

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES M. SHEPPARD, JR.

Appeal No. 2004-1029
Application No. 09/747,529

HEARD: July 14, 2004

Before FRANKFORT, MCQUADE, and BAHR, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 21 through 36, all of the claims remaining in this application. Claims 1 through 20 have been canceled.

As noted on page 1 of the specification, appellant's invention relates to both a textile article and a method of making the textile article, wherein the textile article is a two-sided Jacquard woven textile product (e.g., a towel) with a

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graphic impression on at least one side thereof. The method of making the article as described in the specification comprises the steps of a) providing a two-sided Jacquard woven textile wherein the front side of the textile or towel has, for example, a dark color border adjacent each edge and a light color area within the borders, while the reverse side has a light color border adjacent each edge and a dark color area within and surrounded by the borders, and b) subsequently transferring a graphic impression onto the towel, preferably in the light color central area of the front side, by screen printing, image dyeing, digital imaging, or heat transferring. Independent claims 21 and 29 are representative of the subject matter on appeal and a copy of those claims can be found, respectively, in the Appendix to the examiner's answer and the Appendix to appellant's brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Hobson	4,259,994	Apr. 7, 1981
Carpenter et al. (Carpenter)	5,983,952	Nov. 16, 1999

Claims 21 through 36 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hobson in view of Carpenter.

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Rather than reiterate the conflicting viewpoints advanced by the examiner and appellant regarding the above-noted rejection, we refer to the examiner's answer (mailed August 27, 2003) and to appellant's brief (filed June 25, 2003) and reply brief (filed October 6, 2003) for a full exposition thereof.

OPINION

Having carefully reviewed the obviousness issue raised in this appeal in light of the record before us, we have come to the conclusion that the examiner's rejection of claims 21 through 36 under 35 U.S.C. § 103 will not be sustained. Our reasoning in support of this determination follows.

After a careful evaluation of the teachings and suggestions to be derived by one of ordinary skill in the art from the patterned terry fabric and its method of manufacture on a tappet or dobbie mechanism as described in Hobson, and the Jacquard weaving system and method set forth in Carpenter for ensuring automatic alignment of a printed pattern with a woven pattern on a textile fabric as that fabric is being formed, it is our opinion that the examiner has failed to meet her burden of

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establishing a *prima facie* case of obviousness. More particularly, we are of the view that the examiner's reasoning in support of the obviousness rejection before us on appeal (as expressed on pages 3-7 of the answer) is based almost entirely on speculation and conjecture, and with regard to the basic structure and color scheme of the towel defined in appellant's claim 21 and the textile of claim 29 on appeal, relies entirely upon appellant's own disclosure and teachings to supply that which is lacking in the applied prior art references.

Basically, we share appellant's views as aptly expressed in the brief and reply brief concerning the examiner's attempted combination of the Hobson and Carpenter patents, the failure of either Hobson or Carpenter to disclose borders adjacent each edge of a towel or textile product and a central area within and surrounded by the borders, which central area on one side of the towel or textile product receives a graphic impression, and the failure of either of the applied patents to teach or suggest the particular color arrangement of the borders and central areas required in the claims on appeal. We are also in agreement with appellant concerning the examiner's bald conclusion that "it would have been obvious to one of ordinary skill in the art to

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choose various printed designs, as well as choose where to place the printed image on the Hobson product . . ." (answer, pages 3-4), so as to result in a towel or textile like that claimed by appellant. Since neither the applied references nor the examiner provides an adequate factual basis to establish that the towel of claim 21 on appeal or the textile product of appellant's claim 29 would have been obvious to one of ordinary skill in the art at the time of appellant's invention, it follows that we will not sustain the examiner's rejection of those claims under 35 U.S.C. § 103(a).

In addition, we note that the examiner's rejection of claims 22 through 28 and 30 through 36 under 35 U.S.C. § 103(a) based on the combination of Hobson and Carpenter, which claims respectively depend from independent claims 21 and 29, will likewise not be sustained.

Since we have determined that the examiner has failed to establish a prima facie case of obviousness with regard to the claimed subject matter before us on appeal, we find it unnecessary to comment on appellant's evidence of secondary

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considerations relating to commercial success, long felt need and copying by others.

The decision of the examiner to reject claims 21 through 36 under 35 U.S.C. § 103(a) is reversed.

REVERSED

CHARLES E. FRANKFORT)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
JOHN P. MCQUADE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
JENNIFER D. BAHR)	
Administrative Patent Judge)	

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