

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

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TODD A. BLATCHFORD, STEVEN B. HEINECKE,
DONALD H. LUCAST, and DONALD G. PETERSON

Appeal 2007-3575
Application 10/233,698
Technology Center 1600

Decided: August 27, 2007

Before DONALD E. ADAMS, LORA M. GREEN and RICHARD M.
LEBOVITZ, *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 65-83. We have jurisdiction under 35 U.S.C. § 6(b). Claims 65, 66, 77, and 78 are representative of the claims on appeal, and read as follows:

65. A medical dressing comprising:
a substantially contact transparent backing comprising first and second major surfaces;
a first pressure sensitive adhesive; and
a second pressure sensitive adhesive;
wherein the first pressure sensitive adhesive is located on substantially all of the first major surface of the backing and the second pressure sensitive adhesive is located on a portion of the first pressure sensitive adhesive;
whereby substantially all of the second pressure sensitive adhesive is exposed on the medical dressing and only a portion of the first pressure sensitive adhesive is exposed on the medical dressing;
and further wherein the first pressure sensitive adhesive has a higher tack to skin than the second pressure sensitive adhesive.

66. The medical dressing of claim 65, wherein the second pressure sensitive adhesive comprises at least one bioactive agent.

77. A medical dressing comprising:
a substantially contact transparent backing comprising first and second major surfaces;
a first pressure sensitive adhesive located directly on a portion of the first major surface of the backing, wherein at least a portion of the first pressure sensitive adhesive is exposed on the first major surface of the backing; and
a second pressure sensitive adhesive located directly on a portion of the first major surface of the backing,
wherein the first pressure sensitive adhesive forms a border around the second pressure sensitive adhesive on the first major surface of the backing, and further wherein the first pressure sensitive adhesive has a higher tack to skin than the second pressure sensitive adhesive.

78. The medical dressing of claim 77, wherein the second pressure sensitive adhesive comprises at least one bioactive agent.

The Examiner relies on the following references:

Economou	US 3,811,438	May 21, 1974
Holman	US 4,950,699	Aug. 21, 1990

We affirm.

DISCUSSION

Claims 65-83 stand rejected under 35 U.S.C. § 103(a) as being obvious over the combination of Economou and Holman.

Appellants argue the claims in three groups, with Group I comprising claims 65-83, of which we choose claim 65 to be representative (Br.¹ 6); Group II comprising claims 77-83 (*id.* at 7), of which we choose claim 77 to be representative; and Group III comprising claims 66, 72, and 78 (*id.* at 9), of which we choose claim 66 to be representative.

Economou is cited by the Examiner for teaching an adhesive bandage comprising a backing layer coated with a continuous adhesive layer (which reads on the first adhesive of the claims) covered by strips of adhesive of lesser adhesiveness (reads on the second adhesive of the claims) (Answer 4). According to the Examiner, Economou does not teach “the backing layer to be transparent, or the presence of active agent in the adhesive.” (*Id.*)

Holman is cited for teaching a wound dressing comprising an adhesive layer containing collagen (which reads on a bioactive agent) to allow continuous and constant contact between the wound site and the active agent (*id.*). Holman is also cited for teaching that the wound dressing comprises a transparent backing sheet to permit viewing of the wound.

The Examiner concludes:

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to provide an adhesive bandage comprising backing layer and two layers of adhesives having different adhesiveness as disclosed by

¹ All references to the Brief (Br.) are to the Appeal Brief dated October 16, 2006.

[Economou], and add active agent to the adhesive layer contacting the skin and further replace the backing layer by transparent backing layer as disclosed by [Holman] motivated by the teaching of [Holman] that the presence of active agent in the adhesive layer maintain continuous and constant contact between the wound site and the active agent, and the transparent backing sheet permits viewing of the wound, with reasonable expectation of having dressing comprising transparent backing and two layers of adhesive of different adhesiveness that contains active agent in the adhesive contacting the skin that provides continuous and constant contact of the active agent to the wound and permits monitoring the wound healing through the transparent backing.

(*Id.* at 4-5.)

“In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. Only if that burden is met, does the burden of coming forward with evidence or argument shift to the applicant.” *In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993) (citations omitted). In order to determine whether a prima facie case of obviousness has been established, we considered the factors set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1996); (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; (3) the level of ordinary skill in the relevant art; and (4) objective evidence of nonobviousness, if present. We conclude that the Examiner has set forth a prima facie case of obviousness as to all of the claims, and the rejection is affirmed.

Appellants argue that independent claims 65, 71, and 77 recite “a substantially contact transparent dressing,” and that as the backing sheet in Holman only becomes transparent when hydrated to allow viewing of the wound, it does not meet the above limitation (Br. 6). While the Examiner

asserts that sweat on the skin would cause hydration, Appellants argue that assertion “is not supported by any discussion or citation showing that all skin at any time Appellants’ dressing may be used *necessarily* provides the water required to hydrate the backings of Holman.” (*Id.* at 7 (emphasis in original).) Thus, Appellants assert, the Examiner “has provided no reasoning as to how the asserted result ‘*necessarily* flows from the teachings of’ Holman.” (*Id.* (emphasis in original).)

The Specification specifically defines “‘substantially contact transparent’ as used in connection with the present invention, as when adhered to a patient’s skin, a wound or catheter site can be visually monitored through those portions of the backing and pressure sensitive adhesive or adhesives in contact with the patient’s skin without requiring removal of the dressing.” (Specification 3.) The Specification teaches further that a preferred film backing is elastomeric polyurethane (*id.* at 6).²

Holman teaches that a backing may be used, and that “[w]hen hydrated, the water-permeable backing sheet normally becomes transparent to permit the site of the wound to be viewed. The advantages available are a see-through feature for the material, as well as adhesion and a reduction in the rate of fluid loss from the wound.” (Col. 3, ll. 2-7.) Holman also teaches that the backing may be fabricated from polyurethane (col. 3, ll. 8-12).

² We note that the Specification teaches that “[a] description of some backings that may be preferred for use in the medical dressings of the present invention can be found in issued U.S. Patent Nos. 5,088,483 and 5,160,315, as well as European Patent Application No. 0 437 944.” (Specification 6) Thus, while not relying on that disclosure in our decision, we note that transparent backings as required by the claims are known in the art.

Thus, all that is required by the definition of “substantially contact transparent” as defined by the Specification is that when the dressing is adhered to the skin, that the wound or catheter site may be monitored without removal of the dressing. That limitation is taught by Holman, as there is nothing in the definition provided by the instant Specification that limits how the backing becomes transparent. Note that our mandate is to give claims their broadest reasonable construction. *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1364, 70 USPQ2d 1827, 1830 (Fed. Cir. 2004). “An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed, as much as possible, during the administrative process.” *In re Zletz*, 893 F.2d 319, 322, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

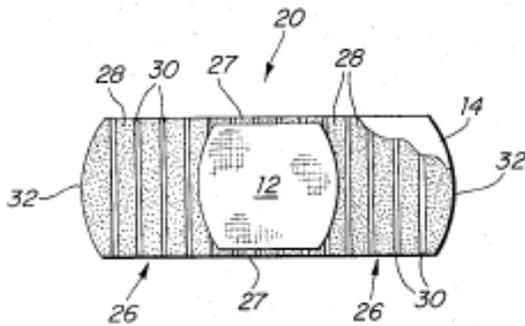
Appellants reiterate in their Reply Brief that the Examiner has still failed to present reasoning, discussion, or citation that the backing of Holman necessarily provides the water to hydrate the backings of Holman (R.Br. 3-4). However, as noted above, there is nothing in the definition of “substantially contact transparent” as provided by the Specification that excludes the addition of exogenous water to provide the transparency and thus allow the wound or catheter site to be monitored without removal of the dressing.

As to claims 77-83, Appellants argue that claim 77 recites that both the first and second pressure sensitive adhesives are “located directly on a portion of the first major surface of the backing,” which is not taught or suggested by the combination (Br. 7.) Appellants assert that a review of the disclosure of Economou, especially the drawings, “shows that only one

adhesive is in contact with the backing. The regions of lesser adhesiveness are spaced across the major surface of the dressing and are located *on top of the one adhesive that is located on the major surface of the backing.*” (*Id.* at 8 (emphasis in original).)

The Examiner points to Figure 2 and its description at column 2, lines 53-61 of Economou, as teaching a medical dressing wherein two adhesives of different tack are located directly on a portion of the first major surface of the backing (Answer 7). Appellants respond that Figure 2 is a plan view of an adhesive bandage, and all that the Figure demonstrates is that there are parallel stripes of adhesive alternating with substantially parallel regions of lesser adhesiveness (R.Br. 5). Appellants assert further that there is nothing in the description of Figure 2 that discloses that both the layers of adhesive and lesser adhesiveness are located directly on a portion of the first major surface of the backing.

Figure 2 of Economou, which is a diagrammatic plan of an adhesive strip bandage according to the invention of Economou, is reproduced below:



The adhesive strip shown in Figure 2 has a backing (14) with opposed marginal portions (26) and edge portions (27) having pressure sensitive adhesive. According to Economou:

Each marginal portion **26**, and edge portions **27**, however, contain a plurality of generally parallel layers **28** of adhesive and plurality of generally parallel regions **30** of lesser adhesiveness alternating therebetween, so that layers **28** and regions **30** form a segmented adhesive portion. The regions **30** may be uncoated regions of the tape backing strip, or an adhesive mixture of lesser adhesiveness than that in layers **28** . .

(Col. 2, ll. 54-65)

Thus, the ordinary artisan would read the description in conjunction with Figure 2 as disclosing a medical dressing having alternating strips, one strip of adhesive, and a second strip of adhesive, wherein both adhesives located directly on the first major surface of the backing, as Economou specifically teaches that the regions of lesser adhesiveness may be uncoated regions of the tape backing strip.

That teaching is contrast to the description of Figure 6 at column 4, lines 38-41, which teaches an alternative embodiment wherein a conventional tape has been overprinted or coated with a tape of lesser adhesiveness. There is nothing in the description of Figure 6, which shows layers of adhesive such that the lesser adhesive is not located directly on the first major surface of the backing, is also applicable to the dressing shown in Figure 2.

As to claims 66, 72, and 73, Appellants argue that the claims require “the second pressure sensitive adhesive [to] comprise[] at least one bioactive agent,” and that collagen is not a bioactive agent in accordance with the present invention (Br. 9). Appellants argue that bioactive agent as set forth in the Specification includes drugs, antibiotic agents, antimicrobial agents, etc., and the Examiner has failed to provide any support for the

assertion that collagen is considered to be a bioactive agent, or that a bioactive agent as set forth by the Specification encompasses all agents that have wound healing properties (Br. at 9-10).³

The Specification defines “‘bioactive agent,’ as used in connection with the present invention, to include pharmacologically active ingredients, such as drugs, antibiotic agents, antimicrobial agents, etc.” (Specification, page 3.) The use of “includes” in the definition means that the bioactive agent is not limited to “pharmacologically active ingredients, such as drugs, antibiotic agents, antimicrobial agents, etc.,” but that those are just examples of bioactive agents that may be used in the invention. Thus, the definition of “bioactive” given by the Specification, is not limiting, but merely provides examples of bioactive agents that may be used in the medical dressings of the invention.

Moreover, bioactive is defined by the *American Heritage Dictionary* (online) as relating to a substance that has an effect on living tissue.⁴ Collagen is a substance that has an effect on living tissue in that it aids in the wound healing, and thus reads on a bioactive agent as required by claims 66, 72, and 73.

³ Appellants also argued at page 10 of the Brief that “the Examiner acknowledges the non-obviousness of claim 82 in view of the cited references.” The Examiner responds that claim 82 was unintentionally not listed in the argument, but that its limitations were addressed (Answer 10), which Appellants acknowledge (R.Br. 9).

⁴ bioactive. Dictionary.com. *The American Heritage® Dictionary of the English Language, Fourth Edition*. Houghton Mifflin Company, 2004. <http://dictionary.reference.com/browse/bioactive> (accessed: August 07, 2007).

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CONCLUSION

In summary, we conclude that the Examiner has set forth a prima facie case of obviousness, and the rejection of claims 65-83 under 35 U.S.C. § 103(a) over the combination of Economou and Holman is affirmed.

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

AFFIRMED

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