

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* PETER J. NUNES,  
FREDRICK R. KELLY and BRIAN D. ANDRESEN

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Appeal 2007-2982  
Application 10/126,792  
Patent Application Publication 2002/0150513 A1  
Technology Center 1700

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Decided: 10 September 2007

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*Before:* FRED E. McKELVEY, *Senior Administrative Patent Judge,*  
and RICHARD E. SCHAFER and JAMES T. MOORE, *Administrative*  
*Patent Judges.*

McKELVEY, *Senior Administrative Patent Judge.*

DECISION ON APPEAL

Appeal 2007-2982  
Application 10/126,792

Peter J. Nunes, Fredrick R. Kelly and Brian D. Andresen (appellant) appeal from a final rejection of claims 1-16. 35 U.S.C. § 134(a). We have jurisdiction. 35 U.S.C. § 6(b).

The Examiner rejected claims 1-16 under 35 U.S.C. § 103(a) as unpatentable over the combination of Pawliszyn (WO 98/41885 published 24 September 1998) and Konik (U.S. Patent 5,768,455 issued 16 June 1998).

Upon consideration of the record, we affirm for the reasons given in the Examiner's Answer (entered 14 February 2007).

1           The Appeal Brief (filed 10 November 2006) and the Examiner's  
2 Answer were written prior to the Supreme Court's decision in *KSR*  
3 *International Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 82 USPQ2d 1385 (2007).

4           With respect to appellant's argument (Appeal Brief, page 16) that  
5 there is no suggestion or motivation to combine or modify Pawliszyn with  
6 the tapered guide (element 34) of Konik, we note that all appellant is doing  
7 is using a known element for its intended purpose (to guide a thread) to  
8 achieve an expected result. *KSR* counsels against such a use being non-  
9 obvious. 127 S. Ct. at 1739. *See also In re Trans Texas Holdings Corp.*,  
10 Nos. 2006-1599, -1600, slip op. at 18-19 (Fed. Cir. Aug. 22, 2007) (the  
11 Board did not err in concluding that it would have been obvious to combine  
12 the indexed loan accounts disclosed in Murkherjee with the well-known  
13 practice of offering loans secured by mortgaged real estate). Moreover, *KSR*  
14 states that when a work is available in one field (Konik), design incentives  
15 can prompt variations of it in the same field (Konik) or a different field  
16 (Pawliszyn). 127 S. Ct. at 1740. *See also (1) In re Icon Health and Fitness,*  
17 *Inc.*, No. 2006-1573, slip op. at 7 (Fed. Cir. Aug. 1, 2007) ("familiar items

1 may have obvious uses beyond their primary purposes") and (2) *In re*  
2 *Sullivan*, No. 2006-1507, slip op. at 9-10 (Fed. Cir. Aug. 29, 2007) (since  
3 *Sullivan* teaches whole antibodies for use against rattlesnake venom and  
4 Coulter teaches using Fab fragments to detect venom of a different snake it  
5 would not have been unreasonable for one skilled in the art of snake venom  
6 to consider that a Fab fragment of a whole antibody that neutralizes one type  
7 of venom might be used to neutralize the venom of another species).

8 **DECISION**

9 The rejection of claims 1-16 is affirmed.

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

12 **AFFIRMED**

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15 Alan H. Thompson, Esq.  
16 Assistant Laboratory Counsel  
17 Lawrence Livermore National Laboratory  
18 P.O. Box 808, L-703  
19 Livermore, CA 94551