Ryan Flax, Lead Administrative Patent Judge
Jeff Fredman, Administrative Patent Judge
LiLan Ren, Administrative Patent Judge
John Schneider, Administrative Patent Judge
Special guest:
  Jacqueline Bonilla, Deputy Chief Administrative Patent Judge &
  Senior Legal Advisor to Director of USPTO

March 28, 2024
What is the Patent Trial and Appeal Board?

PTAB
ex parte appeals, AIA proceedings, other

TTAB*
ex parte appeals, inter partes proceedings

PATENTS
examine patent applications and grant patents

TRADEMARKS
examine and register trademarks

*Trademark Trial and Appeal Board (TTAB)
Today’s agenda

1. Interview with Jackie Bonilla
2. PTAB case file
3. Inventor in history: Maria Beasley
4. Q&A

*Information not intended as legal advice
Question/comment submission

To send in questions or comments about the presentation, please email:

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An interview with Jacqueline Bonilla,
Deputy Chief Administrative Patent Judge &
Senior Legal Advisor to Director of USPTO
Question/comment submission

To send in questions or comments about the presentation, please email:

– PTABInventorHour@uspto.gov
PTAB frequently asked questions

LiLan Ren, Administrative Patent Judge

PTAB case file

Ex parte Albritton, Appeal No. 2008-005023
Inventor: Kenneth B. Albritton, Ashland, VA (US)

SPORTS EQUIPMENT BAG, ORGANIZER AND VENTILATOR

U.S. application 09/995,615
(appeal No. 2008-005023)
SPORTS EQUIPMENT BAG, ORGANIZER AND VENTILATOR

FIG. 17

FIG. 8
Current pendency of decided ex parte appeals (Oct. – Dec. 2023) is 12.2 months.

Examiner’s non-final rejection

Disposition of Claims

4) ☒ Claim(s) **24-27, 32, 34, 35 and 37-55** is/are pending in the application.
   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) **24-27, 32, 34, 35 and 37-55** is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.
Illustrative rejections for discussion

I. Written description rejection of claim 41

II. Indefiniteness rejection of claim 41

III. Anticipation rejection (Fournier) of claim 35

IV. Obviousness rejection (Tong & Fournier) of claim 24

4. Claims 39, 40, and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Tong.
5. Claims 24, 25, 26, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tong (6334519) in view of Fournier.
6. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Tong rejection as set forth above, and further in view of Briggs et al. (4901897).
7. Claims 35, and 37 are rejected under 35 U.S.C. 102(a) as being anticipated by Fournier.
8. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over either the Fournier or Tong rejection as set forth above, in view of Davis et al. (2626689).
9. Claims 24-27, 32, 35, 37, and 39-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franklin et al. (5575362) in view of Wulf et al. (5749503), and further in view of Bomes et al. (5054589).
10. Claims 24-27, 32, 35, 37, 39-48, 54, and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franklin et al. in view of either Wulf et al. or Yu (6129254), and further in view of Fournier.
Anticipation rejection of claim 35

35. (Previously Presented) A backpack, comprising:

a back wall;

a left wall and right wall extending from at least a portion of said back wall;

a bottom portion attached to a bottom of said back wall and said bottom portion connecting between a bottom of said right wall and said left wall;

a first wall extending from said bottom portion and assisting in holding a sufficient portion of said left and right walls together forming a bottom compartment;

a plurality of compartments on a front surface of said back wall, said plurality of compartments comprising a front portion comprising of at least a partially see-through material accommodating a circulation of air within said compartments, said compartments accommodating a plurality of objects, said plurality of compartments being disposed on a single plane accommodating full accessibility and a view of the objects within said plurality of compartments when said backpack is in an open position, said back wall folding to close said backpack, said compartments disposed from a top portion of the front surface of said back wall to a bottom portion of said back wall; and

at least one back strap on an external surface of said backpack to accommodate shoulder and back transport of said backpack, on a user.
Examiner’s rejection on anticipation

7. Claims 35, and 37 are rejected under 35 U.S.C. 102(a) as being anticipated by Fournier. **Fournier** teaches a back wall 2, left and right wall, a bottom portion attached to a bottom of the back wall 1, a first wall 2 extending from the bottom portion and assisting in holding a sufficient portion of left and right walls together, a plurality of compartments on a front surface of the back wall comprising of netted material, and at least one strap 5 as claimed. The term backpack does not impart any structure over the bag in Fournier. **Kilduff (3686414)** teaches the two straps can be carried on the shoulder as a backpack.
Examiner’s asserted prior art — anticipation
However, by using Kilduff, there cannot be a 35 USC §102 rejection. Moreover, claim 35 also mentions a first wall extending from said bottom portion and assisting in holding a sufficient portion of said left and right walls together forming a bottom compartment. The first wall of Kilduff fails to disclose the first wall extending from the bottom portion and assisting in holding a sufficient portion of said left and right walls together forming a bottom compartment as arranged in the claim. In Kilduff, the first wall does not assist in holding together the left and right walls together to form a bottom compartment. A compartment is only formed when the entire structure is closed.
Fournier satisfies all of the structural limitations of claim 35 (FF 10-18). The only element not taught by Fournier is the intended use recitation that the strap should “accommodate shoulder and back transport of [the] backpack” (Claim 35). However, “[a]n intended use or purpose usually will not limit the scope of the claim.

The use of additional references to evidence that a reference is enabled is permitted. See In re Samour, 571 F.2d 559, 563 (CCPA 1978)
5. Claims 24, 25, 26, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tong (6334519) in view of Fournier. Tong teaches a hook unit 13, back wall, left and right walls 12, a bottom portion 16 attached to a bottom of the back wall 1, a plurality of compartments on a front surface of the back wall, and at least one strap as claimed.

Tong meets all claimed limitations except for the netted compartments. Fournier teaches that it is known in the art to provide netted compartments. It would have been obvious to one of ordinary skill in the art to provide netted compartments in Tong as taught by Fournier to provide venting for the contents. Kilduff (3686414) teaches the two straps can be carried on the shoulder as a backpack.
Appellant’s arguments on obviousness

In Tong the two straps are not along the longitudinal side of the back surface of the backwall but along the lateral side.

In addition, Kilduff is improperly introduced by the Examiner as he does not cite in this rejection and does not provide any motivation or suggestion to combine with Tong and Fournier.

As indicated by the court, evidence of secondary considerations, when it exists, is always to be considered, and not merely when the Examiner remains in doubt after reviewing the prior art.
Appellant’s non-obviousness evidence — industry praise

The Hunt is over. And the winner has captured the $1,000 Grand Prize! By Linda Dangelo, Assistant Editor, Inventors' Digest magazine

the Grand Prize winner was Kenneth "Buck" Albritton’s Gearmax™ Backpack. Gearmax looks like a typical backpack when it's closed, but unzipped it’s an extremely well-organized sports or travel equipment bag.

"All of the products had great merit, but we looked for the one that we felt would appeal to the most people," said Dr. Rines, after he and Dr. Bird announced that the Grand Prize winner was Kenneth "Buck" Albritton's Gearmax™ Backpack. Gearmax looks like a typical backpack when it's closed, but unzipped it's an extremely well-organized sports or travel equipment bag that can be conveniently hung and used as a "virtual" locker with a built-in ventilation system. Dr. Rines was impressed by the high-quality, detailed components of the product, and Dr. Bird indicated that its usefulness could potentially extend into the medical industry where the Gearmax could be packed with different sizes of respirator equipment when responding to emergencies. "Often we don't know if the emergency is an infant or a large adult," he shared. "This product is perfect to neatly pack different sized equipment and be able to access it quickly."

"Wow, this is really exciting and such an honor for us," shared Albritton, who was notified by phone of his first place status. But Albritton’s not merely
Appellant's non-obviousness evidence — commercial success
We had to reorder halfway through our planned three-month promotion after we ran out quicker than we anticipated. This great demand for the product provided the best referral promotion we have had in our twenty-year history.

Over the last 12 months, our sales of your products have been $7,674.70. This is an increase of 178% over the $2,755.40 from the previous 12 months.
October 30, 2003 License Agreement was offered by a top producer of bags both for retail and advertising specialty sales. The company was founded in the 50's and has a 50,000+ square foot facility in China and US headquarters is over 150,000 square foot with over 400 employees world-wide.

April 6, 2004 License Agreement was offered by company ranked in the top 10 of the promotional merchandise industry. The company has been in business for over 20 years and in the past year exceeded 100 million in revenue.
Board decision on obviousness

Applying the KSR standard of obviousness to the findings of fact, we agree with the Examiner that it would have been *prima facie* obvious to modify the bag of Tong to utilize mesh compartments as taught by Fournier and backpack straps as taught by Kilduff.

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1 Heard February 12, 2009
2 The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).
Appellant has provided specific evidence of industry praise, both in winning the grand prize of the United Inventors Association and in letters from purchasers (FF 27, 29, 30). Both the prize award and the letters provide evidence of a nexus between the merits of the claimed invention and the commercial success of the product, linking the features of a backpack, open ventilated compartments and a hook (FF 27, 29, 30).

Appellant has also provided evidence of commercial success in the relevant market and increased market share relative to the increase in luggage sales generally (FF 28).

Lastly, Appellant has provided specific licensing agreements, one of which is drawn to the product of the instant U.S. Patent Application (FF 31).
2. **The allowed claim(s) is/are 24-27, 32, 34, 38, 41-43, 45, 54 and 55.**
Takeaways

A rejection, even a final one, is not the end of your options

Patent prosecution may take a while, so be patient

How you claim your invention is of paramount importance

Ex parte appeal to PTAB is an option for patentable claims

Evidence and addressing rejections matter on appeal
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Fast-track appeals pilot program

www.uspto.gov/patents/ptab/fast-track-appeals-pilot-program
Inventor in history: Maria Beasley
Maria Beasley

16 patents from 1878-1903

Wide variety of technologies
Early patents

US 202,919 (1878)  
Foot Warmer

US 214,084 (1879)  
Roasting and Baking Pan

1836 1878 1880 1882 1884 1886 1888 1890 1892 1894 1896 1898 1900 1902 1904 1913
Barrel Making (1881-1891)

8 Patents directed at barrel making

- 1836: Barrel hoop driving machine
- 1878: Machine for driving hoops upon casks
- 1882: Process for making barrels
- 1884: Barrel stave shaping machine
- 1886: Barrel-making machine
- 1888: Process for notching and cutting hoops for barrels
- 1890: Barrel setting up machine
Barrel making (cont’d)

Patents licensed to oil and sugar companies
• By 1912, licensing revenues exceeded $20,000/yr (over $600,000 today)

Formed her own barrel making companies
• Sold one in 1891 for $1.4 million (over $45 million today)
Life rafts

US 226,264 (1880)

US 258,191 (1882)
Pasting shoe uppers

US 258,004 (1882)
Steam generator

US 341,721 (1886)
Means for preventing derailment of railroad cars
Kneading machine

US 739,142 (1903)
Question/comment submission

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Feedback and suggestions

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Questions?
Future programs

Inventor Hour, Episode 27
Thursday, Apr. 25, 2024, noon (ET)

Inventor Hour, Episode 28
Thursday, May 23, 2024 noon (ET)