

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD D. MOSBACHER
and
CHARLES P. KEUHN, JR.,
Appellants

Appeal 2008-2971
Application 10/836,610¹
Technology Center 3700

Decided: August 06, 2008

Before CAROL A. SPIEGEL, ERIC GRIMES, and MARK NAGUMO,
Administrative Patent Judges.

SPIEGEL, *Administrative Patent Judge.*

DECISION ON APPEAL

¹ Application 10/836,610 ("the 610 application") was filed 30 April 2004. The real party in interest is said to be KIMBERLY-CLARK WORLDWIDE, INC. (Appeal Brief Under 37 C.F.R. § 41.37, filed 7 June 2007 ("App. Br."), 2).

I. Statement of the Case

This is an appeal under 35 U.S.C. § 134 from a final rejection of claims 34-61, all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b). We AFFIRM.

The subject matter on appeal is directed to a system containing various items for changing diapers, such as the diaper, wipes, and gloves, secured to a common holder and a method comprising delivering the secured items to a day care provider.

The system of independent claim 47 requires the most extensive list of items and reads (App. Br. 28):

47. A system for supplying day care providers with products related to diaper changing, the system comprising:
- a holder;
 - a diaper secured to the holder;
 - a pair of shoe coverings secured to the holder;
 - a pair of gloves secured to the holder;
 - a sanitizer secured to the holder;
 - a lotion secured to the holder;
 - a changing pad secured to the holder;
 - a disposal bag secured to the holder; and
 - a wipe secured to the holder.

Claim 51 is illustrative of the method claims and reads (App. Br. 29):

51. A method of supplying day care providers with products related to diaper changing, the method comprising:
- securing a diaper to a holder;
 - securing a pair of gloves to the holder;
 - securing a wipe to the holder; and
 - delivering the holder to a day care provider.

The Examiner relies on the following prior art² of record:

Michalak	4,083,124	Apr. 1978
Finkel	4,702,378	Oct. 1987
Habib	6,723,080 B1	Apr. 2004
Khan	2002/0004656 A1	Jan. 2002
Snell	2005/0143706 A1	Jun. 2005

The Examiner has rejected

- (1) claims 34, 36, 38 and 40 as unpatentable under 35 U.S.C. § 103(a) over Habib in view of Khan;
- (2) claim 35 as unpatentable under 35 U.S.C. § 103(a) over Habib in view of Khan and further in view of Michalak;
- (3) claims 37 and 39 as unpatentable under 35 U.S.C. § 103(a) over Habib in view of Khan and further in view of Snell;
- (4) claims 41, 43, and 45 as unpatentable under 35 U.S.C. § 103(a) over Habib in view of Michalak;
- (5) claim 42 as unpatentable under 35 U.S.C. § 103(a) over Habib in view of Michalak and further in view of Khan;
- (6) claims 44 and 46 as unpatentable under 35 U.S.C. § 103(a) over Habib in view of Michalak and further in view of Snell;
- (7) claims 47-50 as unpatentable under 35 U.S.C. § 103(a) over Habib in view of Khan, Michalak, and Snell;
- (8) claims 51, 53, and 54 as unpatentable under 35 U.S.C. § 103(a) over Habib in view of Khan and further in view of Finkel;
- (9) claim 52 as unpatentable under 35 U.S.C. § 103(a) over Habib in view of Khan and further in view of Finkel and still further in view of Michalak;

² No references to *et al.* are made in this Decision.

- (10) claims 55, 57, and 58 as unpatentable under 35 U.S.C. § 103(a) over Habib in view of Michalak and further in view of Finkel;
- (11) claim 56 as unpatentable under 35 U.S.C. § 103(a) over Habib in view of Michalak and further in view of Finkel and still further in view of Khan; and,
- (12) claims 59-61 as unpatentable under 35 U.S.C. § 103(a) over Habib in view of Khan and further in view of Michalak and still further in view of Finkel.

Appellants have not appealed the provisional final rejection of claims 34-61 under obviousness-type double patenting over claims 1-38 of co-pending Application 10/931,700 in view of either Khan or Michalak (FR³ 11).

At issue is whether Appellants have shown reversible error by the Examiner in any one or more of the remaining twelve rejections under § 103.

II. Findings of Fact ("FF")

The following findings of fact are supported by a preponderance of the evidence of record.

A. Appellants' specification

- [1] According to the 610 specification (Spec. 2:13-23),

[t]he system and method may supply day care providers with products such that day care providers are able to conveniently perform multiple diaper changes per day under sanitized conditions and in compliance with government regulations. The system and method may also reduce the need to purchase and store excessive

³ Final Office Action mailed 13 November 2006 ("FR").

inventories of products that are used to change diapers.

In addition, the system and method may allow day care providers to turn diaper changing into a profit center by allowing day care providers to readily pass along charges to their clients for the products that are used to change diapers. Many of a day care provider's clients would gladly pay a premium not to have to continually bring diaper changing supplies to the day care provider.

- [2] An exemplary system includes a diaper, a sanitizer, and a wipe, each of which is "secured" to the same holder (Spec. 4:27-30).
- [3] The 610 specification defines "secured" as "containing, constraining, enclosing, holding, compressing, contacting or supporting within, upon and/or against the holder by any method" (Spec. 4:30-32).
- [4] Further according to the 610 specification, a holder may be "any type of container or storage device", for example, a box, can, jar, rack, bag, pouch, cubby, shelf, drawer, dispenser, spindle, core, cupboard, closet, clip, cabinet, crate, trunk, tote, and/or tub (Spec. 5:1-5).
- [5] The holder may also be used as a shipping container or to perform some other function (Spec. 5:7-8).

B. Prior art

- [6] Habib is the primary reference applied by the Examiner.
- [7] Habib discloses a prepackaged diaper changing kit or system 10 comprising disposable diaper 12, prepackaged moist baby wipes 14, baby liner 16 which can be used as changing pad, prepackaged instant hand sanitizer 18, and disposable plastic bag 20, which are all

- prepackaged in exterior packaging or holder 22 (Habib 3:18-22; 3:67-4:2).
- [8] According to Habib, disposable diaper 12 can be a conventional diaper sized for infants up to large children and/or adults (Habib 3:22-42).
- [9] Further according to Habib, the prepackaged diaper changing kit may be dispensed from conventional vending machines or sold in 6-, 12- and/or 24-packs, etc. at various retailers or by mail order or over the internet (Habib 5:26-49).
- [10] The diaper changing kit of Habib differs from the system of claim 47 in failing to include a pair of gloves, a pair of shoe coverings, and a lotion.
- [11] Kahn discloses a disposable diaper system or kit 4 comprising a diaper 10 and first and second storage compartments 14 and 16 for storing an integrated disposable bag 14a and glove set 16a for reducing feces and/or body fluid contamination during diaper removal (Kahn 1, ¶¶ 9 and 20).
- [12] Michalak discloses a sanitary protective foot and shoe covering for use in hospitals and similar institutions to prevent foreign matter from the shoes from contaminating surrounding areas (Michalak 1:5-12).
- [13] Snell discloses a diaper changing kit comprising a diaper and related accessories, such as a moistened wipe, baby powder, a medicament, a swab, a lotion and/or a disposal bag for a dirty diaper (Snell 2, ¶ 18; 6 ¶ 74).
- [14] Snell, like Habib, suggests packaging a plurality of diaper kits together in a master container (Snell 7, ¶ 83).

[15] Finkel suggests a ready commercial market among parents, babysitters, nurseries, hospitals, day care centers, etc. for reasonably priced disposable sanitary diaper changing kits (Finkel 1:8-29; 2:8-24).

[16] Finkel discloses a sealed, disposable kit 10 comprising multiple compartments containing a coupon 70, a dry towel packet 72, a packet of baby powder 74, a wet towel packet 76, a packet of soap 78, and a disposable diaper 80 (Finkel 3:67-4:6; Fig. 4).

Other findings of fact follow below.

III. Discussion

A. Legal standard

A claimed invention is not patentable if the subject matter of the invention would have been obvious to a person having ordinary skill in the art at the time the invention was made. 35 U.S.C. § 103(a); *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727 (2007); *Graham v. John Deere Co.*, 383 U.S. 1 (1966). Facts relevant to a determination of obviousness include (1) the scope and content of the prior art, (2) any differences between the claimed invention and the prior art, (3) the level of ordinary skill in the art, and (4) any relevant objective evidence of obviousness or nonobviousness. *KSR*, 127 S.Ct. at 1734; *Graham*, 383 U.S. at 17-18.

A combination of known elements with no change in their respective functions is likely to be obvious when it does no more than yield predictable results. *KSR*, 127 S.Ct. at 1739-41.

One of ordinary skill in the art is presumed to have skills apart from what the prior art references expressly disclose. *In re Sovish*, 769 F.2d 738,

743 (Fed. Cir. 1985). A person of ordinary skill is also a person of ordinary creativity, not an automaton. *KSR*, 127 S.Ct. at 1742.

In *KSR*, the Supreme Court explained that a "rigid" teaching, suggestion, motivation ("TSM") test "is incompatible with our precedents." *KSR*, 127 S.Ct. at 1741. A rigid requirement of relying on only what is written in a prior art reference would, as the Supreme Court noted, unduly confine the use of the knowledge and creativity within the ordinary grasp of an ordinarily skilled artisan. *Id.* at 1742.

B. Examiner's findings and conclusions

rejection (1) under § 103 over Habib and Khan

The Examiner found the diaper changing system of Habib differed from the system of claims 34, 36, 38, and 40 in lacking a pair of gloves. The Examiner found Khan taught supplying a pair of gloves to reduce fecal and/or body fluid contamination. Ans. 4. The Examiner concluded it would have been obvious "to provide the system of Habib with gloves as suggested by Khan in order to reduce feces and/or body fluid contamination." Ans. 5.

rejection (2) under § 103 over Habib, Khan, and Michalak

The Examiner found the diaper changing system of Habib-Khan differed from the system of claim 35 in lacking a pair of shoe coverings. The Examiner found Michalak taught supplying a pair of shoe coverings to limit foreign matter from contaminating certain areas. The Examiner concluded it would have been obvious "to provide the system of Habib-Khan with shoe coverings as taught by Michalak in order to limit foreign matter from contaminating baby areas." Ans. 5. The Examiner noted that Finkel evidenced that a hospital and day care center are considered similar environments with respect to diaper changing systems. Ans. 14.

rejection (3) under § 103 over Habib, Khan, and Snell

The Examiner found the diaper changing system of Habib-Khan differed from the system of claims 37 and 39 in lacking a lotion and in requiring Habib exterior packaging 22 to be a box. The Examiner found Snell taught supplying a lotion in a diaper kit and providing the diaper kit in a box. The Examiner concluded it would have been obvious "to provide the system of Habib-Khan with a lotion as taught by Snell in order to sooth[e] any chaffed [sic] skin on the baby or changer." Ans. 6. The Examiner further concluded it would have been obvious "to provide the system of Habib-Khan in a box as taught by Snell in order to protect the contents from damage during transport or to enable dispensing of the packages. . . ." Ans. 6.

rejection (4) under § 103 over Habib and Michalak

The Examiner found the diaper changing system of Habib differed from the system of claims 41, 43, and 45 in lacking a pair of shoe coverings. The Examiner concluded it would have been obvious "to provide the system of Habib with shoe coverings as taught by Michalak in order to limit foreign matter from contaminating baby areas." Ans. 6. The Examiner noted that Finkel evidenced that a hospital and day care center are considered similar environments with respect to diaper changing systems. Ans. 16.

rejection (5) under § 103 over Habib, Michalak, and Khan

The Examiner found the diaper changing system of Habib-Michalak differed from the system of claim 42 in lacking a pair of gloves. The Examiner concluded it would have been obvious "to provide the system of Habib-Michalak with gloves as suggested by Khan in order to reduce feces and/or body fluid contamination." Ans. 7.

rejection (6) under § 103 over Habib, Michalak, and Snell

The Examiner found the diaper changing system of Habib-Michalak differed from the system of claims 44 and 46 in lacking a lotion and in requiring Habib exterior packaging 22 to be a box. The Examiner concluded it would have been obvious "to provide the system of Habib-Michalak with a lotion as taught by Snell in order to sooth[e] any chaffed [sic] skin on the baby or changer." Ans. 7. The Examiner further concluded it would have been obvious "to provide the system of Habib-Michalak in a box as taught by Snell in order to protect the contents from damage during transport or to enable dispensing of the packages. . . ." Ans. 7-8.

rejection (7) under § 103 over Habib, Khan, Michalak, and Snell

The Examiner found the diaper changing system of Habib differed from the system of claims 47-50 in lacking a pair of gloves, a pair of shoe coverings, and a lotion, and in requiring Habib exterior packaging 22 to be a box. The Examiner concluded it would have been obvious "to provide the system of Habib with gloves as suggested by Khan in order to reduce feces and/or body fluid contamination." Ans. 8. The Examiner further concluded it would have been obvious "to provide the system of Habib with shoe coverings as taught by Michalak in order to limit foreign matter from contaminating baby areas." Ans. 8. The Examiner also concluded it would have been obvious "to provide the system of Habib with a lotion as taught by Snell in order to sooth[e] any chaffed [sic] skin on the baby or changer." Ans. 9. The Examiner further concluded it would have been obvious "to provide the system of Habib-Khan-Michalak-Snell in a box as taught by Snell in order to protect the contents from damage during transport or to enable dispensing of the packages" Ans. 9. As to claim 50, the

Examiner found that although Habib does not discuss the absorbency of diaper 12, selection of a low absorbency diaper "would have been an obvious matter of design choice since the applicant has disclosed that 'any type of diaper may be used herein' (Page 5, lines 9-10)." Ans. 9.

rejection (8) under § 103 over Habib, Khan, and Finkel

The Examiner found Habib-Khan disclose securing a diaper, a pair of gloves, a wipe, a changing pad and a sanitizer in a diaper changing kit but differs from the method of claims 51, 53 and 54 in failing to disclose an express step of delivering the kit to a day care provider. Ans. 9-10. The Examiner concluded it would have been obvious to "to deliver the kit of Habib-Khan to a day care provider in order to maintain sanitary conditions at the day care center" since "Finkel teaches the desirability of having diaper-changing kits at a day care provider". Ans. 10.

rejection (9) under § 103 over Habib, Khan, Finkel, and Michalak

The Examiner further concluded it would have been obvious to secure shoe coverings in the Habib-Khan-Finkel diaper changing kit as suggested by Michalak and to deliver the Habib-Khan-Finkel-Michalak kits to a day care provider as recited in the method of claim 52. Ans. 10.

rejection (10) under § 103 over Habib, Michalak, and Finkel

The Examiner found Habib-Michalak disclose securing a diaper, a pair of shoe coverings, a wipe, a changing pad, and a sanitizer in a diaper changing kit but differs from the method of claims 55, 57, and 58 in failing to disclose an express step of delivering the kit to a day care provider. Ans. 10-11. The Examiner concluded it would have been obvious to "to deliver the kit of Habib-Michalak to a day care provider in order to maintain

sanitary conditions at the day care center" since "Finkel teaches the desirability of having diaper-changing kits at a day care provider". Ans. 11.

rejection (11) under § 103 over Habib, Michalak, Finkel, and Khan

The Examiner further concluded it would have been obvious to secure a pair of gloves and a disposal bag in the Habib-Michalak-Finkel diaper changing kit as disclosed by Khan and Habib and to deliver the kit to a day center provided as recited in the method of claim 56. Ans. 11.

rejection (12) under § 103 over Habib, Khan, Michalak, and Finkel

The Examiner found Habib-Khan-Michalak disclose securing a diaper, a pair of gloves, a pair of shoe coverings, a disposal bag, a wipe, a changing pad, and a sanitizer in a diaper changing kit but differs from the method of claims 59-61 in failing to disclose an express step of delivering the kit to a day care provider. Ans. 11-12. The Examiner concluded it would have been obvious "to deliver the kit of Habib-Khan-Michalak to a day care provider in order to maintain sanitary conditions at the day care center" since "Finkel teaches the desirability of having diaper-changing kits at a day care provider". Ans. 12.

C. Appellants' arguments

As to each of the twelve appealed grounds of rejection, Appellants argue there is no motivation or suggestion to combine Habib with Khan, Michalak, Snell, and/or Finkel (App. Br. 11, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, and 24). Appellants argue the Examiner's reason for combining reference teachings in each rejection is merely a conclusory statement analogous to the situation in *In re Lee*, 277 F.3d 1338 (Fed. Cir. 2002) (App. Br. 12, 13, 14, 15, 16, 17-18, 19, 20, 21, 22, 23, and 24).

Appellants note that the references cited by the Examiner provide no objective evidence as to securing the combination of items recited in claims 34, 35, 37, 41, 44, and 47 or the combination of items plus delivery thereof recited in claims 51, 52, 55, and 56 (App. Br. 12-24; Reply Br. 2-8).

Finally, Appellants argue the combinations recited in the claims are more than the predictable use of prior art elements. According to Appellants, only their '610 specification describes benefits, e.g., convenience to day care providers, compliance with government day care regulations, and turning a profit on diaper changing by charging a premium for diaper changing supplies clients would otherwise have had to bring to the day care center (see FF 1), associated with the claimed combinations (Reply Br. 9).

D. Analysis

Here, the diaper changing system of claims 34-50 is a combination of a diaper and items known to be associated with diaper changing, such as wipes, lotion, changing pad, etc., with no change in their respective functions. Method claims 51-61 comprise packing the diaper changing system and delivering it to a day care provider. A combination of known elements with no change in their respective functions is likely to be obvious when it does no more than yield predictable results. *KSR*, 127 S.Ct. 1739-41. Appellants have not submitted relevant evidence of nonobviousness.

First, we find that the Examiner has provided ample reasons why the collective teachings of the references would have suggested their combination in each of the twelve appealed rejections. Specifically, the Examiner concluded it would have been *prima facie* obvious to one of ordinary skill in the art, as to

1. claims 34, 36, 38, and 40, "to provide the system of Habib with gloves as suggested by Khan in order to reduce feces and/or body fluid contamination" (Ans. 5);

2. claim 35, "to provide the system of Habib-Khan with shoe coverings as taught by Michalak in order to limit foreign matter from contaminating baby areas" (Ans. 5);

3. claims 37 and 39, "to provide the system of Habib-Khan with a lotion as taught by Snell in order to sooth[e] any chaffed [sic] skin on the baby or changer" and "to provide the system of Habib-Khan in a box as taught by Snell in order to protect the contents from damage during transport or to enable dispensing of the packages. . . ." (Ans. 6);

4. claims 41, 43, and 45, "to provide the system of Habib with shoe coverings as taught by Michalak in order to limit foreign matter from contaminating baby areas" (Ans. 6);

5. claim 42, "to provide the system of Habib-Michalak with gloves as suggested by Khan in order to reduce feces and/or body fluid contamination" (Ans. 7);

6. claims 44 and 46, "to provide the system of Habib-Michalak with a lotion as taught by Snell in order to sooth[e] any chaffed [sic] skin on the baby or changer" and "to provide the system of Habib-Michalak in a box as taught by Snell in order to protect the contents from damage during transport or to enable dispensing of the packages. . . ." (Ans. 7-8);

7. claims 47-50, "to provide the system of Habib with gloves as suggested by Khan in order to reduce feces and/or body fluid contamination", "to provide the system of Habib with shoe coverings as taught by Michalak in order to limit foreign matter from contaminating baby

areas", "to provide the system of Habib with a lotion as taught by Snell in order to sooth[e] any chaffed [sic] skin on the baby or changer", "to provide the system of Habib-Khan-Michalak-Snell in a box as taught by Snell in order to protect the contents from damage during transport or to enable dispensing of the packages . . . ", and to use a low absorbency diaper as "an obvious matter of design choice since the applicant has disclosed that 'any type of diaper may be used herein' (Page 5, lines 9-10)." (Ans. 8-9);

8. claims 51, 53, and 54, "to deliver the kit of Habib-Khan to a day care provider in order to maintain sanitary conditions at the day care center" since "Finkel teaches the desirability of having diaper-changing kits at a day care provider..." (Ans. 10);

9. claim 52, obvious to secure shoe coverings in the Habib-Khan-Finkel diaper changing kit as suggested by Michalak and to deliver the Habib-Khan-Finkel-Michalak kits to a day care provider (Ans. 10);

10. claims 55, 57, and 58, "to deliver the kit of Habib-Michalak to a day care provider in order to maintain sanitary conditions at the day care center" since "Finkel teaches the desirability of having diaper-changing kits at a day care provider" (Ans. 11-12);

11. claim 56, obvious to secure a pair of gloves and a disposal bag in the Habib-Michalak-Finkel diaper changing kit as disclosed by Khan and Habib and to deliver the kit to a day center (Ans. 11); and,

12. claims 59-61, "to deliver the kit of Habib-Khan-Michalak to a day care provider in order to maintain sanitary conditions at the day care center" since "Finkel teaches the desirability of having diaper-changing kits at a day care provider" (Ans. 12).

Second, the fact that the Examiner's reason is not the same as Appellants' alternative reason (see FF 1) is insufficient to rebut the conclusion of obviousness presented by the Examiner. *KSR*, 127 S.Ct. at 1741; *In re Dillon*, 919 F.2d 688, 693-94 (Fed. Cir. 1990). Furthermore, it is settled law that the teaching or suggestion to combine references' disclosures need not be explicitly stated in the prior art, but may be implicit from the state of the prior art considered as a whole. *In re Kahn*, 441 F.3d 977, 987 (Fed. Cir. 2006); cited with approval in *KSR*, 127 S.Ct. at 1741.

Third, *In re Lee* is not controlling precedent under the facts of this case. In *In re Lee*, 277 F.3d at 1343-44, our reviewing court expressed skepticism about invoking the knowledge of a skilled artisan to supply the motivation to combine references on a scanty record. That is not the situation here where the Examiner has made *Graham* factor findings and expressly explained why the "common sense" of an ordinary artisan seeking to solve the problem at hand would have led the artisan to combine the references. For the most part, the Examiner relied on express teachings in the references as a reason to combine them. For example, Khan expressly discloses use of a glove set to reduce fecal and/or body fluid contamination (FF 11). However, to the extent the Examiner relied on "common sense" as motivation to combine, he expressly explained why. For example, the Examiner explained it would have been obvious to include a lotion as taught by Snell in the diaper changing system of Habib-Khan for the common sense reason of soothing any chafed (or chapped) skin on the baby or changer (see e.g., Ans. 6). Therefore, the Examiner's reason for combining reference teachings in each appealed rejection is factually supported and not analogous to the conclusory statements found in the *In re Lee* case.

We note that Appellants have not submitted relevant evidence of nonobviousness to rebut the Examiner's conclusion of *prima facie* obviousness. We also note that the disclosure in Habib of selling multi-pack diaper changing kits by mail order or over the internet (FF 9) is cumulative to the disclosure in Finkel of a commercial market in day care centers, etc. for reasonably priced disposable sanitary diaper changing kits (FF 6) relied on by the Examiner.

Therefore, based on the foregoing, we sustain each of the twelve appealed rejections of claims 34-61 under § 103 over the combined teachings of Habib, Khan, Michalak, Snell, and/or Finkel.

Finally, since Appellants do not contest the provisional rejection of claims 34-61 (FR 11; App. Br. 9-10), we summarily sustain the Examiner's provisional rejection of claims 34-61 on the ground of nonstatutory obviousness-type double patenting over claims 1-38 of copending application 10/931,700 in view of either Khan or Michalak.

IV. Order

Upon consideration of the record, and for the reasons given, it is ORDERED that the decision of the Examiner rejecting claims 34, 36, 38 and 40 as unpatentable under 35 U.S.C. § 103(a) over Habib in view of Khan is AFFIRMED;

FURTHER ORDERED that the decision of the Examiner rejecting claim 35 as unpatentable under 35 U.S.C. § 103(a) over Habib in view of Khan and Michalak is AFFIRMED;

FURTHER ORDERED that the decision of the Examiner rejecting claims 37 and 39 as unpatentable under 35 U.S.C. § 103(a) over Habib in view of Khan and Snell is AFFIRMED;

FURTHER ORDERED that the decision of the Examiner rejecting claims 41, 43, and 45 as unpatentable under 35 U.S.C. § 103(a) over Habib in view of Michalak is AFFIRMED;

FURTHER ORDERED that the decision of the Examiner rejecting claim 42 as unpatentable under 35 U.S.C. § 103(a) over Habib in view of Michalak and Khan is AFFIRMED;

FURTHER ORDERED that the decision of the Examiner rejecting claims 44 and 46 as unpatentable under 35 U.S.C. § 103(a) over Habib in view of Michalak and Snell is AFFIRMED;

FURTHER ORDERED that the decision of the Examiner rejecting claims 47-50 as unpatentable under 35 U.S.C. § 103(a) over Habib in view of Khan, Michalak, and Snell is AFFIRMED;

FURTHER ORDERED that the decision of the Examiner rejecting claims 51, 53, and 54 as unpatentable under 35 U.S.C. § 103(a) over Habib in view of Khan and Finkel is AFFIRMED;

FURTHER ORDERED that the decision of the Examiner rejecting claim 52 as unpatentable under 35 U.S.C. § 103(a) over Habib in view of Khan and Michalak is AFFIRMED;

FURTHER ORDERED that the decision of the Examiner rejecting claims 55, 57, and 58 as unpatentable under 35 U.S.C. § 103(a) over Habib in view of Michalak and Finkel is AFFIRMED;

FURTHER ORDERED that the decision of the Examiner rejecting claim 56 as unpatentable under 35 U.S.C. § 103(a) over Habib in view of Michalak, Finkel, and Khan is AFFIRMED;

FURTHER ORDERED that the decision of the Examiner rejecting

Appeal 2008-2971
Application 10/836,610

claims 59-61 as unpatentable under 35 U.S.C. § 103(a) over Habib in view of Khan, Michalak, and Finkel;

FURTHER ORDERED that the decision of the Examiner provisionally rejecting claims 34-61 as unpatentable under obviousness-type double patenting over claims 1-38 of co-pending Application 10/931,700 in view of either Khan or Michalak is AFFIRMED; and,

FURTHER ORDERED that no time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

MAT

Christopher M. Goff
Armstrong Teasdale LLP
One Metropolitan Square
Suite 2600
St. Louis, MO 63102