

The opinion in support of the decision being entered today
is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHRISTOPHER PETER OLSON,
KATHLEEN IRENE RATLIFF, and SHIRLEE ANN WEBER

Appeal 2007-0714
Application 10/651,354¹
Technology Center 3700

Decided: August 27, 2007

Before DEMETRA J. MILLS, ERIC GRIMES, and LORA M. GREEN,
Administrative Patent Judges.

GREEN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1, 6-12, 17, 18, 20, 26, 27, and 29-35. We have jurisdiction under 35 U.S.C. § 6(b). Claim 1 is representative of the claims on appeal, and reads as follows:

¹ Kimberly-Clark Worldwide Inc. is the real party in interest (Br. 1).

1. An absorbent article defining a longitudinal centerline, a transverse centerline, opposite first and second waist regions, and a crotch region disposed between and interconnecting the first and second waist regions, comprising:
 - an outer cover having an interior surface and an opposite exterior surface;
 - an absorbent assembly disposed on the interior surface;
 - a permanent character graphic disposed on the outer cover in the first waist region;
 - an active object graphic disposed on the outer cover in the crotch region;
 - wherein the permanent character graphic is interactively interrelated with the active object graphic.

The Examiner relies on the following references:

Timmons	US 4,022,211	May 10, 1977
Howell	US 5,389,093	Feb. 14, 1995

We affirm.

DISCUSSION

Claims 1, 6, 10, 12, 17, 26, 27, 30, 31, and 33 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Timmons.² As Appellants do not argue the claims separately, we focus our analysis on independent claim 1. 37 C.F.R. § 41.37(c)(1)(vii) (2006).

According to the Examiner,

Timmons discloses an absorbent article, as shown in figure 1, comprising an outer cover 14 having interior and exterior surfaces, and an absorbent assembly 12. A permanent character graphic 22 and an active object graphic 16b are disposed on the outer cover 14, as shown in figure 5, and are

² The Examiner also included claim 16 in this ground of rejection (Answer 3) but that claim has been cancelled (Br. 2).

interactively interrelated as components of an alphabet block. At least one permanent character graphic 22 is disposed in the waist region of the article, and at least one active object graphic is disposed in the crotch region of the article, as shown in figure 5.

(Answer 3.)

It is axiomatic that in order for a prior art reference to serve as an anticipatory reference, it must disclose every limitation of the claimed invention, either explicitly or inherently. *See In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1432 (Fed. Cir. 1997).

Appellants argue that the rejection should be reversed because Timmons does not disclose a “character graphic” as defined in the Specification, and that each rejected claim requires a permanent character graphic (Br. 7). Appellants assert that character graphic as defined by the Specification is “a graphic containing an anthropomorphous image, and in particular an image having or suggesting human form or appearance which ascribes human motivations, characteristics or behavior to inanimate objects, animals, natural phenomena, cartoon characters, or the like.” (Br. 7-8; Specification 5.) According to Appellants, neither the blocks nor the alphabet letters of the Timmons patent represents an anthropomorphous image, as they do not have or suggest a human form or appearance (Br. 8).

We agree with Appellants that Timmons does not teach a character graphic as defined by the Specification. We do find, however, that Timmons anticipates the absorbent article of claim 1, and we thus affirm the rejection. But as our reasoning differs from that of the Examiner, we designate the affirmance as a new ground of rejection.

Claim 1 requires a permanent character graphic disposed on the outer cover in the first waist region; and an active object graphic disposed on the outer cover in the crotch region; wherein the permanent character graphic is interactively interrelated with the active object graphic. Both the character graphic and the active object graphic are printed matter.

We recognize that “[t]he Patent and Trademark Office (PTO) must consider all claim limitations when determining patentability of an invention over the prior art,” and “may not disregard claim limitations comprised of printed matter.” *In re Lowry*, 32 F.3d 1579, 1582, 32 USPQ2d 1031, 1034 (Fed. Cir. 1994) (citations omitted). In determining whether the printed matter imparts patentability to a claimed invention, however, “the critical question is whether there exists any new and unobvious functional relationship between the printed matter and the substrate.” *In re Gulack*, 703 F.2d 1381, 1386, 217 USPQ 401, 404 (Fed. Cir. 1983). The following cases are illustrative.

In *In re Miller*, 418 F.2d 1392 (CCPA 1969), the claims were drawn to measuring utensils, such as a cup or a measuring spoon, that had a legend on them that automatically performed the calculation if a cook wished to make a fractional portion of a recipe. *Id.* at 1393-94. While the Solicitor of the Patent Office argued that the legends were printed matter, and thus should be ignored, the court reversed the rejection, finding that there was “a new and unobvious functional relationship between a measuring receptacle, volumetric indicia thereon indicating volume in a certain ratio to actual volume, and a legend indicating the ratio.” *Id.* at 1396.

At issue in *In re Gulack*, 703 F.2d 1381 (Fed. Cir. 1983), was a claim requiring a band, ring, or set of concentric rings; a plurality of digits

imprinted on the band at regularly spaced intervals; and an algorithm by which the appropriate digits were developed. *Id.* at 1382. The court found that there was a functional relationship between the printed matter and the substrate that was different than that disclosed by the prior art, and reversed the Board's conclusion to the contrary. *Id.* at 1387.

The claims in *In re Lowry*, 32 F.3d 1579 (Fed. Cir. 1994), were drawn to a memory containing a stored data structure comprising a plurality of attribute data objects (ADOs). *Id.* at 1580-81. The Board analogized the ADO's to printed matter, and determined that there was no functional relationship between the printed matter, the ADOs, and the substrate, *i.e.*, the memory. *Id.* at 1582. The court reversed, finding that the data structures were not analogous to printed matter, but instead defined functional characteristics of the memory. *Id.* at 1583. Moreover, the court noted that even if the data structures were analogous to printed matter, the "PTO did not establish that the ADO's, within the context of the entire claims, lack a new and unobvious functional relationship with the memory." *Id.* at 1584.

Finally, in *In re Ngai*, 367 F.3d 1336 (Fed. Cir. 2004), at issue was a claim to a kit containing a buffer agent and instructions, with the only difference being the content of the instructions. *Id.* at 1338. The court distinguished its finding in *Gulack*, finding that the "addition of a new set of instructions into a known kit does not interact with the kit in the same way as the numbers interrelated with the band [in *Gulack*]." *Id.* at 1339.

Using the above cases as the framework to guide our analysis, we find that there does not exist a new and unobvious relationship between the printed matter, *i.e.*, the character graphic and the active graphic, and the

substrate, *i.e.*, the diaper, when the limitations of claim 1 are compared to the teachings of the prior art, *i.e.*, Timmons.

The absorbent article of claim 1 requires a permanent character graphic and an active object graphic, wherein the active graphic fades or appears when exposed to urine (Specification 2-3). Timmons teaches an absorbent article having a wetness indicator, such that when the article is dry it shows a decorative or printed pattern, but when the diaper is wet the pattern or color quickly fades (col. 1, ll. 42-46). Moreover, according to Timmons, the coloring agent may be applied in an “unlimited variety of decorative patterns,” with a portion of the pattern consisting of a permanent coloring agent and a portion consisting of a water-dispersible coloring agent (col. 3, ll. 57-61).

The absorbent article of claim 1 and that taught by Timmons have the same relationship between the printed matter and the substrate. Part of the printed matter, the character graphic of claim 1, and the permanent coloring agent of Timmons, remains visible at all times. The other part of the printed matter, the active graphic of claim 1, and the water dispersible coloring agent of Timmons, indicates when the absorbent article, *i.e.*, a diaper, has been exposed to urine. Thus, the character graphic and the active graphic of claim 1, *i.e.*, the printed matter, do not have a new and unobvious relationship with the substrate, *i.e.*, the diaper, as the printed matter in Timmons, and the printed matter of claim 1 both serve the function of indicating when the diaper has been wet.

In addition, claims 7-9 stand rejected under 35 U.S.C. § 103(a) as being obvious over the combination of Timmons and Howell; claim 11 stands rejected under 35 U.S.C. § 103(a) as being obvious over Timmons;

claims 18, 29, 32, 34, and 35 stand rejected under 35 U.S.C. § 103(a) as being obvious over Timmons; and claim 20 stands rejected under 35 U.S.C. § 103(a) as being obvious over Timmons.

As Appellants merely reiterate their arguments as to the rejection of claims 1, 6, 10, 12, 17, 26, 27, 30, 31, and 33 under 35 U.S.C. § 102(b) as being anticipated by Timmons (Br. 10), the rejection of these claims is affirmed for the reasons set forth above.

CONCLUSION

In summary, we find that Timmons anticipates, either alone or in combination with the other cited reference, renders obvious the subject matter of the claims on appeal, *i.e.*, claims 1, 6-12, 17, 18, 20, 26, 27, and 29-35. Because our reasoning differs from that of the Examiner, we designate our affirmance as a new ground of rejection.

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b) (effective September 13, 2004, 69 Fed. Reg. 49960 (August 12, 2004), 1286 Off. Gaz. Pat. Office 21 (September 7, 2004)). 37 C.F.R. § 41.50(b) provides "[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review."

37 C.F.R. § 41.50(b) also provides that the appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

- (1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the Examiner, in which event the proceeding will be remanded to the Examiner. . . .
- (2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

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

AFFIRMED; 37 C.F.R. § 41.50

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KIMBERLY-CLARK WORLDWIDE, INC,
CATHERINE E. WOLF
401 NORTH LAKE STREET
NEENAH WI 54956