Paper No. 32

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES LEO BAGGOT, MICHAEL EARK DANIIELS, RONALD FREDERICK GROPP, DAVID ROBERT GRUBER, PAUL KERNER PAULING, JAMES MONROE PERKINS, JAMES B. BA DOUR JR., LARRY E. BIRNBAUM and RUDOLPH S. FORTUNA

Appeal No. 2002-1222
Application 09/049,908

ON BRIEF

Before WARREN, OWENS and TIMM, *Administrative Patent Judges*.

WARREN, *Administrative Patent Judge*.

Decision on Appeal

This is an appeal under 35 U.S.C. § 134 from the decision of the examiner finally rejecting claims 1 through 34, all of the claims in the application. Claims 1 and 25 are illustrative of the claims on appeal:

1. A method of making and processing a high bulk tissue web, comprising:

depositing an aqueous suspension of papermaking fibers onto an endless forming fabric to form a web;

drying the web to form a dried web having a bulk of 9.0 cubic centimeters per gram or greater;

winding the dried web to form a plurality of parent rolls each comprising a web wound on a core;

transporting the parent rolls to an unwind stand comprising a pair of spaced apart arms, each arm comprising torque transmitting means for engaging a parent roll;

engaging the torque transmitting means with a first parent roll;

partially unwinding the first parent roll using variable drive means operably associated with the torque transmitting means;

rotatably supporting the partially unwound first parent roll on a core placement table that is adapted to receive the partially unwound first parent roll from the arms;

engaging the torque transmitting means with a second parent roll;

bonding a leading end portion of the web on the second parent roll to a trailing end portion of the partially unwound first parent roll to form a joined web: and

rewinding the joined web.

25. A method of splicing tissue webs, comprising:

partially unwinding a first tissue web from a first parent roll using electric drive means;

transporting the first tissue web to a finishing unit comprising rolls defining a finishing unit nip;

thereafter substantially continuously impacting the first tissue web in the finishing unit nip while the first tissue web is unwound from the first parent roll using electric drive means;

partially unwinding a second tissue web from a second parent roll using electric drive means;

transporting the second tissue web to the finishing unit;

maintaining the first and second tissue webs moveable relative to one another upstream of the finishing unit;

simultaneously unwinding both the first and second tissue webs from the first and second parent rolls using electric drive means and passing the webs through the finishing unit nip to bond the webs together; and

thereafter substantially continuously impacting the second tissue web in the finishing unit nip while the second tissue web is unwound from the second parent roll using electric drive means.

The appealed claims, as represented by claims 1 and 25, are drawn to a method of making and processing tissue web which comprises at least bonding or splicing the tissue web from a second parent roll to the tissue web from a partially unwound first parent roll. The claimed method encompassed by claim 25 specifies splicing the two tissue webs in a finishing unit nip, such as the embossing unit of claim 26, and that the different steps involved with the unwinding

of the tissue webs from the respective parent rolls are driven by electric drive means. The claimed method encompassed by claim 1 specifies certain components of the unwind system including an unwind stand and a core placement table that rotatably supports the partially unwound first parent roll, but does not specify the manner in which the two tissue webs are bonded. In each claimed method, the leading edge of the tissue web from the second parent roll can be transported with a thread-up conveyor as set forth in appealed claims 3 and 29.

The references relied on by the examiner are:

Focke et al. (Focke)	4,466,577	Aug. 21, 1984
Seki	4,735,372	Apr. 5, 1988
Mobley	4,944,470	Jul. 31, 1990
Baker	4,969,588	Nov. 13, 1990
Sohma	5,289,984	Mar. 1, 1994
Anderson	5,360,502	Nov. 1, 1994

The examiner has advanced the following grounds of rejection on appeal:

claims 1, 2, 9, 11 through 28 and 32 through 34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over admitted prior art in appellants' specification (page 1, lines 6-10 and 23-26, and page 9, lines 29-30) in view of Anderson, Sohma and Seki (answer, pages 5-9);

claims 3, 4 and 29 through 31 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over admitted prior art in appellants' specification (page 1, lines 6-10 and 23-26, and page 9, lines 29-30) in view of Anderson, Sohma and Seki as applied to claims 1, 2 and 25 above and further in view of Baker (answer, page 9);

claims 5, 6 and 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over admitted prior art in appellants' specification (page 1, lines 6-10 and 23-26, and page 9, lines 29-30) in view of Anderson, Sohma and Seki as applied to claims 3 and 4 above and further in view of Mobley (answer, pages 9-11); and

claims 7 and 8 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over admitted prior art in appellants' specification (page 1, lines 6-10 and 23-26, and page 9, lines 29-30) in view of Anderson, Sohma and Seki as applied to claim 3 above and further in view of Focke (answer, page 11).[1]

Appellants state in their brief that the appealed claims in each ground of rejection "do not stand or fall together" (pages 9-10) but do not present arguments with respect to each of the appealed claims specifying how each claim is nonobvious over the prior art based on the

[1] The grounds of rejection under 35 U.S.C. § 103(a) and the judicially created doctrine of obviousness-type double patenting involving Baggot et al '496 set forth in the final rejection mailed September 19, 2000 (Paper No. 15; pages 2-7), have been withdrawn by the examiner in the advisory action mailed February 9, 2001 (Paper No. 20). *See also* answer, page 2.

different elements thereof. Thus, we decide this appeal based on appealed independent claims 1 and 25 for the first ground of rejection; appealed claims 3 and 29 for the second ground of rejection; and appealed claims 5 and 7 for the third and fourth grounds of rejection respectively. *See* 37 CFR § 1.192(c)(7) (2001), which provides in pertinent part "[m]erely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable."

We affirm the first and second grounds of rejection with respect to appealed independent claim 25 and appealed claims 26 through 34 dependent thereon, and reverse all other grounds of rejection.

Rather than reiterate the respective positions advanced by the examiner and appellants, we refer to the examiner's answer and to appellants' brief and reply brief for a complete exposition thereof.

Opinion

We first consider the grounds of rejection of appealed claims 1, 3, 5 and 7. In order to establish a *prima facie* case of obviousness, the examiner must show that some objective teaching, suggestion or motivation in the applied prior art taken as a whole and/or knowledge generally available to one of ordinary skill in this art would have led that person to the claimed invention as a whole, including each and every limitation of the claims arranged as required by the claims, without recourse to the teachings in appellants' disclosure. *See generally, In re Rouffet*, 149 F.3d 1350, 1358, 47 USPQ2d 1453, 1458 (Fed. Cir. 1998); *Pro-Mold and Tool Co. v. Great Lakes Plastics Inc.*, 75 F.3d 1568, 1573, 37 USPQ2d 1626, 1629-30 (Fed. Cir. 1996); *In re Fine*, 837 F.2d 1071, 1074-76, 5 USPQ2d 1596, 1598-1600 (Fed. Cir. 1988); *In re Dow Chem. Co.*, 837 F.2d 469, 473, 5 USPQ2d 1529, 1531-32 (Fed. Cir. 1988).

The plain language of appealed independent claim 1, on which appealed claims 3, 5 and 7 directly or ultimately depend, requires an unwind stand comprising at least a pair of spaced apart arms which engage the core of a parent roll, and a core placement table adapted to receive the partially unwound parent roll core from the arms prior to the bonding of the web from a second parent roll to the web of the first parent roll while the first parent roll is still unwinding while rotatably supported on the core placement table at the time of bonding. The examiner correctly

points out that Anderson does not specifically disclose the details of an unwind stand system which would be encompassed by the appealed claims (answer, e.g., page 7). We find that the sole description of an unwind system in Anderson is the illustration of roll stand **10** in Anderson **Fig. 1**. On this record, we further find that one of ordinary skill in this art would have reasonably inferred from Anderson **Fig. 1** that roll stand **10** comprises a frame having arms at each end to hold a parent roll and a centrally located shaft to rotate the frame with respect to the roll stand in order to move the two parent rolls so held to different positions around the roll stand.[2] There is no teaching or inference in Anderson that roll stand **10** is used in combination with a core placement table.

The unwind or roll stand structures shown in the other applied references which reasonably appear to correspond to roll stand **10** of Anderson **Fig. 1** are found in Sohma and Focke. In Sohma, the holding member for paper roll cores has spaced apart arms **4** and **5** which hold three parent rolls and rotate about shaft **3** to place the parent rolls, that are in different unwound states, into different positions in order to facilitate continuously advancing a web that involves splicing a web from a second parent roll to a web from a first parent roll, as shown in Sohma **FIGs. 1**, **2** and **4** and explained in Sohma cols. 3-5. In Focke, the reel support **12** has arms **13** and **14** rotating around central bearing **15** to place parent rolls **18** and **19**, in different unwound states, into different positions in order to facilitate continuously advancing a web that involves connecting a web from a second parent roll to a web from a first parent roll, as shown in Focke **FIGs. 1-3** and **7** and explained in Focke cols. 3-8.

We are of the view that reel support **12** of Focke more closely resembles the structure of Anderson roll stand **10** than the holding member of Sohma, although the examiner relies on Sohma to show an unwind stand (answer, e.g., pages 7 and 11). We find no disclosure in either Focke or Sohma that a core placement table which rotatably supports the partially unwound first parent roll is used with the unwind stand disclosed therein. The examiner acknowledges the

[2] It is well settled that a reference stands for all of the specific teachings thereof as well as the inferences one of ordinary skill in this art would have reasonably been expected to draw therefrom, see *In re Fritch*, 972 F.2d 1260, 1264-65, 23 USPQ2d 1780, 1782-83 (Fed. Cir. 1992); *In re Preda*, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968), presuming skill on the part of this person. *In re Sovish*, 769 F.2d 738, 743, 226 USPQ 771, 774 (Fed. Cir. 1985).

same with respect to Sohma and relies on Seki for this feature, alleging that Seki is "just one example of an apparatus for providing a continuous web of paper by unwinding paper rolls that are spliced in a high-speed operation where core placement tables are utilized," but does not identify the component of the structure in this reference which serves as such a core placement table (answer, e.g., pages 8 and 13-14).

We find that in the apparatus of Seki, the unwind stand or web feeding station **11** has two spaced apart sets of arms **15a** and **15b** which rotate around respective shafts **21** and **21** and hold respective web parent rolls **3a** and **3b**, with the end of the operation of bonding the leading edge of web from parent roll **3b** to the running web from parent roll **3a** described as

> [u]pon the stopping of the roll of . . . [web parent roll] **3a** and disconnection from the feeding service the roll **3a** is then removed out of the roll carrying arms **15a** and then carried out of the machine by using the roll carry-out conveyor **12**. At the same time, the roll carrying arms **15a** are rotated clockwise in swinging motion as view in **FIG. 1** so that the roll of . . . [web parent roll] **3c** waiting for service upon the rolling carrier **13** is then loaded thereupon . . . . [Seki **FIG. 1** and cols. 3-5, particularly col. 4, line 56, to col. 5, line 6; *see also* col. 2, line 51, to col. 3, line 21, particularly col. 3, lines 13-21.]

The difficulty that we have with the examiner's reliance on Seki is that roll carry-out conveyor **12** is *not* a core placement table that rotatably supports the partially unwound first parent roll, that is, functions with respect to the continued unwinding of a web parent roll prior to the bonding or splicing the web of a second parent roll to the web of a first parent roll as required by appealed claim 1 and the claims dependent thereon. We find no other disclosure in this reference which teaches or suggests such a core placement table. In considering the other applied references, we note that Mobley is similar to Seki in disclosing that "exhausted roll shaft **47**" drops into support **50** as seen from Mobley **FIGs. 4** and **5** (cols. 1-2).

Thus, we determine that the examiner's position that *prima facie* the combination of an unwind stand and a core placement table specified in appealed claims 1, 3, 5 and 7 would have been taught to one of ordinary skill by the combined teachings of the applied references is not supported by substantial evidence in the references, separately or in combination. The examiner's unsupported allegation that "[i]t is well known in the splicing art to use a core placement table for splicing" (answer, page 13) does not provide such evidence, particularly in light of the challenge thereof by appellants (reply brief, page 2). *See generally, In re Ahlert*, 424

F.2d 1088, 1091-92, 165 USPQ 418, 421-22 (CCPA 1970); *Ex parte Natale*, 11 USPQ2d 1222, 1226-27 (Bd. Pat. App. & Int. 1989).

Therefore, on this record, the examiner has not established a *prima facie* case of obviousness with respect to appealed claims 1 through 24, and accordingly, we reverse the grounds of rejection with respect to these appealed claims.

The application of the applied prior art to the claimed methods encompassed by appealed claims 25 and 29 requires different considerations because these claims do not contain the same apparatus limitations as appealed claims 1 through 24. Thus, in order to review the examiner's application of prior art to these claims we must first interpret the language thereof by giving the claim terms their broadest reasonable interpretation in light of the written description in the specification as it would be interpreted by one of ordinary skill in this art, including the meaning for claim terms established in the written description in the specification. *See, e.g., In re Hyatt, 2*11 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000); *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997), *In re Zletz*, 893 F.2d 319**,** 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

The plain language of appealed claim 25 specifies a continuous method of finishing any kind of tissue web without regard to the method of producing the same, which includes at least one splicing step, comprising at least the sequential steps of (1) partially unwinding a first tissue web from a first parent roll; (2) transporting the first tissue web to a finishing unit comprising rolls defining at least one finishing unit nip; (3) substantially continuously impacting the first tissue web in the finishing unit nip while the same is unwound from the first parent roll; (4) partially unwinding a second tissue web from a second parent roll; (5) transporting the second tissue web to the finishing unit; (6) maintaining the first and second tissue webs moveable relative to one another upstream of the finishing unit; (7) simultaneously unwinding both the first and second tissue webs from the first and second parent rolls and passing the webs through the finishing unit nip to bond the webs together; and (8) substantially continuously impacting the second tissue web in the finishing unit nip while the second tissue web is unwound from the second parent roll.

The only apparatus components required in appealed claim 25 are unspecified electric drive means that must be used with unspecified apparatus components to unwind parent rolls in steps (1), (3), (4), (7) and (8). In this respect, we find no specific definition of "electric drive means" in the specification and thus reasonably interpret this term to include any electric drive motor means that can be operatively associated with and control any apparatus component(s) that can perform the step of unwinding a parent roll, such as the apparatus components in the written description at, e.g., pages 2-7 and 12-14, and **FIGs. 2** and **5**, including "motors **34**," of the specification. *See In re Donaldson Co.*, 16 F.3d 1189, 1195, 29 USPQ2d 1845, 1950 (fed. Cir. 1994) (*en banc*). The rolls defining a finishing unit nip can be those of, *inter alia*, an embossing unit as in appealed claim 26. We interpret the phrase "substantially continuous impact" to "refer to process that structurally modify the surface characteristics of the web . . . and that form a joined web for rewinding purposes when two webs from different parent rolls are processed simultaneously" in keeping with the definition that appellants provide in the written description in the specification (page 6).

Appealed claim 29 modifies steps (4) and (5) of appealed claim 25 by specifying that the leading end portion of the second tissue web being unwound from the second parent roll is transported to the finishing unit using a thread-up conveyor. Appellants disclose that such an apparatus component can comprise "a vacuum means operably associated with an endless screen belt means" in the specification (page 3). The use of the open-ended term "comprising" as a transitional term and in various claim clauses opens appealed claims 25 and 29 to include methods which encompass additional steps and apparatus components. *See In re Baxter*, 656 F.2d 679, 686-87, 210 USPQ 795, 802-03 (CCPA 1981) ("As long as one of the monomers in the reaction is propylene, any other monomer may be present, because the term 'comprises' permits the *inclusion* of other steps, elements, or materials.").

We find that *prima facie* Anderson would have disclosed to one of ordinary skill in this art a continuous method of finishing a soft tissue web (e.g., col. 1, lines 39-40 and 45-46, and col. 3, lines 7-8) in an embossing nip which includes at least one splicing step, comprising at least partially unwinding a first web **1** by a drive means not illustrated in the drawings, from first parent roll **11** and transporting first web **1** to embossing nip **6** formed by rolls **13** and **14**, which

substantially continuously impacts first web **1** while first parent roll **11** is being unwound (e.g., **Fig. 1** and cols 1-2); unwinding a second web **2** from a second parent roll **12** by a drive means not illustrated in the drawing, transporting edge **6** of end **3** of web **2** together with web **1** to the embossing unit by means of web fixation means **16**, such that end **3** of web **2** and web **1** pass into nip **6** together and are thus spliced (e.g., **Fig. 1** and col. 1, lines 43-66, col. 2, lines 9-14 and 40-62, col. 2, line 63, to col. 3, line 45); and after the splicing operation, web **2** continues to be substantially continuously impacted in nip **6** as parent roll **12** continuous to be unwound (e.g., **Fig. 1** and col. 1, lines 61-66, col. 2, lines 15-21 and col. 3, lines 34-34 and 39-41). Anderson does not describe the drive means to unwind parent rolls **11** and **12** on roll stand **10**, thus intending that drive means for unwinding web rolls known in the art should be used. The control of unwinding the parent rolls taught in Anderson (e.g., col. 3, lines 23-45, and col. 4, lines 14-15) suggests that electric drive means should be employed and indeed, Sohma describes in **FIGs. 2**, **3** and **5** a motor **33** with a housing that would have reasonably suggested an electric drive motor to one of ordinary skill in this art, which is used to unwind the parent rolls **X** and **Y** on arms **4** and **5** (e.g., col. 2, lines 49-51, and col. 4, lines 21-25).

Based on this substantial evidence, we determine that, *prima facie*, one of ordinary skill in this art routinely following the teachings and inferences that this person would have obtained from the combined teachings of Anderson and Sohma,[3] would have reasonably arrived at the claimed method of splicing tissue webs encompassed by appealed claim 25 including each and every limitation arranged as required by this claim as we have interpreted it above, without recourse to appellants' specification. *In re Dow Chem. Co.*, 837 F.2d 469, 473, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988) ("The consistent criterion for determination of obviousness is whether the prior art would have suggested to one of ordinary skill in the art that [the claimed process] should be carried out and would have a reasonable likelihood of success viewed in light of the prior art. [Citations omitted] Both the suggestion and the expectation of success must be founded in the prior art, not in the applicant's disclosure."); *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981)("The test for obviousness is not whether the features of a secondary reference

may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.").

Turning now to the ground of rejection involving appealed claim 29, we noted above in interpreting appealed claim 29 that this claim adds only the limitation of a thread-up conveyor for transporting the leading edge of a tissue web from a second parent roll to the finishing unit, and that appellants describe such a conveyor to include a vacuum-belt system (*see above* p. 8). In stating the ground of rejection with respect to this claim, the examiner takes the position that Baker discloses a threader system which functions as a thread-up conveyor with vacuum means, citing col. 1, lines 64-68, thereof, and concludes that it would have been *prima facie* obvious to one of ordinary skill in this art to modify the process of Anderson and Sohma by using a known method of transporting a leading edge of a web from a parent roll to a desired position in the tissue making process (answer, page 9). We find that the cited passage from Baker acknowledges that the "great variety of systems [that] have been used for guiding or threading a web through paper manufacturing machinery" includes "vacuum-belt systems in which a vacuum draws the web against a porous belt which delivers the tail or web to the desired position" (col. 1, lines 61-63 and 64-66).[4]

Based on the substantial evidence in the combined teachings of Anderson, Sohma and Baker, we agree with the examiner that, *prima facie*, one of ordinary skill in this art routinely following the teachings and inferences that this person would have obtained from the combined teachings of these references,[5] would have modified the method of splicing tissue webs shown by Anderson and Sohma as applied above, by using an apparatus component which functions as a

---

[3] A discussion of the prior art admitted by appellants and Seki is not necessary to our decision on this ground of rejection. *See In re Kronig*, 539 F.2d 1300, 1302-04, 190 USPQ 425, 426-28 (CCPA 1976).

[4] We observe that Focke discloses a vacuum belt thread-up conveyor in connection with an unwind stand (*see above* pp. 5-6) as acknowledged by the examiner (answer, page 11), but the examiner has not applied Focke to appealed claims 29 through 31.

[5] A discussion of the prior art admitted by appellants and Seki is not necessary to our decision on this ground of rejection. *See Kronig*, *supra*.

thread-up conveyor with the reasonable expectation of transporting the leading edge of a tissue web of a second parent roll to the desired position in the tissue web manufacturing process relative to the tissue web from the unwinding first parent roll. Thus, one of ordinary skill in this art would have reasonably arrived at the claimed method of splicing tissue webs encompassed by appealed claim 29 including each and every limitation arranged as required by this claim as we have interpreted it above, without recourse to appellants' specification. *See Dow. Chem.*, *supra*; *Keller*, *supra*.

Accordingly, since a *prima facie* case of obviousness has been established over the combined teachings of Anderson and Sohma with respect to appealed claim 25, and over the combined teachings of Anderson, Sohma and Baker with respect to appealed claim 29, we have again evaluated all of the evidence of obviousness and nonobviousness based on the record as a whole, giving due consideration to the weight of appellants' arguments in the brief and reply brief. *See generally, In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984).

We have carefully considered all of appellants' arguments which apply to appealed claim 25 (brief, pages 13-21). We found above (*see* p. 8) that, as pointed out by the examiner (answer, page 14), the method of Anderson is employed with a soft tissue web and not "paper" as appellants contend (brief, page 14; *see also* page 19). Indeed, contrary to appellants' position (*id*.), we interpreted appealed claim 25 to require only "tissue webs" (*see above* p. 7), thus encompassing the soft tissue webs of Anderson. We are also unconvinced by appellants' arguments (brief, pages 14-15) that one of ordinary skill in this art would not have considered the unwind stand of Sohma with respect to unwinding tissue webs from parent rolls simply on the basis that Sohma employs the unwind stand disclosed therein with parent rolls containing paper. Indeed, Sohma is analogous prior art inasmuch as it is within the field of appellants' endeavor and is reasonably pertinent to the particular problem of the movement of webs for splicing purposes which appellants are attempting to solve. *See In re Clay*, 966 F.2d 656, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992). Furthermore, contrary to appellants' arguments, there is no requirement for "breaking the expired tissue web" (brief, page 15) in any claim on appeal including appealed claim 25; the apparatus components noted by appellants (*id.*, e.g., page 15)

are not required in appealed claim 25; and Anderson does employ an embossing finishing unit which comprises rolls providing a nip as required by appealed claim 25 (*see id.*, page 20). Thus, contrary to appellants' position (*id.*, page 17), *all* of the elements of appealed claim 25 arranged as required therein are taught in Anderson and Sohma as we explained above.

We have also carefully considered all of appellants' arguments which apply to appealed claim 29 (brief, pages 21-26). We recognize that Baker discloses a reel threader as appellants contend (brief, page 21). However, the examiner relies on the acknowledged prior art vacuum-belt systems for guiding or threading a web in col. 1 of Baker which we discussed above. Indeed, Baker describes the known vacuum-belt systems in essentially the same manner as appellants describe the thread-up conveyor in the specification (page 3) and in the brief (page 24).

Accordingly, based on our consideration of the totality of the record before us, we have weighed the evidence of obviousness found in the combined teachings of the prior art admitted by appellants, Anderson, Sohma and Seki with respect to appealed claims 25 through 28 and 32 through 34, and in the combined teachings of the prior art admitted by appellants, Anderson, Sohma, Seki and Baker with respect to appealed claims 29 through 31 with appellants' countervailing evidence of and argument for nonobviousness and conclude that the claimed invention encompassed by appealed claims 25 through 34 would have been obvious as a matter of law under 35 U.S.C. § 103(a).

The examiner's decision is affirmed-in-part.

Other Issues

We fail to find in the record any indication that appellants called the attention of the examiner to United States Patents No. 6,355,139, issued March 12, 2002, and 6,4450,268, issued August 27, 2002, both to Baggot et al. and both a continuation-in-part of application 08/845,098 which issued as United States Patent No. 6,030,496 ('496 patent) on February 29, 2000. We note that the examiner rejected certain appealed claims under the judicial doctrine of obviousness-type double patenting over the '496 patent in the final action mailed September 19, 2000 (Paper No. 15), which ground of rejection was overcome by appellants as set forth by the examiner in the advisory action mailed February 9, 2001 (Paper No. 20). We suggest that

the examiner consider the issue of whether the claims of the two patents apply to the appealed claims under the judicial doctrine of obviousness-type double patenting.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

CHARLES F. WARREN Administrative Patent Judge	)	
TERRY J. OWENS Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
CATHERINE TIMM Administrative Patent Judge	)	

Douglas G. Glantz
Attorney at Law
5260 Deborah Court
Doylestown, PA 18901