

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(2) is not binding precedent of the Board.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. 11

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD J. MAZZA, THOMAS KING, and JOY STONE

Appeal No. 95-1743
Application 08/068,345¹

ON BRIEF

Before STONER, Chief Administrative Patent Judge, McKELVEY,
Senior Administrative Patent Judge, and OWENS, Administrative
Patent Judge.

Per Curiam

DECISION ON APPEAL

This appeal is from the refusal of the examiner to allow
claims 13 through 16 as amended subsequent to the first action on

¹ Application for patent filed May 27, 1993. According to
appellants this application is a division of Application 07942,548
filed September 9, 1992.

the merits. These are all the claims in the application.

The subject matter on appeal relates to a method of making an adhesive bandaging material which comprises applying the adhesive material to a fabric previously coated with a release coating. The method is said to result in a bandaging material with reduced stiffness and improved hand and comfort in use. The appealed subject matter is adequately illustrated by independent claim 13, which states as follows:

13. A method of manufacturing an adhesive bandaging material comprising the steps of:
forming a fabric having a back side and a face side;
applying a release agent to the back side of the fabric; and
applying an adhesive material to the release agent.

The references relied upon by the examiner are:

Hoey	3,618,754	Nov. 9, 1971
Edison et al. (Edison)	4,737,400	Apr. 12, 1988

Claims 13 and 15 stand rejected under 35 U.S.C. 102(b) as anticipated by Hoey.

Claims 13 through 16 stand rejected under 35 U.S.C. 102(b) as anticipated by Edison.

OPINION

We cannot sustain either of the two rejections under 35

Appeal No. 95-1743
Application 08/068,345

U.S.C. 102(b) based on Hoey or Edison, respectively. Our reasons are set forth below.

The Rejection based on Hoey

Appellants' claim 13 requires that a release agent be applied to a fabric backing and that an adhesive material be applied to the release agent. The central issue with respect to the rejection based on Hoey is the interpretation of Hoey's passage in column 4, lines 32-35, which states:

When this is done and a release coating is desired, it may be applied to the preferably stretched backing either before or after the application of pressure-sensitive adhesive.

The examiner relies on this portion of the Hoey reference (Paper No. 9, third page)² to establish anticipation. Yet, the quoted-portion is at best nebulous. A review of the specification of the instant application clearly shows that appellants do not intend to have the adhesive material contact the backing. For example, Figure 7 of appellants' application illustrates that release agent **20** intervenes between fabric

² We note that the pages of the Examiner's Answer (Paper No. 9) are not numbered. We would encourage examiners to number the pages of their Office actions, including Examiner's Answers. We likewise note that appellants' brief is single-spaced typing. We would encourage appellants to submit briefs using typing that is double-spaced.

Appeal No. 95-1743
Application 08/068,345

backing **12** and adhesive **18**. The same cannot be clearly stated of the Hoey reference. The quoted-portion of Hoey admits of numerous possibilities:

(1) The adhesive bandaging material is formed by coating an adhesive on the back side of the fabric (not appellants' invention)

(2) The adhesive bandaging material is formed by coating a release layer on the back side of stretched fabric followed by coating the adhesive on the release layer (appellants' claim 13 invention).

(3) The adhesive bandaging material is formed by coating a release layer on the back side of unstretched fabric followed by coating the adhesive on the release layer (appellants' claim 13 invention).

(4) The adhesive bandaging material is formed by coating a release layer on the face side of stretched fabric followed by coating the adhesive on the back side of the fabric (not appellants' invention).

(5) The adhesive bandaging material is formed by coating a release layer on the face side of unstretched fabric followed by coating the adhesive on the back side of the fabric (not appellants' invention).

Appeal No. 95-1743
Application 08/068,345

If a prior art reference is subject to two plausible interpretations, then the reference can be said to be ambiguous and will not support an anticipation rejection. In re Hughes, 345 F.2d 184, 188, 145 USPQ 467, 471 (CCPA 1965). Putting aside possibility (1), possibilities (2) and (3) (which are appellants' claim 13 invention) and possibilities (4) and (5) (which are not appellants' claim 13 invention) may be equally plausible. Hence, it cannot be said the Hoey unambiguously describes possibilities (2) and (3).

We have said "may be equally plausible." However, Hoey further makes the following statement (col. 4, lines 35-37):

When the tape is to be rewound, however, a sheet of facing material **76** from the roll **74** is interposed between the adhesive and the backing.

Hoey still further indicates (col. 5, last line to col. 6, line 6):

The preferred tapes of this invention, however, are coated with a release coating which improves unrollability. The coating may be among the well-known release coatings applied to the uncoated backing fabric preferably at dead stretch or to the back of the adhesive coated fabric whether the fabric is faced or unfaced, by using a reverse roll spreader.

These last two quoted-portions of Hoey seemingly indicate that the release layer facilitates unrolling by preventing the adhesive from contacting fabric on both sides (the side to which the adhesive is originally applied and the other side when the adhesive-coated fabric is rolled). The adhesive of appellants' adhesive bandaging material, made in accordance with appellants' process, would contact both the side to which it was applied and the opposite when the material is rolled (because the release layer is between the adhesive and the fabric to which both the adhesive and release layer are applied). See Figure 1 of appellants' application. It may well be that the most plausible interpretation of Hoey is that the release agent is applied to one side of the fabric while the adhesive is applied to the other side. If so, then Hoey manifestly does not anticipate appellants' claim 13.³ Since the teachings of Hoey are less than clear, it cannot be relied upon as an anticipatory reference.

For the above reasons, we cannot sustain the examiner's rejection under 35 U.S.C. 102(b) of claims 13 and 15 as anticipated by the Hoey.

³ Claim 15 depends from claim 13. Since claim 15 is narrower than claim 13, it likewise cannot be anticipated by Hoey.

Appeal No. 95-1743
Application 08/068,345

The Rejection based on Edison

The examiner relies on column 4, lines 27-48 and column 5, lines 40-41 of the Edison to establish the anticipatory nature of the reference. The examiner's reliance on these portions of the Edison reference is believed to be misplaced. These portions clearly set forth a method in which the release coating is applied to the face side of the fabric (col 4, lines 27-29, 34-36) and the adhesive is applied to the back side of the fabric (col. 5, lines 21-23).

We have not overlooked the examiner's finding that "[t]he adhesive apparently is absorbed through the fabric to the opposite side thereof [footnote omitted]. Since release agent is present on both sides of the web [when the web is rolled], adhesive is applied to the release agent no matter which side the adhesive is applied to" (Examiner's Answer, fifth page). The basis for the examiner's finding that "release agent is present on both sides of the web" is not entirely clear. Edison describes applying release agent to one side of the web, not both. The release agent is placed on the web while the web is in a relaxed state (not a stretched state) (col. 4, line 22). Moreover, after application of the release layer, the fabric is dried (col. 4, lines 49-53). Given the relaxed state of the web,

Appeal No. 95-1743
Application 08/068,345

penetration of release agent through the web seems somewhat unlikely.

Nor have we overlooked the examiner's finding that "at least some release material is absorbed through the fabric is not disputed" (Examiner's answer, fifth page, footnote 5). But, it is plain that appellants dispute whether Edison describes the claimed invention. In particular, appellants make quite a point of noting that Edison applies the release agent to one side of the web and the adhesive to the other side. Contrary to the examiner's finding, we think it plain that the examiner's finding is in dispute. Nor do we think this is a case where the examiner's inherency finding is reasonable. Rather, we think the examiner has engaged in considerable speculation to make the finding that release agent penetrates the web.

Lastly, as a matter of claim interpretation (an issue of law), we do not believe that the word "applying" in the phrase "applying an adhesive material to the release agent" (claim 13) means "applying adhesive to the release agent" when the web is being rolled. Appellants apply the release agent via spray head **35** (Figure 3). Adhesive is applied to the web at first roller **41** (Figure 4) being placed evenly on conveyer belt **36** at blade **37** (also Figure 4). There is nothing in appellants' description of

Appeal No. 95-1743
Application 08/068,345

the invention which would suggest that appellants are "applying"
(within the meaning of claim 13) adhesive to a release layer in
the process of placing the web on core **11** (Figure 5).

Appeal No. 95-1743
Application 08/068,345

For the above reasons, we cannot sustain the examiner's rejection under 35 U.S.C. 102(b) of claims 13 through 16 as anticipated by Edison.

SUMMARY

The decision of the examiner is reversed.

REVERSED

_____ BRUCE H. STONER, JR., Chief Administrative Patent Judge)))))	
_____ FRED E. MCKELVEY, Senior Administrative Patent Judge)))))	BOARD OF PATENT APPEALS AND INTERFERENCES
_____ TERRY J. OWENS Administrative Patent Judge)))	

Appeal No. 95-1743
Application 08/068,345

Ronald W. Alice, Esq.
American Home Products Corporation
Patent Department - 2B
One Campus Drive
Parsippany, New Jersey 07054