

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 FILOMENA AUGUSTA MACEDO,  
and GREGORY AARON GRISSETT*

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Appeal 2007-2157  
Application 11/000,692  
Technology Center 1700

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Decided: July 31, 2007

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Before ERIC GRIMES, LORA M. GREEN,  
and NANCY J. LINCK *Administrative Patent Judges*.

GRIMES, *Administrative Patent Judge*.

**DECISION ON APPEAL**

This is an appeal under 35 U.S.C. § 134 involving claims to a personal cleansing kit. The Examiner has rejected the claims as obvious. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

**BACKGROUND**

Implements such as woven and non-woven textiles, natural and synthetic sponges, and loofahs have “long been utilized to enhance speed and volume of lathering” for cleansing human skin (Specification 1).

However, “these articles over time breed bacteria, germs and mold” (*id.* at 2).

The Specification discloses “a personal cleansing kit and method utilizing a washing implement that provides users with a cue to dispose of the implement after a pre-determined number of washing events. . . . The cue is the visual degradation of the implement from a pleated to a relatively non-pleated condition” (*id.* at 3). The implement also signals users that the implement is no longer suitable for use because “the relatively non-pleated implement resulting from extended use becomes functionally inferior on foam enhancement and aesthetic feel. The cushion effect of the pleated form degrades to an elongated thin fibrous web of inferior body” (*id.* at 4).

## DISCUSSION

### 1. CLAIMS

Claims 1-13 are pending and on appeal. Claim 1 is representative and reads as follows:

Claim 1. A personal cleansing kit comprising:

- (i) a water-insoluble fibrous web folded into a plurality of pleats, each pleat being formed with two forks into a U-shape with the two forks being held together by hydroentangled fibers or restrained from unfolding by a weak adhesive to last from about 3 to about 100 separate personal washing events;
- (ii) a cleansing composition comprising from about 0.5 to about 60% by weight of surfactants in a carrier, wherein each event utilizes at least a foaming amount of the cleansing composition.

Thus, claim 1 is directed to a kit comprising (1) a water-insoluble fibrous web and (2) a cleansing composition containing 0.5 to about 60% by weight of surfactants. The fibrous web is folded into a number of U-shaped pleats, with the two “forks” of the U held together by either hydroentangled fibers or a weak adhesive.

The forks are held together such that they unfold after about 3 to 100 “washing events.” The Specification defines a “washing event” as “use of the fibrous web against the body for a period from about 1 minute to 30 minutes.” (Specification 20).

## 2. PRIOR ART

The Examiner relies on the following references:

McMeekin	US 6,957,924	Oct. 25, 2005
Gordon	US 5,650,384	Jul. 22, 1997
Hauser	WO 2004/006869 A1	Jan. 22, 2004

## 3. OBVIOUSNESS -- CLAIMS 1, 2, 4, 5, 7, 8, AND 10-13

Claims 1, 2, 4, 5, 7, 8, and 10-13 stand rejected under 35 U.S.C. § 103 as obvious in view of McMeekin and Gordon (Answer 3-5).<sup>1</sup>

The Examiner cites McMeekin as disclosing “a cleansing device for personal hygiene, comprised of non-woven textile material such as polypropylene or polyethylene or ethyl vinyl acetate copolymers or mixtures thereof” (*id.* at 3). The Examiner finds that in a preferred embodiment the cleansing device is “formed via folding or pleating, with two forks into a u shape” that is “held together by an adhesive” (*id.*).

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<sup>1</sup> Examiner’s Answer mailed December 20, 2006.

Noting that McMeekin's cleansing device is to be used with an "active ingredient such as surface acting agents," the Examiner concedes that "McMeekin . . . is silent with respect to the amount of surfactant employed in said implement" (*id.*). To meet this deficiency, the Examiner cites Gordon as disclosing "a cleansing kit comprising a lightweight polymeric mesh prepared from extruded tubular net meshing and an effective liquid cleanser . . . which comprised up to 35% by weight of surfactants" (*id.* at 4, citations omitted).

The Examiner states that McMeekin's cleansing device renders obvious the limitation requiring the pleats to unfold after about 3 to about 100 personal washing events because McMeekin "teach[es] the preferred non-woven polymeric materials and the preferred surfactant materials for personal cleansing. Therefore, one skilled in the art would expect the non-woven materials to exhibit similar characteristics under the same conditions, absent a showing to the contrary" (*id.*).

Appellants argue that neither McMeekin nor Gordon teaches the limitation in claim 1 requiring the forks of the cleaning implement's pleats to be restrained from unfolding for about 3 to 100 personal washing events (Br. 7-9). Rather, Appellants argue, McMeekin uses a string intended to be a permanent securement, and that "[n]othing in this references suggests that after any certain number of cleansing uses, the string loosens to unfurl the pleated film" (*id.* at 8). Appellants note that McMeekin also discloses using an adhesive to secure the pleats of the cleaning implement, but argue that "[n]othing weak or temporary is suggested for the adhesive" (*id.*).

Appellants argue that Gordon similarly fails to disclose the “fundamental aspect of the present invention” - “that the cleaning implement (i.e. pleated fibrous web) must disintegrate in its physical geometry during a relatively short cleansing lifetime” (*id.*). Appellants argue that the references do not state anything about engineering a self-destructive element into the cleansing implement, nor do “the references disclose or suggest hydroentanglement between two forks of a pleat” (*id.* at 9).

We agree with Appellants that the cited references do not support a *prima facie* case of obviousness. In particular, we agree that the references would not have suggested a cleaning implement having pleats that are “held together by hydroentangled fibers or restrained from unfolding by a weak adhesive to last from about 3 to about 100” washing events.

The Specification does not define the term “weak adhesive.” However, the Specification states that “adjacent pleats and forks can be temporarily restrained from unfolding by a weak adhesive. Preferably an applied adhesive will be water-soluble such as a starch or modified starch. *Synthetic polymers may also be employed as adhesives, an example of which are the ethylene/vinyl acetate and polyvinyl pyrrolidone polymers*” (Specification 4, emphasis added).

McMeekin discloses that the textured film comprising the pleated cleansing device can be made from “ethylene vinyl acetate copolymer” (McMeekin, col. 3, ll. 65-67). Thus, the film constituting McMeekin’s cleansing device can be made of the same material described in the Specification as a weak adhesive.

However, McMeekin does not describe using the same “ethylene vinyl acetate copolymer” to adhere the pleats of the device to each other. McMeekin states that the device includes a “securing means . . . for substantially permanently holding the film together in the desired gathered arrangement. As used herein, ‘substantially permanently’ means a period of time at least as long as the film of the device is suitable for cleansing uses.” (McMeekin, col. 3, ll. 54-58.) McMeekin discloses exemplary means of substantially permanently securing the film (*id.* at col. 8, ll. 29-49), which do not include the weak adhesives disclosed in the instant Specification.

The Examiner takes the position that the Specification does not describe what constitute[s] a personal washing event. In the claims[’] broadest sense, 3 to 100 personal washing events may suggest washing 3 trucks 100 times. Accordingly, the examiner contends that McMeekin et al teach the same material with pleats which are adhered by an adhesive and the examiner asserts that the non-woven material of McMeekin would exhibit degradation in a similar manner, absent a showing to the contrary.

(Answer 6-7.)

We do not agree with the Examiner’s position. As discussed above, the Specification defines a “washing event” as “use of the fibrous web against the body for a period from about 1 minute to 30 minutes” (Specification 20). The Specification also states that “[e]ach event may utilize from about 1 to about 50 grams, preferably from about 3 to about 15 grams of cleansing composition per event” (*id.*). Thus, it is clear from the Specification that the “personal washing events” recited in the claims include baths and showers but do not include washing vehicles.

The Examiner's reasoning – that McMeekin teaches the same pleated material adhered by an adhesive and therefore would exhibit similar degradation – is also not supported by the evidence. As discussed above, McMeekin teaches that the pleats of its device should be adhered “substantially permanently” while the instant claims require using an adhesive that lasts only 3 to 100 personal washing events. The Examiner has not adequately explained why the prior art device, which includes an adhesive having different properties from those required by the claims, would be expected to degrade in a similar manner to the claimed device.

The Examiner has not adequately shown that the adhesives disclosed by McMeekin would result in unfolding after 3 to 100 washing events, or adequately explained why those skilled in the art would have found it obvious to use a weak adhesive or hydroentanglement to hold together the pleats of McMeekin's device. Therefore, the Examiner has not carried the initial burden of showing *prima facie* obviousness. We reverse the rejection of claims 1, 2, 4, 5, 7, 8, and 10-13 as obvious based on McMeekin and Gordon.

#### 4. OBVIOUSNESS -- CLAIMS 3, 6, AND 9

Claims 3, 6, and 9 stand rejected under 35 U.S.C. § 103 as being obvious over McMeekin, Gordon, and Hauser (Answer 5). Claim 6, which is representative of the rejected claims, recites “[t]he kit according to claim 1 wherein the fibrous web is hydroentangled.”

The Examiner relies on McMeekin and Gordon for the teachings discussed above with respect to claim 1, and cites Hauser as disclosing “a cleaning implement such as poufs, comprised of non-woven material such as

polyethylene, polyesters, and polyolefins,” which can be made by hydroentanglement (Answer 5). The Examiner concludes that one of ordinary skill would have considered it obvious to “process the non-woven synthetic materials of McMeekin et al in a hydroentanglement technique because it would be cost effective in not requiring additional binding material and as suggested by [Hauser] said hydroentangled technique increases the strength of the materials” (*id.* at 6).

Appellants argue that Hauser fails to remedy the shortcomings of McMeekin and Gordon (Br. 11). Appellants argue that even if Hauser were “to suggest a pleated material formed from hydroentangled fiber, this still would not negate the central elements of the independent claims. In those claims, the hydroentanglement is between two forks of a pleat so as to hold the forks temporarily together” (*id.*).

Although we agree with the Examiner that the limitation added by claim 6 does not require that the pleats of the claimed device be held together by hydroentanglement, we do not agree with his conclusion that the cited references support a *prima facie* case of obviousness, because claim 6 incorporates the limitations of claim 1.

As discussed above, claim 1 requires the pleats to be held together by either hydroentanglement or a weak adhesive, and the Examiner has not adequately shown that that limitation was taught or suggested by McMeekin or Gordon. The Examiner has also not pointed to anything in Hauser that would have suggested adhering the pleats of McMeekin’s device by either hydroentanglement or a weak adhesive. We therefore agree with Appellants that Hauser does not remedy the deficiency of McMeekin and Gordon. We

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therefore reverse the rejection of claims 3, 6, and 9 as obvious over McMeekin, Gordon, and Hauser.

#### SUMMARY

We reverse the obviousness rejection of claims 1, 2, 4, 5, 7, 8, and 10-13 over McMeekin and Gordon. We also reverse the obviousness rejection of claims 3, 6, and 9 over McMeekin, Gordon, and Hauser.

#### REVERSED

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