

1 Rejection under 35 U.S.C. § 102(b)

2 Regarding the claims whose rejections are reversed, we need to address only
3 the independent claims, i.e., claims 1 and 13. Each of those claims requires a
4 guard formed as a single, unitary piece with a zipper slide.

5 Claims 1 and 13

6 Baroky discloses “a separate, readily attachable guard suitable for
7 retrofitting conventional slide fasteners, which will divert adjacent fabric material
8 away from the slider, to prevent catching and subsequent jamming as the slider is
9 moved along” (Baroky, col. 1, ll. 25-30). The guard is “a snap-on guard **1**,
10 attachable to the front of the slide **2** of a conventional zipper fastener **3**, which is
11 generally crescent-shaped to allow the rear inside surface to be fit about the
12 forward end **4** of the slide **2**” (Baroky, col. 2, ll. 6-10).

13 The Examiner argues that Baroky’s “zipper guard can be considered as
14 being formed as a single, unitary piece with the zipper slider broadly interpreted
15 after the zipper guard is snap fitted with the slider, the end result, shown in Fig. 1
16 of Baroky, a zipper guard formed as a single unitary piece with a zipper slider”
17 (Answer 5). During patent prosecution, claims are to be given their broadest
18 reasonable interpretation consistent with the Specification, as the claim language
19 would have been read by one of ordinary skill in the art in view of the
20 Specification. *See In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed.
21 Cir. 1989); *In re Sneed*, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir.
22 1983). The ordinary meaning of “unitary” is “having the character of a unit:
23 UNDIVIDED, WHOLE”.² The Appellant’s Specification discloses that the
24 integral zipper guide and guard are “formed as a single unit” as in a one-step

² *Webster’s New Collegiate Dictionary* 1279-80 (G. & C. Merriam 1973).

1 molding operation (Specification 3:0008). Thus, the Specification is consistent
2 with the ordinary meaning of “unitary”. Baroky’s zipper guard and zipper slide,
3 when snapped together, have the character of a unit and are whole and undivided.
4 Hence, the snapped-together pieces are unitary. That combination of two snapped-
5 together pieces, however, is not a single piece. Hence, the Examiner has not
6 established a prima facie case of anticipation of the inventions claimed in the
7 Appellant’s claims 1 and 13, or their dependent claims 2, 5, 12 and 15.

8 Claim 21

9 Claim 21 requires that the guard and zipper slide form a piece that is unitary,
10 but the claim does not require that the unitary piece is a single piece. As discussed
11 above, Baroky’s snapped-together guard and zipper slide form a unitary piece.

12 The Appellant argues that Baroky’s guard and zipper slide are not a single,
13 unitary piece (Br. 10; Reply Br. 4). The Appellant, however, does not argue that
14 Baroky fails to disclose a guard and zipper slide that is unitary but need not be a
15 single piece.

16 We therefore are not convinced of reversible error in the Examiner’s
17 rejection of claim 21 under 35 U.S.C. § 102(b).

18 Rejection under 35 U.S.C. § 103

19 The Appellant argues:

20 *Baroky* teaches away from the reference [sic, invention] by stating that “it is
21 therefore the object of the invention to provide a separate, readily attachable
22 guard suitable for retrofitting conventional slide fasteners...” [Baroky,
23 col. 1. ll. 25-27] [Br. 9]^[3]

24 *Baroky* is directed to attaching a separate guard to existing slide
25 fasteners. The patent is directed to a guard that is installed on an already

³ Citations herein to the Brief are to the Amended Appeal Brief, dated May 23, 2006.

1 existing zipper slide. Thus, staying within the object of *Baroky* (i.e.,
2 retrofitting a zipper guard to a zipper slide), it is clear that there is no
3 motivation to provide a single unitary zipper slide and guard, and that the
4 rejections of the claims involve hindsight reasoning. [Br. 10]

5 * * *

6 The obviousness rejection fails to address the fact that the Examiner's
7 interpretation of *Baroky* would defeat the purpose of the reference. Within
8 *Baroky*, it is clearly stated that "the object of the invention to provide a
9 separate, readily attachable guard suitable for retrofitting conventional slide
10 fasteners...". (Column 1, lines 25-27, emphasis added). Throughout the
11 reference, this object is emphasized, and attachment of the two pieces is the
12 main focus of the reference. [Reply Br. 4]

13
14 The determining of obviousness does not require staying within the object of
15 *Baroky*. "The question is not whether the combination was obvious to the patentee
16 but whether the combination was obvious to a person with ordinary skill in the
17 art." *KSR Int'l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1742, 82 USPQ2d 1385, 1397
18 (2007). In making the obviousness determination one "can take account of the
19 inferences and creative steps that a person of ordinary skill in the art would
20 employ." *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396. "A person of ordinary
21 skill is also a person of ordinary creativity, not an automaton." *KSR*, 127 S.Ct. at
22 1742, 82 USPQ2d at 1397.

23 *Baroky*'s disclosure of retrofitting conventional zipper sliders with a
24 separate, readily attachable guard to prevent the sliders from picking up or
25 pinching adjacent fabric material (*Baroky*, col. 1, ll. 13-16, 25-27) would have led
26 one of ordinary skill in the art, through no more than ordinary creativity, to form
27 the slider and guard as one piece in newly-made zippers to avoid the cost and
28 processing step of making and attaching to the slider a separate guard piece. The
29 Examiner has argued that *Baroky* would have led one of ordinary skill in the art to
30 form the slider and guard as one piece to provide "increased rigidity and strength

1 which would ensure proper operating functions as well as omitting the need of a
2 fastening means (connection between the zipper guard and zipper slider) which
3 may become worn or broken. Less parts makes for a more economical structure to
4 manufacture, which affords the zipper slider to be readily attach[ed] to a closure
5 article without additional steps or processes” (Answer 5-6). The Appellant has not
6 challenged the Examiner’s reasoning.

7 For the above reasons we are not convinced of reversible error in the
8 rejection under 35 U.S.C. § 103 of the invention claimed in the Appellant’s
9 claims 1, 2, 5, 12, 13, 15 and 21. We are not convinced of reversible error in the
10 rejection of claim 21 under 35 U.S.C. § 103 for the additional reason that, as
11 discussed above, that claim, which requires that the slider and guard are unitary but
12 does not require that they are a single piece, is anticipated by Baroky. Anticipation
13 is the epitome of obviousness. *See In re Skoner*, 517 F.2d 947, 950, 186 USPQ 80,
14 83 (CCPA 1975); *In re Pearson*, 494 F.2d 1399, 1402, 181 USPQ 641, 644 (CCPA
15 1974).

16 **DECISION**

17 The rejection of claims 1, 2, 5, 12, 13, 15 and 21 under 35 U.S.C. §§ 102(b)
18 over Baroky is reversed as to claims 1, 2, 5, 12, 13 and 15, and affirmed as to
19 claim 21. The rejection of claims 1, 2, 5, 12, 13, 15 and 21 under 35 U.S.C. § 103
20 over Baroky is affirmed.

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

23 **AFFIRMED**
24

Appeal 2006-3390
Application 10/441,783

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3 hh

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