

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GIGI C. GORDON

Appeal No. 2005-0886
Application No. 09/805,313

ON BRIEF

Before KIMLIN, OWENS and WALTZ, Administrative Patent Judges.
KIMLIN, Administrative Patent Judge.

REQUEST FOR REHEARING

Appellant requests rehearing of our decision of April 25, 2005, wherein we affirmed the examiner's rejections of appealed claims 1-18 under 35 U.S.C. § 103. Having reviewed appellant's request, we are satisfied that our decision is free of factual and legal error.

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At the outset, we remain of the opinion that the claim 1 language "for cleaning a surface selected from a group consisting essentially of dishes . . ." is merely a statement of intended use that does not serve to structurally distinguish the cleaning articles of the claimed system from the cleaning articles of Carter. While appellant maintains that Carter "fails to teach, or suggest, the claimed use of bath towels for the claimed cleaning applications" (page 2 of Request, first paragraph), the claims on appeal are not directed to the use of the cleaning articles but, rather, the articles themselves with identifying indicia thereon. Furthermore, although appellant contends that "[a] towel bearing the 'HIS' indicia that is later used to wash a wall or a car plainly does not bear indicia specifying 'WALL' or 'CAR'" (page 2 of Request, second paragraph), appellant does not seem to appreciate that a label can mean different things to different people. For instance, the "he" and "she" of a household may well understand that a towel labeled "HIS" is meant to be used on a car. Manifestly, the mental choices of a person regarding the use of a towel cannot patentably distinguish the structure of one towel from another.

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Appellant also submits that "[t]he use of a bath towel for such purposes [cleaning dishes] will ruin the bath towel and convert it to a rag, which is not the purpose of the towel in *Carter et al.*" (page 2 of Request, penultimate paragraph). However, while Carter may be directed to designer towels, we are convinced that one of ordinary skill in the art would have found in Carter the suggestion of labeling towels or other cleaning articles in accordance with an intended use. We simply find nothing nonobvious in categorizing and organizing articles with the aid of labels which identify an intended use.

As for the rejection over Scotch-Brite™, appellant makes the argument that "[t]he specification teaches only permanent marking or actually forming the cleaning article to the indicia specifying use" (sentence bridging pages 3 and 4 of Request). It is well settled, however, that limitations in the specification are not to be read into the claims. As stated at page 6 of our Decision, "we agree with the examiner that appealed claim 1 is sufficiently broad to embrace identifying indicia that is removed from the cleaning article before its use."

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In conclusion, based on the foregoing, we have reconsidered our decision as requested by appellant, but we decline to make any change therein.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (effective Sep. 13, 2004; 69 Fed. Reg. 49960 (Aug. 12, 2004); 1286 Off. Gaz. Pat. Office 21 (Sep. 7, 2004)).

DENIED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
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TERRY J. OWENS)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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THOMAS A. WALTZ)	
Administrative Patent Judge)	

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