

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* LEON R. DOMBROWSKI

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Appeal 2007-1917  
Application 10/222,660  
Technology Center 3600

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Decided: August 3, 2007

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Before TERRY J. OWENS, STUART S. LEVY, and LINDA E. HORNER,  
*Administrative Patent Judges.*

HORNER, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1-20. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

## SUMMARY OF DECISION

We AFFIRM-IN-PART.

### THE INVENTION

The Appellant's claimed invention is to a system for mounting advertising displays that are likely to be changed periodically (Specification 1:6-9). Claims 1 and 6, reproduced below, are representative of the subject matter on appeal.

1. An indoor as well as outdoor display system having readily changeable planar-type signage comprising:

a signage support structure having a front surface, lateral sides and a back surface;

signage having a display face with a generally planar display surface and a contact surface surrounding said display surface, said display face being sized and shaped to fit around said support structure front surface; and

a plurality of spaced apart quick-release fasteners for removably attaching said display face contact surface to said support structure at points on one or both of said lateral sides and back surface, said fasteners having at least a part thereof permanently affixed to one of said signage and said support structure, said fasteners being engaged and disengaged by hand without a tool.

6. An indoor as well as outdoor display system having readily changeable planar-type signage comprising:

a signage support structure including first and second generally vertical side members, a generally horizontal top member, a generally horizontal bottom

member, and top ends and bottom ends, said first side member having one of said top ends and one of said bottom ends, said second side member also having another of said top ends and another of said bottom ends, said top member being attached to said first and second side members at their respective said top ends, said bottom member being attached to said first and second side member at their respective said bottom ends, said top, bottom, first side and second side members defining a front, back and sides of said support structure, said back having a plurality of first fastening means thereon;

a mount for immovably mounting said support structure in a desired location; and

a plurality of different display faces having a display surface and a contact surface, said contact surface further having a plurality of spaced apart second fastening means attached thereto that connect to said first fastening means and said back of said support structure, said first and second fastening means being engaged and disengaged by hand without a tool while said support structure is immovably mounted, said display face being sized and shaped to fit around said support structure such that when said first and second fastening means are engaged, said display face is held taut across said support structure and said support structure front and sides are thereby covered.

### THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Boeniger	US 4,773,174	Sep. 27, 1988
Terrels	US 5,175,911	Jan. 5, 1993
Sekiguchi	US 5,695,346	Dec. 9, 1997

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The following rejections are before us for review:

1. Claims 1, 2, 5, 11-15, and 17-20 stand rejected under 35 U.S.C. § 102(b) as anticipated by Boeniger.
2. Claims 5, 6, 8, 9, and 16 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Boeniger and Sekiguchi.
3. Claims 3, 4, and 20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Boeniger and Terrels.
4. Claims 7 and 10 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Boeniger, Sekiguchi, and Terrels.

#### ISSUES

The issues before us are whether the Appellant has shown that the Examiner erred in rejecting:

- claims 1, 2, 5, 11-15, and 17-20 under 35 U.S.C. § 102(b) as anticipated by Boeniger;
- claims 5, 6, 8, 9, and 16 under 35 U.S.C. § 103(a) as unpatentable over Boeniger and Sekiguchi;
- claims 3, 4, and 20 under 35 U.S.C. § 103(a) as unpatentable over Boeniger and Terrels; and
- claims 7 and 10 under 35 U.S.C. § 103(a) as unpatentable over Boeniger, Sekiguchi, and Terrels.

The issues turn, in large part, on whether Boeniger discloses the claimed fasteners.

### FINDINGS OF FACT

We find that the following enumerated findings are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427, 7 USPQ2d 1152, 1156 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

1. As shown in Figures 4 and 5, Boeniger discloses a complete display frame 12, with a plurality of spaced apart frame elements 1, each having individual rail-like protrusions 5, where the frame elements are spaced about the perimeter of the back of frame 12 and attached to the frame 12 by clamping fasteners 13-16 (Boeniger, col. 2, l. 57 – col. 3, ll. 27, Figs. 4, 5). As such, Boeniger discloses a first part of the fastener (i.e., the frame element 1 having rail-like projection 5) fixed on the support structure (i.e., frame 12) by means of clamping fasteners 13-16.
2. Boeniger does not disclose a single ridge that extends around the entire back of the frame.
3. Boeniger discloses eyes 8 that are permanently affixed to the reproduction 7 (or signage) (Boeniger, col. 2, ll. 16-18 and Fig. 3).
4. Boeniger's fasteners (i.e., rail-like protrusion 5, spring 6, and eye 8) can be engaged and disengaged by hand without a tool by merely hooking one of the spring 6 around the protrusion 5 and the other end of the spring 6 through the eye 8 (Boeniger, col. 2, ll. 13-18 and Fig. 1).

5. The customary meaning of “snap” (noun) is “A clasp, catch, or other fastening device that operates with a snapping sound.” *The American Heritage® Dictionary of the English Language*, 4<sup>th</sup> ed. (2000).
6. The Specification describes the snap fastener as comprised of “cooperating male and female snap members 48 50” (Specification 3, l. 24).
7. The Specification further describes that in use the female snap members 50 are pressed onto and engage respective male snap members to secure the display face 24 to the support structure 22 (Specification 6, ll. 15-30).
8. The spring 6 of Boeniger is not a snap fastener.
9. Sekiguchi discloses the use of one or more upright posts 620 and 622 or vertical columns connected to the bottom beam 614 of an advertising display sign 100 to provide a stand to elevate the display above the ground (Sekiguchi, col. 18, ll. 2-4, Fig. 2).
10. The addition of Sekiguchi’s mounting posts to Boeniger’s display would entail merely the combination of familiar elements according to known methods to yield predictable results. In other words, the addition of mounting posts is no more than a predictable use of prior art elements according to their established functions.
11. Terrels discloses the use of a snap fastener on boats, aircraft and land vehicles to mount a canvas cover 12 on a base 13, for example, the gunwale of a boat (Terrels, col. 1, ll. 10-13 and col. 2, ll. 6-9).

12. We find no reason why one having ordinary skill in the art, faced with the teaching of the display system of Boeniger for use in supporting and suspending flat reproductions, such as photographic reproductions (Boeniger, col. 1, ll. 6-8) would have modified the display system of Boeniger to attach the reproductions to the frame using snap fasteners.
13. While we agree that snap fasteners are generally well known; we find no interrelated teachings in the cited patents; demands known to the design community or present in the marketplace; or background knowledge possessed by a person having ordinary skill in the art, that would have provided an apparent reason to combine the known elements in the fashion claimed by the Appellant's claims 3, 4, 7, 10, and 20.
14. The product sold by the Appellant, the Snapquick Interchangeable Signage product, uses a snap-type fastener (Decl., ¶ 13).
15. The Appellant's objective evidence of non-obviousness demonstrates only that any commercial success of the Snapquick Interchangeable Signage is due to the snap-type fastener and its durability and ease of use.
16. The Appellant's proof of unit sales does not indicate whether the numbers sold were a substantial quantity in the relevant market.
17. The Declarant has chosen not to furnish us with any idea of the size of the market. Also, there is no evidence that the sales of Appellant's product have come at the expense of other prior art display systems.
18. The Appellant's Specification describes the fastening means as including male and female snap fasteners, hook-and-eye fasteners, keyhole

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fasteners, wing nuts, Velcro, bungee cords, elastically-contracted edges on the signage, or “any other suitable means ... so long as it allows for the display face 24 of the signage to be attached and detached easily” (Specification 7:3-10).

19. Boeniger’s fasteners (*i.e.*, rail-like protrusion 5, spring 6, and eye 8) are equivalent to the structure described in the Appellant’s Specification, *e.g.*, bungee cords, for the “fastening means” of claim 6.

#### PRINCIPLES OF LAW

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987), *cert. denied*, 484 U.S. 827 (1987).

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734, 82 USPQ2d 1385, 1391 (2007).

The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966). *See*

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*also KSR*, 127 S.Ct. at 1734, 82 USPQ2d at 1391 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”)

In *KSR*, the Supreme Court emphasized “the need for caution in granting a patent based on the combination of elements found in the prior art,” *id.* at 1739, 82 USPQ2d at 1395, and discussed circumstances in which a patent might be determined to be obvious. In particular, the Supreme Court emphasized that “the principles laid down in *Graham* reaffirmed the ‘functional approach’ of *Hotchkiss*, 11 How. 248.” *KSR*, 127 S.Ct. at 1739, 82 USPQ2d at 1395 (citing *Graham v. John Deere Co.*, 383 U.S. 1, 12 (1966) (emphasis added)), and reaffirmed principles based on its precedent that “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* The Court explained:

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.* at 1740, 82 USPQ2d at 1396. The operative question in this “functional approach” is thus “whether the improvement is more than the predictable use of prior art elements according to their established functions.” *Id.*

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The Supreme Court stated that “[f]ollowing these principles may be more difficult in other cases than it is here because the claimed subject matter may involve more than the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement.” *Id.* The Court explained, “[o]ften, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.” *Id.* at 1740-41, 82 USPQ2d at 1396. The Court noted that “[t]o facilitate review, this analysis should be made explicit.” *Id.*, citing *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”). However, “the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *Id.*

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## ANALYSIS

*Rejection of claims 1, 2, 5, 11-15, and 17-20 under 35 U.S.C. § 102(b) as anticipated by Boeniger*

The Appellant argued claims 1, 2, and 5 as a first group, claims 11-14 as a second group, claims 17-19 as a third group, and claims 15 and 20 as a fourth group (Appeal Br. 12-15). We select claims 1, 11, 17, and 15 as representative claims, respectively, for each group. The remaining claims stand or fall with their respective representative claim. 37 C.F.R. § 41.37(c)(1)(vii) (2006).

With regard to the first group, the Appellant argued that Boeniger does not anticipate claim 1 because it does not disclose “a plurality of spaced apart quick-release fasteners ... having at least a part thereof permanently affixed to one of said signage and said support structure” (Appeal Br. 12). The Examiner found that Boeniger discloses fastening means comprised of Boeniger’s rail-like protrusion 5, tensioning spring 6, and eye 8 (Answer 3). The Appellant responded that the ridge (rail-like protrusion 5) is part of the frame and the holes (eyes 8) are part of the sign, and therefore are not considered part of the separate claimed fasteners that are permanently affixed to either the frame or the sign (Appeal Br. 13). We see little difference between the eye 8 attached to the sign of Boeniger (Finding of Fact 3) and the female or male snap member attached to the sign of Appellant’s invention. Similarly, we see no difference between the rail-like protrusions 5 disposed on multiple frame elements attached around the perimeter of the frame of Boeniger (Finding of Fact 1) and the female or male snap member attached to the frame of

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Appellant's invention. In either case, once the fastening member is attached to the frame or to the sign it becomes a part of the frame or the sign.

Further, the Appellant argues that Boeniger discloses a single ridge (rail-like protrusion 5) extending around the entire back of the frame, which is not a plurality of spaced apart fasteners, as claimed (Appeal Br. 13). The Appellant misunderstands the disclosure of Boeniger. As shown in Figures 4 and 5, Boeniger discloses a complete display frame 12, with a plurality of spaced apart frame elements 1, each having individual rail-like protrusions 5, where the frame elements are spaced about the perimeter of the back of frame 12 and attached to the frame 12 by clamping fasteners 13-16 (Finding of Fact 1). As such, Boeniger does not disclose a single ridge as argued by the Appellant. (Finding of Fact 2).

The Appellant further argues that the holes (eyes 8) in Boeniger's sign do not interengage with the ridge, but instead require additional springs (Appeal Br. 13). We do not see where claim 1 recites that part of the fastener "interengages" with another part of the fastener. Rather, claim 1 recites "said fasteners having at least a part thereof permanently affixed to one of said signage and said support structure, said fasteners being engaged and disengaged by hand without a tool." We find that Boeniger's eyes 8 are permanently affixed to the reproduction 7 (or signage) (Finding of Fact 3). Further, we find that the claimed fasteners are not limited to two pieces and that Boeniger's fasteners (i.e., rail-like protrusion 5, spring 6, and eye 8) can be engaged and disengaged by hand without a tool by merely hooking one of the spring 6 around the protrusion 5 and the other end of the spring 6 through the eye 8 (Finding of Fact 4). Accordingly, we find

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that the Appellant has not shown that the Examiner erred in finding that Boeniger anticipates claims 1, 2 and 5.

The Appellant makes the similar arguments for patentability of claim 11, which recites “a plurality of interengageable releasable fasteners having a first part fixed on one of said signage and support structure and another part on other of said signage and support structure.” In particular, the Appellant argues that the ridge (rail-like protrusion 5) of Boeniger is part of the support frame itself, and not a separate fastener part that is “fixed” on the support frame as claimed (Appeal Br. 14). The Appellant again misunderstands the disclosure of Boeniger. As shown in Figures 4 and 5, Boeniger discloses a complete display frame 12, with a plurality of spaced apart frame elements 1, each having individual rail-like protrusions 5, where the frame elements are spaced about the perimeter of the back of frame 12 and attached to the frame 12 by clamping fasteners 13-16 (Finding of Fact 1). As such, Boeniger discloses a first part of the fastener (i.e., the frame element 1 having rail-like projection 5) fixed on the support structure (i.e., frame 12) by means of clamping fasteners 13-16 (Finding of Fact 1). Further, as we found *supra* for claim 1, Boeniger also discloses another part of the fastener (eyes 8) fixed on the signage (reproduction 7) (Finding of Fact 3).

The Appellant further argues that the holes in Boeniger’s sign do not interengage with the ridge (rail-like protrusion 5), as claimed (Appeal Br. 14). We do not see where claim 11 requires that the claimed fasteners be limited to two pieces or require that the part of the fastener fixed on the signage directly engages the part of the fastener fixed on the support structure. Rather, claim 11 merely

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recites “a plurality of interengageable releasable fasteners” where the fastener has “a first part fixed on one of said signage and support structure and another part on other of said signage and support structure.” As we found *supra*, Boeniger’s fasteners (i.e., rail-like protrusion 5, spring 6, and eye 8) can be engaged and disengaged by hand without a tool by merely hooking one end of the spring 6 around the protrusion 5 and the other end of the spring 6 through the eye 8 (Finding of Fact 4). As such, Boeniger’s fasteners are interengageable. Accordingly, we find that the Appellant has not shown that the Examiner erred in finding that Boeniger anticipates claims 11-14.

The Appellant makes similar arguments for patentability of claim 17 (Appeal Br. 14-15), which recites “a plurality of quick-release interengageable fasteners each including at least a portion thereof attached to one of said signage and another portion thereof attached to said support structure.” For the same reasons provided *supra*, we do not see where claim 17 limits the fasteners to being comprised of only two portions. As such, for the same reasons provided for claim 11, Boeniger’s fasteners are interengageable and have a portion attached to the signage and another portion attached to the support structure (Findings of Fact 1, 3, and 4). Accordingly, we find that the Appellant has not shown that the Examiner erred in finding that Boeniger anticipates claims 17-19.

With regard to claim 15, which recites “wherein said fasteners are snap fasteners,” and claim 20, which recites “wherein said first part and said second part of said fastening mechanism are snap fasteners,” the Appellant argues that Boeniger’s “spring is *hooked* on the ridge, not ‘snapped’ into place as described in

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the specification of the present application” (Appeal Br. 15). We agree with the Appellant.

We determine the scope of the claims in patent applications “not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction “in light of the specification as it would be interpreted by one of ordinary skill in the art.” *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364, 70 USPQ2d 1827, 1830 (Fed. Cir. 2004). The customary meaning of “snap” (noun) is “A clasp, catch, or other fastening device that operates with a snapping sound.” (Finding of Fact 5). The Specification describes the snap fastener as comprised of “cooperating male and female snap members 48 50” (Finding of Fact 6). The Specification further describes that in use the female snap members 50 are pressed onto and engage respective male snap members to secure the display face 24 to the support structure 22 (Finding of Fact 7). One having ordinary skill in the art would understand the claim term “snap fasteners” when read in light of the Specification to mean cooperating male and female members that, when pressed together, engage each other by snapping together. The spring 6 of Boeniger is not a snap fastener within this meaning of the claim term (Finding of Fact 8). As such, the Appellant has shown that the Examiner erred in rejecting claims 15 and 20 as anticipated by Boeniger.

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*Rejection of claims 5, 6, 8, 9, and 16 under 35 U.S.C. § 103(a) as unpatentable over Boeniger and Sekiguchi*

The Appellant argued that claim 5 is patentable over Boeniger and Sekiguchi because Boeniger does not anticipate or render obvious claim 5 for the same reasons provided for claim 1. As we found *supra* in our analysis of the patentability of claim 1, we find the Appellant's arguments unpersuasive.

Claim 6 and 8 recite first and second fastening means. The Appellant argues that the use of "means" language invokes 35 U.S.C. § 112, ¶ 6, such that the fastening means should be interpreted to be one and the other of the male and female snap members (Appeal Br. 16). Even if we agree that "fastening means" invokes § 112, ¶ 6, we agree with the Examiner that the Specification does not limit the claimed fastening means to snap members (Answer 8). Rather, the Specification discloses that the fastener can be any other suitable means, including, for example, a bungee cord (Finding of Fact 18). We interpret "fastening means" of claim 6 not to be limited to a snap fastener in view of the structure disclosed in the Specification, and we find that Boeniger's fasteners are equivalent to the structure disclosed in the Appellant's Specification (Finding of Fact 19). As such, Boeniger discloses the claimed fastening means.

Claims 6 and 8 further recite "a mount for immovably mounting said support structure in a desired location." Claim 9 similar recites "a support structure mount," and claim 16 recites "wherein said support structure further includes a mount permanently affixed thereto, said mount having a portion to fixedly attach

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said mount to a surface, said signage being mounted using said fasteners with said mount in place.”

The Examiner found that Sekiguchi shows a display system having support posts 620 and 622, and thus held that “it would have been obvious to one skilled in the art to provide support posts in the structure of Boeniger, as well known such as support posts similar to that of Sekiguchi, for supporting the display system [of] Boeniger fixed in place in a vertical orientation for better viewing or showing” (Answer 4).

The Appellant argued that claims 6 and 8 are patentable over Boeniger and Sekiguchi, because Sekiguchi is directed to a display that features moveable messages and high quality images and that Sekiguchi’s display does not equate to the display system of the claims (Appeal Br. 17). This is not the proper test for obviousness. *See KSR*, 127 S.Ct. at 1742, 82 USPQ2d at 1397 (finding that the Court of Appeals erred in assuming that a person of ordinary skill attempting to solve a problem will be led only to those elements of the prior art designed to solve the same problem). The Supreme Court in *KSR* stated that “[c]ommon sense teaches, however, that familiar items may have obvious uses beyond their primary purposes, and in many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle.” *Id.* As such, whether Sekiguchi’s display is similar to the claimed display system is irrelevant to the issue of whether it would have been obvious to modify Boeniger’s display system with the mounting posts taught by Sekiguchi.

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The Appellant further argues that the Examiner failed to set forth a prima facie case of obviousness because the Examiner relied on hindsight to combine Sekiguchi and Boeniger (Appeal Br. 17). Under a functional approach, as reaffirmed by the Supreme Court in *KSR*, the addition of Sekiguchi's mounting posts to Boeniger's display would entail merely the combination of familiar elements according to known methods to yield predictable results (Finding of Fact 10). *See KSR*, 127 S.Ct. at 1739, 82 USPQ2d at 1395. In other words, the addition of mounting posts is no more than a predictable use of prior art elements according to their established functions (Finding of Fact 10). *Id.* at 1740, 82 USPQ2d at 1395. The Appellant has not argued that the modification of Boeniger's display system with mounting posts would have been beyond the skill of one of ordinary skill in the art or would have led to unpredictable results. *Id.* As such, the Examiner set forth a prima facie case of obviousness of claims 6 and 8.

The Appellant argued that claim 9 is patentable over Boeniger and Sekiguchi because Boeniger does not disclose a first fastener member on a back of a support structure, a second fastener member on a contact surface of the display face, where the first and second fastener members connect with one another (Appeal Br. 17). For the reasons provided *supra*, we find that Boeniger discloses a first fastener member (frame element 1 having rail-like protrusion 5) on a face of a support structure (frame 12), and a second fastener member (eye 8) on a contact surface of the display face (reproduction 7) (Findings of Fact 1 and 3). We do not see where claim 9 recites that the first and second fasteners members must be

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directly connected to one another. Rather, claim 9 recites “said contact surface having spaced apart second fastener members thereon that connected and disconnect to said first fastener members on said back surface of said support member manually without any tool.” In Boeniger’s display system, the first and second fastener members connect and disconnect to one another indirectly by means of spring 6 (Finding of Fact 4). As such, Boeniger discloses this limitation of claim 9 and the Examiner has set forth a prima facie case of obviousness of claim 9. We consider the Appellant’s evidence of commercial success, as it pertains to claims 5, 6, 8, and 9 *infra*.

Claim 16 depends from claim 15, which recites that the fasteners are snap fasteners. As we found *supra*, that Boeniger does not anticipate claim 15. We further find that there is no apparent reason why one of ordinary skill in the art, in view of the teachings of Boeniger and Sekiguchi, would modify the fasteners of the Boeniger display system to replace them with snap fasteners (Finding of Fact 12). As such, the Examiner erred in rejecting claim 16 as unpatentable over Boeniger and Sekiguchi.

*Rejections of claims 3, 4, and 20 under 35 U.S.C. § 103(a) as unpatentable over Boeniger and Terrels and claims 7 and 10 under 35 U.S.C. § 103(a) as unpatentable over Boeniger, Sekiguchi, and Terrels*

The Examiner relied on Terrels to demonstrate that a snap button type of fastening means is well known (Answer 4). Terrels discloses the use of a snap fastener on boats, aircraft and land vehicles to mount a canvas cover 12 on a base

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13, for example, the gunwale of a boat (Finding of Fact 11). We see no reason why one having ordinary skill in the art, faced with the teaching of the display system of Boeniger for use in supporting and suspending flat reproductions, such as photographic reproductions, would have modified the display system of Boeniger to attach the reproductions to the frame using snap fasteners (Finding of Fact 12). While we agree that snap fasteners are generally well known; we find no interrelated teachings in the cited patents; demands known to the design community or present in the marketplace; or background knowledge possessed by a person having ordinary skill in the art, that would have provided an apparent reason to combine the known elements in the fashion claimed by the Appellant's claims 3, 4, 7, 10, and 20 (Finding of Fact 13). *See KSR*, 127 S.Ct. at 1740-41, 82 USPQ2d at 1396. As such, we find that the Appellants have shown that the Examiner erred in rejecting claims 3, 4, and 20 and unpatentable over Boeniger and Terrels and claims 7 and 10 as unpatentable over Boeniger, Sekiguchi, and Terrels.

### *Secondary Considerations*

The Appellant submitted evidence of secondary considerations in the form of a Declaration by the inventor, Leon R. Dombrowski, as evidence of non-obviousness of claims 3-10, 16, and 20. With regard to claims 3, 4, 7, 10, 16, and 20, because we have not sustained the Examiner's rejections under 35 U.S.C. § 103(a) of these claims, we need not consider the evidence of secondary considerations as it pertains to these rejections.

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With regard to the rejection under 35 U.S.C. § 103(a) of claims 5, 6, 8, and 9, we recognize that evidence of secondary considerations, such as that presented by the Appellant must be considered in route to a determination of obviousness/nonobviousness under 35 U.S.C. § 103. Accordingly, we consider anew the issue of obviousness under 35 U.S.C. § 103, carefully evaluating and weighing both the evidence relied upon by the Examiner and all of the evidence of Appellant, including the objective evidence of nonobviousness provided by the Appellant.

The Appellant attempts to show commercial success of the invention through evidence of an increase in sales of the Snapquick Interchangeable Signage product and an increase in its customer base since the introduction of the product in January 2002 (Appeal Br. 19, Decl. ¶¶ 2-10). The Examiner found that the evidence of commercial success was not commensurate in scope with the claims, the evidence is not clear enough to exclude the possibility of commercial success due to other factors, and the Appellant supplied only gross sales figures and did not show commercial success absent evidence as to market share (Answer 9-10).

The product sold by the Appellant, the Snapquick Interchangeable Signage product, uses a snap-type fastener (Finding of Fact 14). However, the claims at issue, *i.e.*, claims 5, 6, 8, and 9, are not limited to snap fasteners. Rather, these claims are directed broadly to quick-release fasteners or to fasteners generally. The Appellant's objective evidence of non-obviousness demonstrates only that any commercial success of the Snapquick Interchangeable Signage is due to the snap-type fastener and its durability and ease of use (Finding of Fact 15). *See In re*

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*Tiffin*, 448 F.2d 291, 171 USPQ 294 (CCPA 1971) (holding that the applicant's objective evidence of non-obviousness is not commensurate with the scope of certain claims, reciting "containers" generally, because it establishes non-obviousness only with respect to "cups" and processes of making them).

Further, the Appellant's evidence of gross sales as an indication of commercial success is weak, at best. The Appellant's proof of unit sales, as the Examiner points out, does not indicate whether the numbers sold were a substantial quantity in the relevant market (Finding of Fact 16). *In re Huang*, 100 F.3d 135, 140, 40 USPQ2d 1685, 1689 (Fed. Cir. 1996) (without evidence that the sales are a substantial quantity in the relevant market, "bare sales numbers" are a "weak showing" of commercial success, if any); *In re Baxter Travenol Labs.*, 952 F.2d 388, 392, 21 USPQ2d 1281, 1285 (Fed. Cir. 1991) ("[I]nformation solely on numbers of units sold is insufficient to establish commercial success."); *Kansas Jack, Inc. v. Kuhn*, 719 F.2d 1144, 1150-51, 219 USPQ 857, 861 (Fed. Cir. 1983) ("The evidence of commercial success consisted solely of the number of units sold. There was no evidence of market share, of growth in market share, of replacing earlier units sold by others or of dollar amounts, and no evidence of a nexus between sales and the merits of the invention. Under such circumstances, consideration of the totality of the evidence, including that relating to commercial success, does not require a holding that the invention would have been nonobvious at the time it was made to one skilled in the art."); *Sjolund v. Musland*, 847 F.2d 1573, 1582, 6 USPQ2d 2020, 2028 (Fed. Cir. 1988) ("Nor could the jury, from the bare evidence of units sold and gross receipts, draw the inference that the

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popularity of the [sold units] was due to the merits of the invention.”) (citing *Cable Elec. Prods. v. Genmark, Inc.*, 770 F.2d 1015, 1026-27, 226 USPQ 881, 888 (Fed. Cir. 1985) and *Kansas Jack, Inc.*, 719 F.2d at 1150-51, 219 USPQ at 861). The Declarant has chosen not to furnish us with any idea of the size of the market. Also, there is no evidence that the sales of Appellant’s product have come at the expense of other prior art display systems (Finding of Fact 17). Indeed, in absence of further economic evidence, it is improper to infer that the reported sales represent a substantial share of any definable market or even that the sales volume is anything out of the ordinary in the industry in question. *See e.g., Cable Elec. Prods.*, 770 F.2d at 1028, 226 USPQ at 889.

Accordingly, on the totality of the evidence, weighing all evidence of obviousness against all evidence of non-obviousness, we hold that claims 5, 6, 8, and 9 are unpatentable over Boeniger and Sekiguchi.

#### CONCLUSIONS OF LAW

We conclude that the Appellant failed to show that the Examiner erred in rejecting claims 1, 2, 5, 11-14, and 17-19 under 35 U.S.C. § 102(b) as anticipated by Boeniger. The Appellant showed, however, that the Examiner erred in rejecting claims 15 and 20 under 35 U.S.C. § 102(b) as anticipated by Boeniger.

We further conclude that the Appellant failed to show that the Examiner erred in rejecting claims 5, 6, 8, and 9 under 35 U.S.C. § 103(a) as unpatentable over Boeniger and Sekiguchi. The Appellant showed, however, that the Examiner erred in rejecting under 35 U.S.C. § 103(a) claim 16 as unpatentable over Boeniger

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and Sekiguchi, claims 3, 4, and 20 as unpatentable over Boeniger and Terrels, and claims 7 and 10 as unpatentable over Boeniger, Sekiguchi, and Terrels.

### DECISION

The decision of the Examiner to reject claims 1-20 is AFFIRMED-IN-PART.

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-IN-PART

vsh

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