

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEFFREY L. TAYLOR

Appeal No. 96-1726
Application 08/146,498¹

ON BRIEF

Before COHEN, ABRAMS and STAAB, Administrative Patent Judges.
COHEN, Administrative Patent Judge.

¹ Application for patent filed November 1, 1993.

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DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 11. These claims constitute all of the claims in the application.

Appellant's invention pertains to a surgical gown. An understanding of the invention can be derived from a reading of exemplary claim 1, a copy of which appears in the "APPENDIX" of appellant's brief.

As evidence of obviousness, the examiner has applied the patents listed below:

Tames	3,011,172	Dec. 5, 1961
Krzewinski	3,868,728	Mar. 4, 1975
Schwarze et al. (Schwarze)	4,736,467	Apr. 12, 1988
Holt	5,271,100	Dec. 21, 1993
		(filed Aug. 27, 1992)

The following rejections are before us for review.

Claims 1 through 3, 7, 8, 10, and 11 stand rejected under 35 U.S.C. § 103 as being unpatentable over Tames in view of Holt and Schwarze.

Claims 4 through 6, 9, and 10 stand rejected under 35 U.S.C. § 103 as being unpatentable over Tames in view of Holt

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and Schwarze, as applied to claims 1 and 7 above, further in view of Krzewinski.

The full text of the examiner's rejections and response to the argument presented by appellant appears in the answer (Paper No. 14), while the complete statement of appellant's argument can be found in the brief (Paper No. 13).

Based upon appellant's grouping of claims (brief, page 5), we focus our attention below upon independent claims 1 and 7, with respective dependent claims 2 through 6 and 8 through 11 standing or falling therewith.

OPINION

In reaching our conclusion on the obviousness issues raised in this appeal, this panel of the board has carefully considered appellant's specification and claims, the applied patents,² and the respective viewpoints of appellant and the

² In our evaluation of the applied patents, we have considered all of the disclosure thereof for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the
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examiner. As a consequence of our review, we make the determinations which follow.

We reverse the examiner's rejections of appellant's claims under 35 U.S.C. § 103.

At the outset, we note that each of claims 1 and 7 addresses a surgical gown that requires, inter alia, three particular layers, i.e., an outer layer of a liquid repellant, moisture vapor transmitting material, an inner layer of breathable material, and an intermediate layer of liquid proof material interposed between the outer and inner layers. As is evident from appellant's specification (pages 7 through 9), the material of each of the layers was known at the time of the present invention.

In rejecting the claimed three layer surgical gown, the examiner proposes to modify the two layer surgical gown of Tames based upon the teachings of the three layer gowns of Holt and Schwarze. The surgical gown of Tames (Figures 1 and 4) is characterized by a front panel (outer layer) 15 of any suitable

²(...continued)
disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

lightweight material, such as linen, cotton, or synthetic fabric, and a flexible sheet (inner layer) 20 of lightweight, moisture-proof, electrically conductive material underlying the major part of the upper portion of the front panel 15.

Considering now the teaching of three layer surgical gowns in the Holt and Schwarze patents, we find that, while they each rely upon three layers to form the gown, a combination and association of different layers in each patent forms the resulting three layer surgical gowns. More specifically, the surgical gown of Holt (Figure 4) includes an intermediate barrier layer (polypropylene) 22 with an outer layer of fluid absorbent nonwoven material 20 and an inner fluid absorbent nonwoven material layer 24 to absorb surgeon perspiration. As to the surgical gown of Schwarze (Figure 2), it includes an inner (intermediate) layer 24 formed of polyester/cotton blend, either woven or knit, which has been treated with an effective amount of bacteriostatic silyl quaternary amine ammonium compound, with the intermediate layer 24 being surrounded by two outer (inner and outer) layers 22 of untreated (no antimicrobial material), thin, tightly woven, fine denier, breathable polyester fabric providing

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a comfortable surface that readily transmits moisture vapor, is highly water resistant and is comfortable for the wearer.

We, of course, fully appreciate the examiner's point of view as regards the asserted obviousness of the claimed surgical gown. However, the basic difficulty that this panel of the board has with the rejection of claims 1 and 7 is that the selective modification of the surgical gown of Tames to yield appellant's claimed gown can only be accomplished on the basis of the references when knowledge of appellant's own invention is relied upon, i.e., reliance upon impermissible hindsight.

Tames gives examples of the material for the front panel (outer layer) 15, but otherwise the patentee gives no instruction as to what qualities this layer should possess relative to the underlying moisture-proof, electrically conductive material of flexible sheet 20. On the other hand, the outer gown layer of Holt is absorbent, while the outer gown layer of Schwarze readily transmits moisture vapor and is highly water resistant. But for appellant's own teaching, we do not perceive any clear suggestion from the combined teachings that would have been derived by one of ordinary skill in the art to selectively modify the front panel of the surgical gown of Tames by forming it from a liquid repellent, moisture vapor transmitting material.

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For the above reason, we cannot support the rejection of appellant's claims 1 and 7 under 35 U.S.C. § 103 and the dependent claims which stand therewith. The Krzewinski reference does not overcome the deficiency in the evidence of obviousness discussed above.

In summary, this panel of the board has:

reversed the rejection of claims 1 through 3, 7, 8, 10, and 11 under 35 U.S.C. § 103 as being unpatentable over Tames in view of Holt and Schwarze; and

reversed the rejection of claims 4 through 6, 9, and 10 under 35 U.S.C. § 103 as being unpatentable over Tames in view of Holt, Schwarze, and Krzewinski.

The decision of the examiner is reversed.

REVERSED

IRWIN CHARLES COHEN)
Administrative Patent Judge)
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NEAL E. ABRAMS)
Administrative Patent Judge)
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BOARD OF PATENT
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Frost & Jacobs
2500 PNC Center
201 East Fifth Street
Cincinnati, OH 45202