

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte
LOES MICHELSEN, BERT BOGAERTS, and
MICHEL COOMANS

Appeal 2008-2445
Application 10/857,086
Technology Center 3700

Decided: November 21, 2008

Before DONALD E. ADAMS, RICHARD M. LEBOVITZ, and
MELANIE L. McCOLLUM, *Administrative Patent Judges*.

McCOLLUM, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellants have requested rehearing of the Decision entered August 20, 2008. This Decision affirmed the rejections of claims 1-20 under 35 U.S.C. § 103(a).

STATEMENT OF THE CASE

The Examiner rejected claim 1 under 35 U.S.C. § 103(a) as obvious over Arakawa (EP 0 752 239 A1, Jan. 8, 1997) in view of Tritsch (US 3,930,503, Jan. 6, 1976) (Ans. 3). In affirming this rejection, we found that “Arakawa’s fastener could be folded in the opposite direction to the manner depicted on page 8 of the Appeal Brief by moving adhesive layer 11 in the clockwise direction towards the A2 releasing agent layer 3” (Decision 9).

Appellants contend that the “Examiner did not suggest clockwise folding during prosecution and it was not articulated in his Answer” (Req. Reh’g 3). Therefore, Appellants contend that they were “not given an opportunity to present comments on this combination and/or respond to the reasons given in support thereof” (*id.*). In addition, Appellants contend that “the Board-proposed alternative folding pattern would not be suitable for use and thus not obvious” (*id.*).

ISSUE

Have Appellants shown that we misapprehended or overlooked points in rendering the Decision?

FINDINGS OF FACT

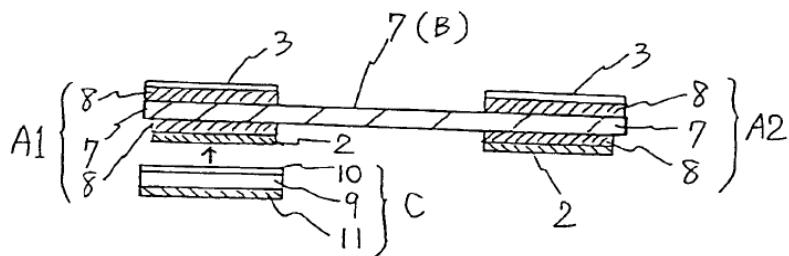
1. Claim 1 is directed to a fastener having, *inter alia*, a landing section releasably attached to a second attachment section.
2. In the Examiner’s Answer, the Examiner found that Arakawa describes a “landing section (C) [that] is capable of being releasably attached to the second attachment section (3, 8, A[2]),” but that “Arakawa does not expressly disclose that the device . . . is in this specific pre-installed condition” (Ans. 4-5).

3. The Examiner also found that Tritsch teaches “a diaper having a fastener folded back in such a configuration before use” (*id.* at 5).

4. The Examiner concluded that it would have been obvious “to employ the folded configuration of Tritsch to the device of Arakawa in order to protect the fasteners during manufacturing and handling” (*id.*).

5. Arakawa Figure 10 is reproduced below:

Fig. 10



This figure depicts fixing tape comprising a central “portion B formed by a stretch film 7” and “portions A1 and A2 composed of a composite of the stretch film 7 and non-stretchable films 8 at both the end portions thereof.” Adhesive layers 2 are “on one surface of each of . . . portions A1 and A2” and releasing agent layers 3 are “on each of the other surfaces.” Release tape C is on adhesive layer 2 of portion A1 and is composed of a base material 9 having a releasing agent layer 10 on one surface and an adhesive layer 11 on the other surface, such that releasing agent layer 10 is in contact with adhesive layer 2 of portion A1. (Arakawa 5: 12-19.)

6. Assuming Arakawa’s central portion 7(B) is of sufficient length, adhesive layer 11 of tape C (“the landing section”) can be releasably attached to releasing agent layer 3 of section A2 (“the second attachment

section") by moving adhesive layer 11 in either the clockwise or counterclockwise directions (Arakawa, Fig. 10).

7. In setting forth his Grounds of Rejection, the Examiner did not specify whether the adhesive layer 11 was being moved in the clockwise or counterclockwise direction (Ans. 3-5; *see also* Final Rej. 3-5).

8. In responding to the rejection, Appellants set forth arguments that the configuration that would result from moving adhesive layer 11 in the counterclockwise direction would not have been obvious (App. Br. 8-9).

9. In responding to these arguments, the Examiner did not point out that alternatively the adhesive layer 11 can be moved in the clockwise direction towards the A2 releasing agent layer 3 (Ans. 7-11).

10. In rendering our Decision, we found that, “[b]y moving adhesive layer 11 in the clockwise direction towards the A2 releasing agent layer 3, adhesive layer 11 could be releasably attached to the A2 releasing agent layer 3 while the A2 adhesive layer 2 remains exposed and therefore not adhered to film 7” (Decision 9).

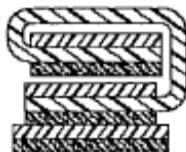
11. We also found that, “[b]ecause the A2 adhesive layer 2 remains exposed when the tape is folded, by attaching the fastener to the diaper via the A2 adhesive layer 2, it would not be necessary to unfold the tape in order to fasten it to the diaper” (*id.* at 12).

ANALYSIS

As pointed out by Appellants, the Examiner did not specifically mention clockwise folding in the Examiner's Answer (Findings of Fact (FF) 7 & 9). However, given that Arakawa's tape can clearly be folded in either the clockwise or counterclockwise directions in order to releasably

attach adhesive layer 11 to the A2 releasing agent layer 3 (FF 6), we do not agree that Appellants were “not given an opportunity to present comments on this combination” (Req. Reh’g 3). We provide the following comments to Appellants’ substantive remarks.

Appellants argue that, to the best of their understanding, the clockwise folding pattern would result in the following construction:



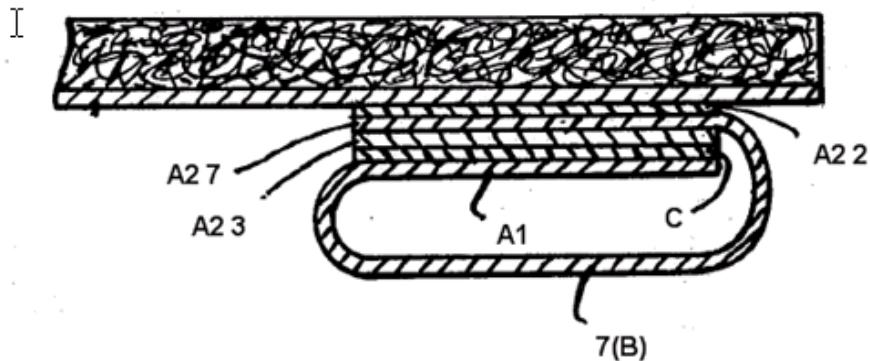
(Req. Reh’g 3). This diagram depicts the result of a proposed pattern for folding Arakawa’s tape set forth in the request for rehearing.

Although we agree that clockwise folding could result in this construction, this diagram does not conform to the folding pattern we described in the Decision. In particular, we described a folding pattern in which the adhesive layer 11 is releasably attached to the A2 releasing agent layer 3 while the A2 adhesive layer 2 remains exposed, such that the A2 adhesive layer 2 could be attached to a diaper without unfolding the tape (FF 10-11). In contrast, Appellants’ diagram appears to result in an exposed adhesive layer 11 on the bottom of the diagram and the A2 adhesive layer 2 is proximate to (if not attached to) the A1 releasing agent layer 3.

Appellants set forth arguments as to why the depicted “folding pattern would not be suitable for use and thus not obvious” (Req. Reh’g 3). However, because Appellants’ diagram does not depict the clockwise

folding pattern described in our Decision, we are not persuaded by these arguments.

In an effort to avoid any further confusion, we set forth the following diagram to illustrate the clockwise folding pattern described in our Decision:



The figure above depicts folded tape attached to a diaper, as in Figure 3 of Tritsch. Because we based this figure on Tritsch Figure 3 (and merely changed the reference characters to conform with Arakawa), it does not separately depict the various layers of sections C and A1. Instead, each of these multilayer structures is depicted by a single layer identified as C and A1, respectively.

In this configuration, section C (specifically adhesive layer 11 thereof) can be separated from the A2 releasing agent layer 3, the tape can then be unfolded, and adhesive layer 11 can be attached to the opposite end of a diaper. Because this configuration does not result in a landing section (i.e., tape C) that would not pivot during deployment, the substantive arguments raised in the request for rehearing do not apply to this configuration.

CONCLUSION

Appellants' Request has been granted to the extent that the Decision has been reconsidered, but such request is denied with respect to making any

Appeal 2008-2445
Application 10/857,086

modifications to the Decision affirming the Examiner's rejection under 35 U.S.C. § 103(a).

REHEARING DENIED

lp

Brian G. Bembenick
Avery Dennison Corporation
Bldg. 22-D
8080 Norton Parkway
Mentor OH 44060