesky and Willius, and claims 1, 4, 7, 11, 12, 13, 16, and 19-22 as unpatentable over Kump in view of Mattesky and Willius.

The Examiner provides reasoning in support of the rejections in the Answer (mailed February 3, 2006). Appellants present opposing arguments in the Appeal Brief (filed October 31, 2005) and Reply Brief (filed March 21, 2006).

THE ISSUE

Appellants do not separately argue the claims. Therefore, in accordance with 37 C.F.R. § 41.37(c)(1)(vii), we select claim 11 to decide the appeal of each of the rejections, with the other claims so rejected standing or falling therewith. Appellants do not dispute the Examiner's finding that Mattesky discloses the subject matter of claim 11, with the exception of the product arm member surface being a fluoropolymer surface (Answer 4). Appellants likewise do not dispute the Examiner's determination that it would have been obvious, in view of the combination of Brozak and Mattesky or the combination of Kump and Mattesky, to modify either Brozak or Kump to provide a smooth slippery surface to enhance the appearance and/or functions of the product arm member, thereby rendering obvious the subject matter of claim 11, with the exception of the surface being a fluoropolymer surface (Answer 5 and 7). Accordingly, the only issue before us is whether Appellants have demonstrated that the Examiner erred in concluding it would have been obvious, in view of the teachings of Willius, to modify the display hook of

Mattesky, Brozak in view of Mattesky, or Kump in view of Mattesky, to provide a fluoropolymer coating.

FINDINGS OF FACT

FF1. Mattesky teaches coating display peg hook units or retainer members with a "suitable coating process … for the purpose of providing them with a smooth slippery surface so as to enhance their appearance and/or functions (e.g. the packages 180 can [slide] easily on the peg hook unit 145 and/or the retainer member 160)" (Mattesky, [0037]).

FF2. Polytetrafluoroethylene (PTFE or TEFLON™) is notoriously well known for use as a non-stick or slippery coating. *See, e.g., Webster's New World Dictionary* 1374 (Victoria Neufeldt et al. eds., 3rd coll. ed., Simon & Schuster, Inc. 1988). Polytetrafluoroethylene is a fluoropolymer.

FF3. Willius discloses an apparatus and method for hanging books and book-like items for storage (Willius, col. 1, ll. 7-9). The apparatus includes under-cabinet and wall-mounted receptacle bars 26, 50 for receiving hangers 10, the hangers 10 designed to be inserted between the pages of the book proximate the spine and binding (Willius, col. 3, ll. 29-43, 49-52, and col. 3, l. 58 to col. 4, l. 13, and Figs. 5 and 8).

FF4. Willius's receptacle bar is formed so that, when mounted, its longest span is inclined at approximately 15° with respect to the horizontal surface to which it is mounted. Thus, each book hung on the receptacle bar automatically slides by force of gravity to the bar's lowest point to make room for other books and keep multiple books together for efficient use of space and a neat appearance. (Willius, col. 3, l. 63 to col. 4, l. 2)

FF5. Willius describes the coatings on both the hangers and receptacle bars as having "a low coefficient of friction" (Willius, col. 4, ll. 14-16) and, in particular, teaches that the hangers and receptacle bars can be coated with "teflon" (Willius, col. 4, ll. 26-27).

FF6. While Willius expressly associates the low coefficient of friction coatings only with permitting the surface of the hanger to slide easily on the pages of the book (Willius, col. 4, ll. 15-17), Willius's disclosure of such coatings on the receptacle bars as well as the hangers conveys easy sliding of the hangers along the receptacle bars, in furtherance of the objective of having the books slide by gravity along the inclined span of the receptacle bar to the bar's lowest point (FF4).

PRINCIPLES OF LAW

The selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. *In re Leshin*, 277 F.2d 197, 199, 125 USPQ 416, 418 (CCPA 1960).

"The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1740, 82 USPQ2d 1385, 1395 (2007).

> When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, §103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in

> the same way, using the technique is obvious unless its actual application is beyond his or her skill.

Id., 127 S. Ct. at 1740, 82 USPQ2d at 1396.

ANALYSIS

Mattesky's teaching of coating the display hook or retainer member with a suitable coating to provide a smooth slippery surface to enhance appearance and permit sliding of the packages on the hook or retainer member (FF1) in combination with Willius's teaching of a low coefficient of friction coating on the receptacle bar for easy sliding of books by force of gravity along the inclined span thereof (FF6) and of polytetrafluoroethylene (FF5), a well known slippery fluoropolymer coating (FF2), in particular, would have prompted a person of ordinary skill in the art of display hooks to provide a fluoropolymer coating on the display hook of Mattesky, Brozak in view of Mattesky, or Kump in view of Mattesky to provide a smooth slippery surface. The modification involves the mere substitution of one material with another material known for its suitability as a slippery coating and would yield a predictable variation whose application is well within the skill of the art.

The issue of whether or not Willius is within Appellants' field of endeavour (Appeal Br. 8-10) is not dispositive, as Appellants, Mattesky, and Willius all address the problem of providing a slippery coating on a hook or bar to facilitate sliding of articles along the hook or bar and a person of ordinary skill in Appellants' field of endeavour would have recognized the suitability of the well known polytetrafluoroethylene coating to provide a slippery surface on the display hook of any of Mattesky, Brozak in view of

Mattesky, and Kump in view of Mattesky. We therefore conclude that Appellants have not demonstrated that the Examiner erred in determining it would have been obvious, in view of the teachings of Willius, to modify the display hook of Mattesky, Brozak in view of Mattesky, or Kump in view of Mattesky, to provide a fluoropolymer coating. All of the rejections are sustained.

SUMMARY

The decision of the Examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2006).

AFFIRMED

vsh

REINHART BOERNER VAN DEUREN P.C.
2215 PERRYGREEN WAY
ROCKFORD, IL 61107