

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

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*Ex parte* FIORELLO SALONE, BRUCE WILLIAM LAVASH,  
GUIDO BONELLI, MARIA GRAZIA CAPRI, and  
MARCO DIGIACOMANTONIO

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Appeal 2008-5257  
Application 10/265,893  
Technology Center 3700

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Decided: January 2, 2009

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Before LORA M. GREEN, RICHARD M. LEBOVITZ, and  
JEFFREY N. FREDMAN, *Administrative Patent Judges*.

FREDMAN, *Administrative Patent Judge*.

**DECISION ON APPEAL**

This is an appeal under 35 U.S.C. § 134 involving a claim to an absorbent article. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

*Statement of the Case*

*Background*

“Absorbent articles, particularly sanitary napkins, having wings or flaps are disclosed in the literature and are available in the marketplace” (Spec. 1:17-19). The Specification notes that “[g]enerally, the flaps extend laterally from a central absorbent means and are intended to be folded around the edges . . . Thus, the flaps are disposed between the edges of the wearer’s panties in the crotch region and the wearer’s thighs” (Spec. 1:20-23). According to the Specification, “the flapped napkins commonly experience problems that keep them from being optimally effective. These problems generally result from the stresses exerted on such flaps when the sanitary napkins are worn” (Spec. 2:15-18).

*The Claims*

Claims 1-19 are on appeal. We will focus on claims 1 and 6, which are representative and read as follows:

1. An absorbent article for wearing in an undergarment, said absorbent article having a principle longitudinal centerline and a transverse centerline, said absorbent article comprising:

a main body portion having two spaced apart longitudinal side edges and two spaced apart transverse end edges, said main body portion comprising a liquid pervious top sheet, a liquid impervious backsheet joined to said topsheet and an absorbent core positioned between said topsheet and said backsheet;

a pair of flaps for folding around and securing said absorbent article to said undergarment, said flaps being associated with said main body portion at a juncture, with one flap extending laterally outward from each longitudinal side edge of said main body portion;

a first stress relief means located in said flaps remote from said juncture, said first stress relief means comprising a slit or a notch; and

at least one second stress relief means located in said flaps contiguous with said first stress relief means said second stress relief means comprising a zone of differential extensibility.

6. The absorbent article of claim 1 further comprising a third stress relief means located adjacent said juncture, said third stress relief means comprising a zone of differential extensibility.

*The prior art*

The Examiner relies on the following prior art references to show unpatentability:

McFall	U.S. 5,993,431	Nov. 30, 1999
Blanchard	U.S. 6,689,112 B1	Feb. 10, 2004

*The issues*

The Examiner rejected claims 1-19 under 35 U.S.C. § 103(a) as being obvious over McFall and Blanchard (Ans. 5-10).

The Examiner found that the “McFall et al. discloses a first region of extensibility/stress relief means 46 remote from a juncture, a second region of extensibility/stress relief means 48 spaced from each other and contiguous with the first stress relief means 46 (col. 10, ll. 4-6 and 23-25, fig. 1)” (Ans. 5). The Examiner found that “McFall et al. further discloses the absorbent article is provided with side flaps that have portions that are extensible for relieving stresses on the sanitary napkin when the flap are wrapped around the side edges of a wearer's undergarments” (Ans. 6). The Examiner found

that “McFall et al. *does not expressly disclose* that the flaps contain a slit or notch” (Ans. 6).

The Examiner found that Blanchard teaches “a first stress relief means 53 located in flaps 24, 24’, remote from juncture 26, 26’ (fig. 1), said first stress relief means 53 comprises a slit” (Ans. 7). The Examiner concluded that it “would be obvious to one of ordinary skill in the art at the time the invention was made to modify the zones of differential extensibility of McFall. et al. with the slit of Blanchard et al. for enhanced resistance to stresses exerted on the flap” (Ans. 7).

Appellants contend that

[e]ven if one were to replace regions 46 of McFall et al. with the slit material of Blanchard et al. this would not establish a *prima facie* case of obviousness as the combination does not have all the limitations of claim 1. The McFall et al./Blanchard et al. combination as outlined in the Office Action would still have the first region 44 located in a portion of the pad other than in the flaps.

(App. Br. 3).

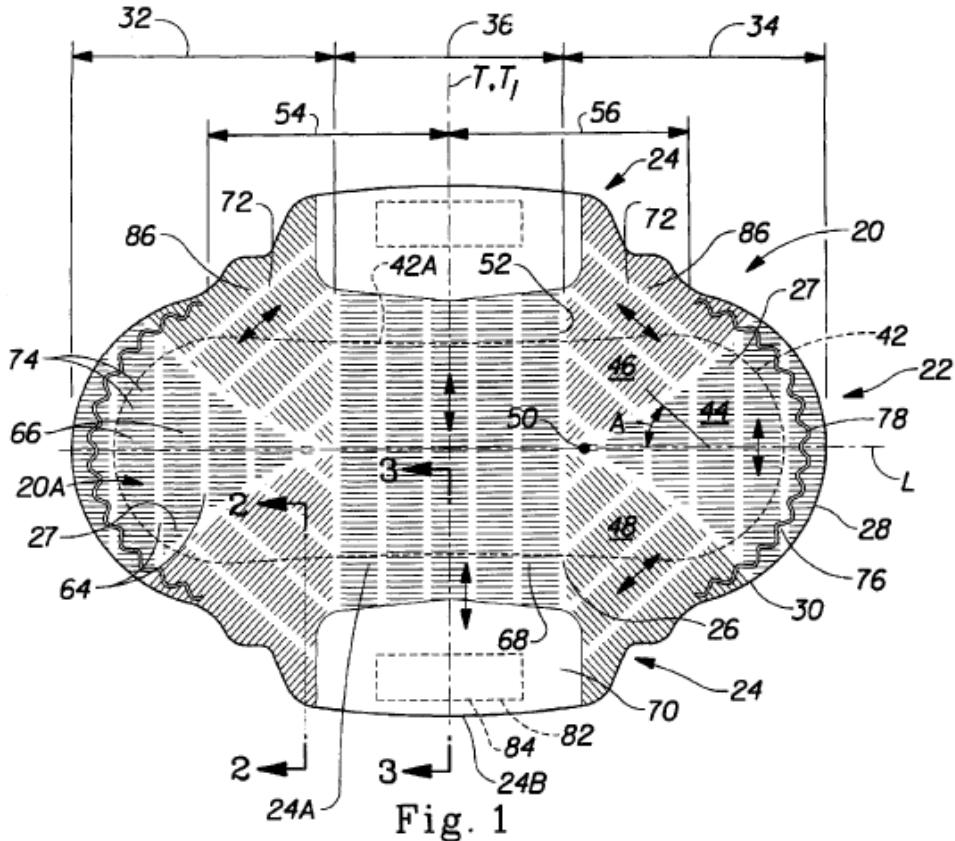
Appellants also contend that the “Office Action fails to even mention that the first region 44 of McFall et al. would need to be moved into the flaps. This is clearly a necessary requirement to even establish a *prima facie* case of obviousness” (App. Br. 3). Appellants contend that “even if the Office Action mentioned the need to move regions 44 of McFall et al., there would still be the need for a requisite motivation to do so. No such motivation has been suggested by the Office Action” (App. Br. 4).

In view of these conflicting positions, we frame the obviousness issues before us as follows:

Did the Examiner err in finding that it would have been obvious to modify the flaps on the sanitary napkin of McFall to incorporate slits as shown on the flaps of the sanitary napkin of Blanchard?

*Findings of Fact (FF)*

1. McFall teaches a sanitary napkin as reproduced below:



“FIG. 1 is a top plan view of a preferred sanitary napkin embodiment of the present invention” (McFall, col. 3, ll. 51-52).

2. McFall teaches “a multi-directionally extensible, and preferably elastically extensible, absorbent article for wearing in an undergarment, such as a sanitary napkin” (McFall, col. 2, ll. 53-56).

3. McFall teaches that the “multi-directionally extensible absorbent article has a longitudinal centerline, a transverse centerline, a pair of longitudinal side edges, a pair of end edges” (McFall, col. 2, ll. 57-59).

4. McFall teaches that the “main body portion . . . comprises a multidirectionally extensible liquid pervious topsheet, a multidirectionally extensible liquid impervious backsheet . . . and a multidirectionally extensible absorbent core positioned between the topsheet and the backsheet” (McFall, col. 2, l. 67 to col. 3, l. 6).

5. McFall teaches a pair of “side flaps . . . that are extensible for relieving stresses on the flaps when they are wrapped about the side edges of a wearer’s undergarments” (McFall, col. 3, ll. 35-38).

6. McFall teaches that the “second region of extensibility **46** is disposed laterally outward of at least part of the first region of extensibility **44** . . . if the sanitary napkin **20** is provided with flaps **24**, this region of extensibility can even extend beyond the longitudinal side edge **26** of the main body portion into the side flaps **24**.” (McFall, col. 10, ll. 23-32; *see Fig. 1*).

7. McFall specifically teaches that “even though the side flaps **24** are integral with the main body portion **22**, they are provided with zones of extensibility **72**” (McFall, col. 16, ll. 21-23)

8. Blanchard teaches that “the expandable center portion **53** [of flap 24] provides a means for the relief of stresses in the flaps of the sanitary napkin when the sanitary napkin is placed in the wearer’s undergarment.” (Blanchard, col. 4, ll. 60-63).

9. Blanchard teaches that “[o]ne example of a suitable treatment means . . . includes slitting the non-expandable flap materials in an amount

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sufficient to permit the elastomeric materials to expand" (Blanchard, col. 4, l. 66 to col. 5, l. 3).

10. The Examiner found that

It would be obvious to one of ordinary skill in the art at the time the invention was made to modify the zones of differential extensibility of McFall. et al. with the slit of Blanchard et al. for enhanced resistance to stresses exerted on the flaps by a user during wearing of the article since both references disclose an absorbent article with side flaps that have portions that are extensible for relieving stresses on the sanitary napkin when the flaps are wrapped around the side edges of a wearer's undergarments.

(Ans. 7-8.)

*Principles of Law*

In *KSR*, the Supreme Court rejected the rigid application of the teaching, suggestion, and motivation test by the Federal Circuit, stating that

The principles underlying [earlier] cases are instructive when the question is whether a patent claiming the combination of elements of prior art is obvious. When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability.

*KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, 1740 (2007).

"As our precedents make clear, however, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *Id.* at 1741.

*Analysis*

*Claim 1*

McFall teaches a sanitary napkin with a main portion comprising a liquid pervious top sheet, a liquid impervious backsheet and an absorbent core (FF 1-4). McFall teaches that the sanitary napkin comprises a pair of flaps which extend laterally outward (FF 5). McFall teaches a stress relief means comprising a zone of differential extensibility in the flaps (FF 6). While McFall does not teach a slit or notch as a stress relief means, Blanchard teaches placing a slit in the flaps of a sanitary napkin as a stress relief means (FF 8-9). The Examiner found that incorporating Blanchard's slit in the flaps of a sanitary napkin into the flaps of McFall's sanitary napkin was obvious since both patents were concerned with stress relief on the flaps (FF 10).

Applying the *KSR* standard of obviousness to the findings of fact, the addition of Blanchard's slit in the flaps of a sanitary napkin as a stress relief means to the sanitary napkin of McFall teaches all of the limitations of claim 1 with the requisite reason to combine them (FF 1-10). The combination of McFall and Blanchard uses known elements and combines them in predictable ways. Such a combination is merely a "predictable use of prior art elements according to their established functions." *KSR*, 127 S. Ct. at 1740.

We are not persuaded by Appellant's argument that "[e]ven if one were to replace regions 46 of McFall et al. with the slit material of Blanchard . . . The McFall et al./Blanchard et al. combination . . . would still have the first region 44 located in a portion of the pad other than in the flaps" (App. Br. 3). McFall clearly teaches that "if the sanitary napkin **20** is

provided with flaps **24**, this region of extensibility can even extend beyond the longitudinal side edge **26** of the main body portion into the side flaps **24**.” (McFall, col. 10, ll. 30-32; FF 6). McFall is referring to the region of extensibility 46 at column 10, and expressly teaches that region of extensibility 46 can extend into the flaps, satisfying the requirement of claim 1 for a “second stress relief means comprising a zone of differential extensibility” (Claim 1). This teaching, along with Blanchard’s disclosure of the use of a slit in the flap teaches that both the first and second stress relief means are present in the flaps (FF 6, 9).

We also do not find persuasive Appellants’ argument that “[n]o such motivation has been suggested by the Office action” (App. Br. 4). In fact, the Examiner provides a specific motivation to combine the two stress relieving means “for enhanced resistance to stresses exerted on the flaps by a user during wearing of the article” (Ans. 7). Additionally, the combination represents a “predictable use of prior art elements according to their established functions.” *KSR*, 127 S. Ct. at 1740.

#### *Claim 6*

Appellant contends that “an element of Claim 6, namely the requirement that the third stress means be located adjacent the same flap juncture as referenced in Claim 1 is missing” (App. Br. 4). We are not persuaded by this argument since the Examiner notes that “McFall . . . further discloses a third region of differential extensibility/stress relief means 72 located adjacent a juncture 62” (Ans. 8-9). McFall specifically teaches that “even though the side flaps **24** are integral with the main body portion **22**, they are provided with zones of extensibility **72**” (McFall, col. 16, ll. 21-

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23; FF 7). Therefore, McFall teaches an additional regions of extensibility 72 in the side flaps (FF 7).

*Conclusions of Law*

The Examiner did not err in finding that it would have been obvious to modify the flaps on the sanitary napkin of McFall to incorporate slits as shown on the flaps of the sanitary napkin of Blanchard.

SUMMARY

In summary, we affirm the rejection of claims 1 and 6 under 35 U.S.C. § 103(a) over McFall and Blanchard. Pursuant to 37 C.F.R. § 41.37(c)(1)(vii)(2006), we also affirm the rejections of claims 2-5 and 7-19 as these claims were not argued separately.

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)(2006).

AFFIRMED

LP

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