

The opinion in support of the decision being entered today  
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* GLORIA NEWTON

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Appeal 2006-3343  
Application 10/372,564  
Technology Center 3600

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Decided: June 20, 2007

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Before RICHARD E. SCHAFER, ADRIENE LEPIANE HANLON and  
JAMES T. MOORE, *Administrative Patent Judges*.

MOORE, *Administrative Patent Judge*.

DECISION ON APPEAL

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STATEMENT OF CASE

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The Appellant appeals under 35 U.S.C. § 134 (2002) from a final  
rejection of claims 1 to 20. We have jurisdiction under 35 U.S.C. § 6(b)  
(2002).

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The Appellant claims a fitted fabric pet bed mattress cover.

1 Claim 1 is the broadest independent claim under appeal, and reads as  
2 follows:

- 3 1. A multipurpose disposable contour sheet for a pet bed  
4 mattress, the disposable contour sheet comprising:  
5 an unbroken and unfolded sheet of non-woven stabilizing  
6 interfacing fabric sized to cover completely an upper surface  
7 and sides of a pet bed mattress and to partly cover a bottom  
8 surface thereof; and  
9 a strip of stretchable material attached to a peripheral  
10 edge of the sheet of interfacing fabric while the stretchable  
11 material is in a stretched condition.  
12  
13

14 The Examiner rejected claims 1-20 under 35 U.S.C. § 103(a) (2004).

15 The prior art relied upon by the Examiner in rejecting the claims on  
16 appeal is:

17 Albin	US 5,002,014	Mar. 26, 1991
18 Chamberlain	US 5,046,207	Sep. 10, 1991
19 Denesuk	US 6,196,156	Mar. 6, 2001

20  
21 We AFFIRM.

## 22 ISSUE

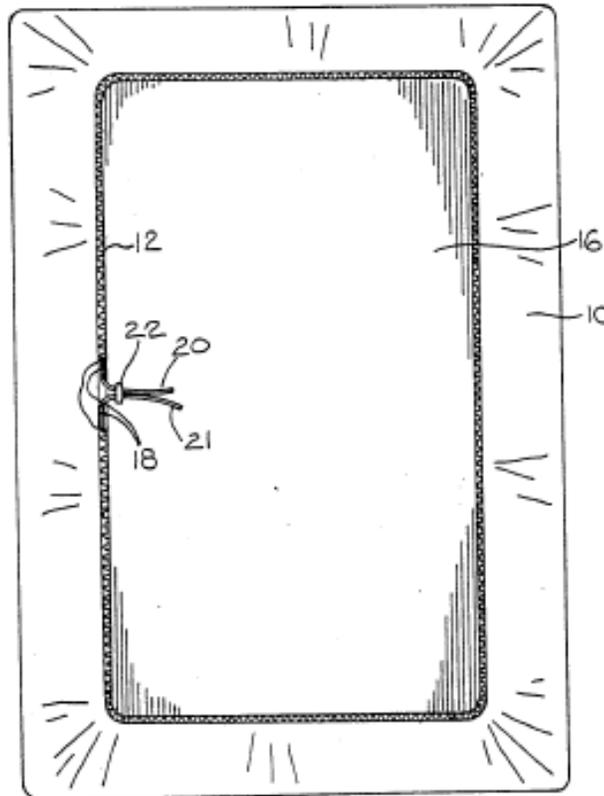
23 Did the Examiner err in determining that selection of a known  
24 material for use in a known manner is obvious?

## 25 FINDINGS OF FACT

- 26  
27 1. Chamberlain teaches a fitted bed sheet. (1:20-21).  
28 2. Chamberlain teaches that the bed sheet is formed of  
29 “conventional fabric material.” (2:5).

1           3.     Chamberlain describes a peripheral elastic band sewn to the  
2 sheet to allow snug fitting at the corners. (2:4-7).

3           4.     Chamberlain's figure 6 is a planar view of the underside of the  
4 fitted bed sheet (Fig. 6)<sup>1</sup> which is reproduced below:



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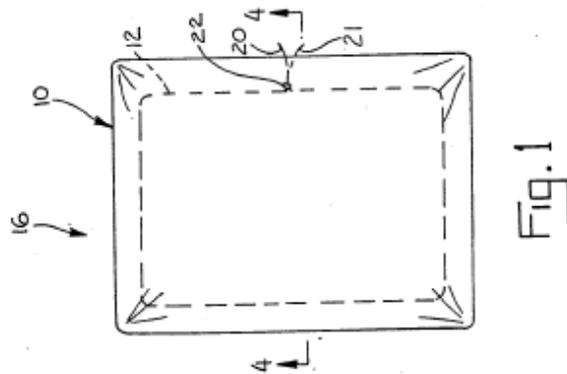
6

7           5. There is no description in Chamberlain preventing a pet from using  
8 the mattress.

9           6. Chamberlain's figure 1, reproduced below, is a top plan view of a  
10 bed cover.

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<sup>1</sup> Figure 6 is a bottom view of a mattress having a fitted sheet.



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2           7. Chamberlain's fitted sheet covers an upper surface and sides of the  
3 mattress completely. (Fig. 1, Fig. 6)

4           8. Denesuk describes a pet bed cover made from non-woven fabrics  
5 (12:50-65).

6           9. Albin teaches a pet bed cover using hypoallergenic materials (3:50-  
7 54).

8           10. Covers for pet pillows or mattress pads are well known.  
9 (Specification, p. 1, l. 21).

10           11. Fitted mattress covers are also well known. (Specification, p.1, ll.  
11 21-22).

12           12. Disposable pad or mattress covers are well known.  
13 (Specification, p. 1, ll. 21-22).

1 PRINCIPLES OF LAW

2 If a technique has been used to improve one device, and a person of  
3 ordinary skill in the art would recognize that it would improve similar  
4 devices in the same way, using the technique is obvious unless its actual  
5 application is beyond his or her skill. *KSR International Co. v. Teleflex Inc.*,  
6 127 S. Ct. 1727, 1740, 82 USPQ2d 1385, 1396 (2007).

7 The combination of familiar elements according to known methods is  
8 likely to be obvious when it does no more than yield predictable results.  
9 *KSR*, 127 S. Ct. at 1739, 82 USPQ2d at 1395.

10 The intended use of an apparatus is not a relevant limitation with  
11 respect to the patentability of the structure defined in an apparatus claim. *In*  
12 *re Yanush*, 477 F.2d 958, 959, 177 USPQ 705, 706 (CCPA 1973).

13

14 ANALYSIS

15 I. The Rejection of Claims 1-9 and 11-14 Under 35 USC §103(a) as  
16 being unpatentable over Chamberlain in view of Denesuk.

17 The Examiner has found that Chamberlain teaches a disposable  
18 contour sheet capable of being used with a pet mattress, the sheet being an  
19 unbroken and unfolded seamless sheet of interfacing fabric. The sheet is  
20 sized to cover completely an upper surface and sides of a mattress and to  
21 partly cover a bottom surface. A strip of stretchable material is attached to a  
22 periphery of the sheet. Finally, the Examiner has found that the sheet and  
23 material of Chamberlain is disposable in that it can be thrown away after  
24 repeated use. (Final Rejection, May 31, 2005, p. 2, ll. 10-17).

1           The Examiner has also found that Denesuk teaches heavy weight non-  
2 woven stabilized non-stretch fabric material for bedding articles. (Id. p. 2, ll.  
3 19-20).

4           The Examiner concludes that it would have been obvious to one of  
5 ordinary skill in the art at the time the invention was made to employ the  
6 heavy weight non-woven stabilized non-stretch fabric material as taught by  
7 Denesuk in Chamberlain, as the material was known to be suitable. Id. p. 2,  
8 l. 21- p. 3, l. 3.

9           The Appellant urges that Chamberlain “teaches only a bed sheet 10  
10 formed of conventional fabric material” (Br. p. 8, ll. 10-11) (emphasis in  
11 original) whereas the Appellant’s claimed fabric is a disposable contour  
12 sheet of non-woven stabilizing interfacing fabric. (Id. p. 8, ll. 12-14).

13           The thrust of this argument appears to be that Chamberlain must be  
14 limited to a conventional “bed sheet” material which would thus render the  
15 claimed non-woven stabilized interfacing fabric nonobvious because it is not  
16 normally used as a bed sheet material. (Id. P. 10, l. 7-9).

17           Prior to addressing the merits of the rejections, we consider the scope  
18 and meaning of certain terms that appear in appealed claim 1. *Gechter v.*  
19 *Davidson*, 116 F.3d 1454, 1457, 1460 n.3, 43 USPQ2d 1030, 1032, 1035 n.3  
20 (Fed. Cir. 1997). In proceedings before the U.S. Patent and Trademark  
21 Office (PTO), unpatented claims must be interpreted by giving words their  
22 broadest reasonable meanings in their ordinary usage, taking into account  
23 the written description found in the specification. *In re Morris*, 127 F.3d  
24 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).

1           The term which is pivotal here is “non-woven stabilizing interfacing  
2 fabric” and what it means in the context of the Appellant’s claims. The  
3 Specification gives us some help in interpreting this term:

4           As illustrated, the disposable contour sheet 10 of the invention is  
5 formed of a single, flat, unbroken and unfolded sheet of heavy  
6 interfacing fabric that is soil, snag, run and tear resistant, while being  
7 pliant and semi-absorbant of water and adhering loose hair to itself.  
8 Known prior art use of interfacing fabric is limited to the garment,  
9 upholstery and craft industries. Interfacing is a supportive fabric that  
10 is placed between the facing and garment fabric. Interfacing fabric is  
11 commercially available as woven, non-woven or knit fabrics that can  
12 be applied by fusing (fusible) or sewing (sew-in). Non-woven  
13 interfacings are usually made of polyester, rayon, nylon or a blend of  
14 those fibers. The fibers are distributed at random and held together by  
15 chemical binders and heat. Because they do not have a yarn direction  
16 or grain, non-woven interfacings do not ravel and can be cut in any  
17 direction.

18  
19           The weight and amount of stretch of non-woven interfacing fabrics  
20 vary significantly. Some non-woven interfacing fabrics are relatively  
21 stable; others have varying amounts of stretch and give. Non-woven  
22 stabilizing interfacings do not give or stretch appreciably in any  
23 direction. Interfacing weights vary from sheer to quite heavy. The  
24 heavy non-woven stabilized interfacings are primarily used for purses,  
25 draperies and craft projects, and may be desirable in the garment  
26 industry primarily for applications such as buttonholes and  
27 waistbands. (Specification, p. 5, l. 28 - p. 6, l.15).

28  
29           We conclude that, in the context of the Appellant’s Specification, a  
30 non-woven stabilizing interfacing fabric includes a non woven polyester  
31 fabric which is not stretchy. With this background in place, we look to the  
32 Appellant’s contentions.

1           The Appellant first urges that that the disclosure of Chamberlain must  
2 be read as teaching away from the claimed invention in that Chamberlain is  
3 limited to conventional human bed sheet fabric material and no other. (Br.  
4 8, ll. 10-21). The foundation for this argument is that the sizes of the  
5 Chamberlain mattresses are said to be between twin and queen size and there  
6 is absolutely no other alternative for the fabric.

7           We find this argument unpersuasive - the Appellant is reading  
8 Chamberlain's disclosure much too narrowly.

9           First, we observe that Chamberlain states that the sheet "is formed of  
10 conventional fabric material and includes a peripheral elastic band 12 sewn  
11 onto the sheet to allow snug fitting at the corners of a bed." (2:4-7).

12 Chamberlain is not limited, as Appellant urges, to "conventional bed sheet  
13 fabrics" - Chamberlain's description literally encompasses all conventional  
14 fabric materials.

15           Second, Chamberlain states that "the overall dimensions of the sheet  
16 are offered only as examples of the concept and are not limiting as to the  
17 construction of the sheet." (2:11-12). The description of between twin and  
18 queen reference particular embodiments (Fig. 2 and Fig. 1) which are said  
19 not to be limiting. Accordingly, the argument that the size of the mattresses  
20 of Chamberlain limits the fabric to those normally used in human beds is  
21 unconvincing.

22           Therefore, we do not agree with the Appellant that Chamberlain  
23 teaches away from the claimed invention.

24           The Appellant next urges that Denesuk fails to teach an "interfacing  
25 fabric" (Br. p. 11, ll. 16-22). However, as the Examiner pointed out,

1 although the claim uses the term “interfacing fabric” the fabric is not being  
2 used as an interfacing fabric. (Answer, p. 4, ll. 11-14). Rather, the fabric  
3 being used is a one layer bedding sheet made from polyester, rayon, and  
4 nylon (which is non-stretchy). Denesuk describes:

5 [A] textile-based bedding article for a domestic animal comprises an  
6 outer textile casing defining a shape in the form of an article of a size  
7 which can support a domestic animal, an inner filling and at least one  
8 of the outer textile casing and the inner filling having an effective  
9 micro-inhibiting agent or property. The outer textile casing can  
10 comprise a woven, a non-woven or a knit fabric made from natural or  
11 synthetic fibers.” (2:22-29)

12

13 Non-Wovens

14 Some articles are [sic - of] the present invention may be made using  
15 non-woven fabrics. These are generally made from extruded  
16 continuous filaments or from fiber webs or batts strengthened by some  
17 form of bonding between or among fibers. The fibers may be bonded,  
18 e.g., by heating (including use of low-melting coatings), by adhesives,  
19 stitch-bonding or mechanical interlocking (e.g., needling).

20

21 A preferred base material is often polyester or olefin fibers or  
22 filaments...(12:50-57).

23

24 Denesuk above describes a non-woven polyester fabric as an outer  
25 casing. The outer casing is not described as stretchy, but as defining a shape  
26 in the form of an article which can support a domestic animal.  
27 Accordingly, giving the Appellant’s claim its broadest reasonable  
28 interpretation consistent with the description, the claim encompasses  
29 Denesuk’s polyester casing which defines the shape of the article for holding  
30 a domestic animal.

31 We therefore agree with the Examiner’s conclusion that it would have  
32 been obvious to one of ordinary skill in the art at the time the invention was

1 made to combine the non-stretchy polyester pet bed outer covering of  
2 Denesuk with Chamberlain's fitted sheet.

3 The Appellant additionally urges that interfacing fabric is known only  
4 for purses, draperies, craft projects, buttonholes and waistbands but such  
5 substitution "is clearly not suitable for the purpose intended of the bed sheet  
6 for human occupancy of Chamberlain." (Br. p. 13, l. 4-8).

7 This contention is without merit. First, the Appellant has put forth no  
8 persuasive evidence that interfacing fabric is not suitable for the bed sheet of  
9 Chamberlain. We have only attorney argument on this point, which is not  
10 evidence. Second, as pointed out by the Examiner, pets have been known to  
11 sleep on twin or queen sized beds (Answer, p. 4, ll. 1-6). Thirdly, the  
12 Appellant has stated that interfacing fabric is known in upholstery  
13 (Specification, p. 6, l. 3), which contradicts the Appellant's more limited  
14 assertion.

15 The Appellant next urges, inter alia, that the prior art must suggest the  
16 desirability of the claimed invention. (Brief, p. 13, l. 9 - p. 18, l. 25). This  
17 restrictive viewpoint on the standard of obviousness has been deemed  
18 incorrect by the United States Supreme Court in *KSR v. Teleflex*.

19 When a work is available in one field of endeavor, design incentives  
20 and other market forces can prompt variations of it, either in the same  
21 field or a different one. If a person of ordinary skill can implement a  
22 predictable variation, §103 likely bars its patentability. For the same  
23 reason, if a technique has been used to improve one device, and a  
24 person of ordinary skill in the art would recognize that it would  
25 improve similar devices in the same way, using the technique is  
26 obvious unless its actual application is beyond his or her skill.  
27 *Sakraida* and *Anderson's-Black Rock* are illustrative—a court must  
28 ask whether the improvement is more than the predictable use of prior

1 art elements according to their established functions. *KSR*, 127 S.  
2 Ct. at 1739, 82 USPQ2d at 1396.

3  
4 We find Chamberlain describes a contour sheet which is an unbroken  
5 and unfolded seamless sheet of fabric. (See Figs 1 and 6). The sheet is sized  
6 to cover completely an upper surface and sides of a mattress and to partly  
7 cover a bottom surface. A strip of stretchable material is attached to a  
8 periphery of the sheet. Chamberlain also describes the use of a  
9 “conventional fabric material” (2:5) for its bed sheet.

10 Denesuk describes a non-woven polyester fabric suitable for use in a  
11 pet bed. (12:49-65).

12 Finally, the Appellant herself characterizes the disposable contour  
13 sheet as being formed from a “conventional interfacing fabric”.  
14 (Specification, p. 3, l. 20).

15 Each feature of the presently claimed invention is individually known  
16 in the prior art; but that alone does not render the claimed invention obvious.  
17 Rather, the question squarely presented is whether it would have been  
18 obvious to substitute a non-stretchy polyester fabric for the “conventional”  
19 fabric of Chamberlain’s fitted bed sheet.

1           There is no evidence that the claim elements are anything other than  
2 the predictable use of prior art elements according to their established  
3 functions. We find that the Appellant has substituted a known fabric (a  
4 stabilizing non-woven interfacing fabric) into a known apparatus (a fitted  
5 sheet) in a known manner. The combination of familiar elements according  
6 to known methods is likely to be obvious when it does no more than yield  
7 predictable results. *KSR*, 127 S. Ct. at 1739, 82 USPQ2d at 1395.

8           Accordingly, we conclude that the Examiner did not err in  
9 determining that Chamberlain and Denesuk would have rendered claim 1  
10 obvious to one of ordinary skill in the art at the time the invention was made.

11           The Appellant raises separate issues with regard to claims 3 and 9.  
12 She asserts for claim 3 that both Chamberlain and Denesuk fail to disclose a  
13 “heavy weight non-woven stabilized non-stretch garment interfacing fabric”  
14 and for claim 9 that Chamberlain and Denesuk fail to disclose a  
15 “conventional garment interfacing fabric.” Merely pointing out what claims  
16 cover is not a separate argument for patentability. See 37 C.F.R. §  
17 41.37(c)(vii).

18           Furthermore, the term “garment interfacing fabric” does not add any  
19 structural limitations. It is simply a statement of one possible end use for a  
20 material, which material encompasses the polyester nonwoven of Denesuk.  
21 The intended use of an apparatus is not a relevant limitation with respect to  
22 the patentability of the structure defined in an apparatus claim. *In re*  
23 *Yanush*, 477 F.2d 958, 959, 177 USPQ 705, 706 (CCPA 1973).

24           Accordingly, this argument is unpersuasive.

25           We therefore affirm this rejection as it relates to claims 1-9 and 11-14.

1           II. The Rejection of Claim 10 under 35 U.S.C. §103(a) as being  
2 Unpatentable over Chamberlain, Denesuk, and Albin.

3           The Examiner has found that Albin teaches a hypoallergenic cover for  
4 an animal mattress. (Answer, p. 5., ll. 15-16). The Examiner concludes that  
5 it would have been obvious to use the hypoallergenic fabric of Albin to  
6 prevent allergy. (Id. ll. 17-21).

7           The Appellant urges that Albin fails to cure the deficiencies of  
8 Chamberlain and Denesuk relating to non-woven stabilized non-stretch  
9 garment interfacing fabric, and teaches away by including woven fabrics.  
10 (Br. p. 23, ll. 9-12).

11           As discussed above, the combination of Chamberlain and Denesuk  
12 render the claimed non-woven stabilized non-stretch garment interfacing  
13 fabric obvious.

14           As regards the argument relating to teaching away, it is noted that  
15 Albin is relied upon by the Examiner to show that hypoallergenic materials  
16 allow “any animal, no matter how sensitive, can use the mattress without  
17 experiencing any dermatological consequences.” (3:50-54).

18           Albin is not relied upon for the woven/nonwoven nature of the  
19 covering fabric. The choice of woven versus nonwoven is a choice of one  
20 type from a known genus of two types of known fabrics.

21           Accordingly, we are not persuaded that Albin teaches away from the  
22 claimed invention by utilizing a mesh fabric.

23           We affirm this rejection as it relates to claim 10 of the instant  
24 application.



Appeal 2006-3343  
Application 10/372,564

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