

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* WENDELL B. COLSON

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Appeal 2006-3364  
Application 10/305,972  
Technology Center 3600

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Decided: June 5, 2007

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Before TERRY J. OWENS, ANITA PELLMAN GROSS, and  
ROBERT E. NAPPI *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellant appeals from a rejection of claims 1-21, which are all of the pending claims.

## THE INVENTION

The Appellant claims a covering for an architectural opening, e.g., a pleated shade or a roman shade for a window. Claims 11 and 18 are illustrative:

11. A covering for an architectural opening comprising:
  - a substantially horizontally-extending headrail, the headrail being adapted for attachment to a support surface;
  - a substantially horizontally-extending footrail, the footrail being vertically disposed beneath the headrail;
  - a continuous roman shade, the continuous roman shade coupled to the headrail at a top end and to the footrail at a bottom end;
  - a substantially vertically-orientated spacer cord, the spacer cord being fixedly attached to the headrail at a top end and to the footrail at a bottom end, the spacer cord being adhesively bonded to the continuous roman shade at a plurality of vertically-spaced locations, said bonding being with a bead of adhesive at a single point at each vertically spaced location.

18. A covering for an architectural opening comprising:
  - a continuous extendable shade having a top end and a bottom end; and
  - a substantially horizontally-orientated spacer cord, the spacer cord being adhesively bonded to the continuous shade at a plurality of horizontally-spaced locations proximate the bottom end, said bonding being with a bead of adhesive at a single point at each horizontally spaced location.

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#### THE APPLIED PRIOR ART

Fairbanks	US 4,582,109	Apr. 15, 1986
Alcocer	US 5,184,659	Feb. 09, 1993

Appellant's prior art figures 1-4

#### THE REJECTIONS

The claims stand rejected under 35 U.S.C. § 103 as follows: claims 1-17 and 21 over the Appellant's prior art figures 1-4 in view of Alcocer, and claims 18-20 over Fairbanks in view of Alcocer.

#### OPINION

We affirm the aforementioned rejections.

##### Rejection over the Appellant's prior art figures 1-4 in view of Alcocer

The Appellant's prior art figures 1 and 2 show pleated blinds (10) having spacer cords or straps (22) attached to a headrail (14), a midrail (20) and a footrail (16) (Spec. 1: 22 – 2:10). The Appellant's prior art figures 3 and 4 show roman shades (30) having spacer cords (44) attached to a headrail (36), a footrail (38) and, between sections of fabric shade material (32), a plurality of vertically spaced ribs (34) (Spec. 2:26 – 3:5). The attachment of the spacer cords to the ribs is by way of staples (46) (Spec. 3:2-3).

Alcocer discloses an aircraft window shade having a pair of narrow width, vertical pleated strips (30) of textile material sewed, stapled or adhesively secured to vertically spaced ribs (10b) between vertically adjacent pleats (10a) (col. 4, ll. 37-54).

The Appellant points out that Alcocer discloses sewing, stapling or adhesively securing bands or strips, and argues that it would not appear sufficient to adhesively secure shade material to a small cord at tiny finite locations (Br. 7, 9-12). The Appellant's claims do not require that the cord is small or that the adhesive beads are tiny. The Appellant's disclosure that it was known to use spacer cords or straps (Spec. 2:8) indicates that spacer cords need not be thin but, instead, can be more strap-like. Regardless, because, in a window environment, pleated and roman shades tend to not be subject to physical abuse, one of ordinary skill in the art would have had a reasonable expectation that any of the alternative fastening techniques disclosed by Alcocer would be adequate to attach a spacer cord to a pleated or roman shade section at the vertically spaced locations in the Appellant's prior art figures 1 and 3.

The Appellant argues that because Alcocer uses spacer strips which require a large amount of adhesive, Alcocer would have led to one of ordinary skill in the art to use a large amount of adhesive to adhere a spacer cord to a pleat such that the cord is adhesively bonded along the top and bottom surfaces of the pleat (Br. 8-12; Reply Br. 1-2). The Appellant

argues that the Appellant's minimization of the amount of adhesive improves the blind's aesthetics (Reply Br. 1-2). Alcocer's disclosure of adhesively bonding the vertical pleated strips to pleated shades only at the vertically spaced ribs (col. 4, ll. 41-45; fig. 2) would have led one of ordinary skill in the art, through no more than ordinary creativity, to bond a spacer cord to pleated material only at those locations in the shades shown in the Appellant's prior art figures 1 and 3. *See KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1742, 82 USPQ2d 1385, 1397 (2007) ("A person of ordinary skill is also a person or ordinary creativity, not an automaton."). As pointed out above, because pleated and roman shades are used in an environment wherein they tend to not be treated harshly, one of ordinary skill in the art would have reasonably expected an adhesive bead to be adequate to bond the spacer cord to the pleated material. Moreover, although the prior art need not be modified for the purpose of solving the problem solved by the Appellant, *see In re Kemps*, 97 F.3d 1427, 1430, 40 USPQ2d 1309, 1311 (Fed. Cir. 1996); *In re Beattie*, 974 F.2d 1309, 1312, 24 USPQ2d 1040, 1042 (Fed. Cir. 1992); *In re Dillon*, 919 F.2d 688, 693, 16 USPQ2d 1897, 1901 (Fed. Cir. 1990) (en banc), *cert. denied*, 500 U.S. 904 (1991), it also would have been readily apparent to one of ordinary skill in the art that attaching the spacer cord and pleated material using an adhesive bead would minimize the adhesive requirement and would produce a more attractive shade than one having the structure argued by the Appellant wherein a cord is fastened to the top and bottom portions of the pleats.

The Appellant argues that Alcocer would not have fairly suggested to one of ordinary skill in the art that using spacer cords in place of pleated strips would reduce costs and complexity (Br. 7-8). As pointed out above, for a *prima facie* case of obviousness to be established the prior art need not be modified for the purpose of solving the problem addressed by the Appellant. *See Kemps*, 97 F.3d at 1430, 40 USPQ2d at 1311; *Beattie*, 974 F.2d at 1312, 24 USPQ2d at 1042; *Dillon*, 919 F.2d at 693, 16 USPQ2d at 1901. The Examiner relies upon the Appellant's admitted prior art for a disclosure of spacer cords (Final Rejection mailed April 13, 2004, p. 2). Alcocer's indication that mechanical fasteners and adhesives are effective for bonding spacing strips to ribs between sections of pleated material (col. 4, ll. 41-45) would have led one of ordinary skill in the art, through no more than ordinary creativity, to use adhesive as an alternative to mechanical fasteners for fastening the spacer cords at the joints between the pleated material sections in the Appellant's prior art figures 1 and 3. *See KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. at 1742, 82 USPQ2d at 1397.

The Appellant argues that it would have been unexpected to one of ordinary skill in the art that an adhesive bead at a point location "would provide the necessary strength for reliably obtaining uniform spacing of the pleats" (Reply Br. 2). The Appellant's claims do not require reliably obtaining uniform spacing of the pleats. Regardless, the Appellant has not provided evidence of unexpected results. Arguments of counsel cannot take the place of evidence. *See In re De Blauwe*, 736 F.2d 699, 705, 222 USPQ 191, 196 (Fed. Cir. 1984); *In re Payne*, 606 F.2d 303, 315, 203 USPQ 245, 256 (CCPA 1979).

For the above reasons we are not convinced of reversible error in the Examiner's rejection over the Appellant's admitted prior art in view of Alcocer.

Rejection over Fairbanks in view of Alcocer

Fairbanks discloses a pleated window shade having pleated material (12) fastened at fold lines (16) to restraint strips (27, 27') by plastic fasteners (28) (col. 3, l. 54 – col. 4, l. 9).

The Appellant argues that Fairbanks does not disclose using adhesive to secure the restraint strips to the pleated material (Br. 8). Alcocer's indication that both mechanical fasteners and adhesives are suitable for fastening spacer strips to pleated material joints (col. 4, ll. 41-45; fig. 2) would have led one of ordinary skill in the art, through no more than ordinary creativity, to use an adhesive to fasten Fairbanks' restraint strips to the pleated material joints. *See KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. at 1742, 82 USPQ2d at 1397.

The Appellant argues that Fairbanks does not disclose or suggest that using spacer cords secured to the pleated material with adhesives would reduce cost and complexity (Br. 8). The Appellant's admission that spacer cords and straps were known in the art (Spec. 2: 6-8) indicates that one of ordinary skill in the art would have used either restraint straps or spacer cords in Fairbanks' pleated window shade. As pointed out above, the motivation for using Alcocer's adhesive instead of Fairbanks' plastic fasteners need not be to solve the particular problem (cost and complexity) addressed by the Appellant. *See Kemps*, 97 F.3d at 1430, 40 USPQ2d at 1311; *Beattie*, 974 F.2d at 1312, 24 USPQ2d at 1042; *Dillon*, 919 F.2d at

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693, 16 USPQ2d at 1901. An adequate motivation would have been to attach the spacer cord to the pleated material joints.

We therefore are not convinced of reversible error in the rejection over Fairbanks in view of Alcocer.

#### DECISION

The rejections under 35 U.S.C. § 103 of claims 1-17 and 21 over the Appellant's prior art figures 1-4 in view of Alcocer, and claims 18-20 over Fairbanks in view of Alcocer are affirmed.

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

AFFIRMED

vsh

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