

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte HARISH A. PATEL

Appeal No. 96-3299  
Application 08/345,060<sup>1</sup>

ON BRIEF

MAILED

NOV 26 1996

PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

Before McCANDLISH, Senior Administrative Patent Judge, FRANKFORT  
and STAAB, Administrative Patent Judges.

McCANDLISH, Senior Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the examiner's rejection of claims 1 through 4, 6 and 7.<sup>2</sup> No other claims are pending in the application.

<sup>1</sup> Application for patent filed November 25, 1994.

<sup>2</sup> The statements concerning the status of the claims in the examiner's answer and appellant's brief are incorrect. Of the claims presented in this application, namely claims 1 through 7, claim 5 has been canceled, and claims 1 through 4, 6 and 7 stand rejected and are before us in this appeal.

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Appellant's invention relates to a wound dressing having an absorbent pad confined between two perforated, non-adherent sheets 12 and 14 and including inner and outer absorbent layers 18 and 20. The inner layer, which lies on the body side of the pad, has a lower density than the outer layer to inhibit maceration of the skin in the region of the wound.

A copy of the appealed claims, as these claims appear in the appendix to appellant's brief, is appended to this decision.

In rejecting the appealed claims, the examiner relies upon the following references:

Karami et al. (Karami)	5,167,613	Dec. 1, 1992
Wanek et al. (Wanek)	5,294,478	Mar. 15, 1994

Claims 1 through 3, 6, and 7 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Karami, and claim 4 stands rejected under 35 U.S.C. § 103 as being unpatentable over Karami in view of Wanek.

We have carefully considered the issues raised in this appeal together with the examiner's remarks and appellant's

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arguments. As a result, we conclude that the rejections of the appealed claims cannot be sustained.

Considering first the § 102(b) rejection, it is well established patent law that for a reference to be properly anticipatory, each and every element of the rejected claim must be found either expressly described or under the principles of inherency in the applied reference. *See, inter alia, RCA Corp. v. Applied Digital Data Systems, Inc.*, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). It follows that the absence from the reference of any element of the claim negates anticipation of that claim by the reference. *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565, 1571, 230 USPQ 81, 84 (Fed. Cir. 1986).

With regard to claim 1, appellant does not take issue with the examiner's finding that Karami discloses a wound dressing having an absorbent material sandwiched between opposed first and second non-adherent sheets and including first and second absorbent layers of different densities. Appellant contends, however, that in contrast to the subject matter of claim 1, Karami's outer sheet 32 is not perforated. Appellant further contends that as compared with the densities of Karami's inner and outer absorbent layers 40 and 38, the order of the densities of the absorbent layers in appellant's absorbent pad is reversed

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so that the inner layer at the body side of the pad is a low density fabric while the outer, overlying layer is a high density fabric.

We agree with appellant's argument regarding the densities of the absorbent layers. Claim 1 recites that the high density layer receives wound fluid diffusing through the low density layer. This limitation requires the low density absorbent layer to be on the inner or body side of the absorbent material. In contrast, the inner layer of Karami's absorbent pad is the high density layer. Even the examiner's findings on page 3 of the answer agree with appellant's position regarding the order of Karami's absorbent layers of high and low densities.

The examiner seems to ignore this distinction, being satisfied to state on page 7 of the answer that Karami also focuses on the task of preventing skin maceration in column 5, lines 38-41 of the Karami specification. However, this description is not tantamount to a disclosure of locating the low density layer on the inner or body side of the absorbent pad. This part of the Karami specification relates to the occurrence of maceration of healthy skin in the peripheral, adhesive-bearing region of the dressing surrounding the wound, not in the region of the wound underlying the absorbent pad. Moreover, the

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maceration in the peripheral region of Karami's dressing is not solved in the manner disclosed and claimed by appellant, but instead is solved by providing adhesive-free areas of the peripheral portion of the dressing with slits to permit diffusion of exudate.

We also cannot accept the examiner's position that Karami's bacteria-impermeable, plastic cover sheet 32 is perforated because it is permeable to air as described in column 6, lines 53-61 of the Karami specification or has one or more windows or openings as described in column 7, lines 7-16 of the Karami specification. In the present case, the word "perforated" must be given its applicable, common ordinary meaning. See *In re Barr*, 444 F.2d 588, 597, 170 USPQ 330, 339 (CCPA 1971), *Envirotech Corp. v. Al George, Inc.*, 730 F.2d 753, 759, 221 USPQ 473, 477 (Fed Cir. 1984), and *Nike Inc. v. Wolverine World Wide Inc.*, 43 F.3d 644, 647, 33 USPQ2d 1038, 1040 (Fed. Cir. 1994).

According to its applicable, common ordinary meaning in Webster's Third New International Dictionary (G. & C. Merriam Company, 1971) "perforated" means "having a hole or series of holes: pierced, punctured." Karami's cover sheet does not meet this definition merely because it is air permeable. Furthermore, a window as described in column 7 of the Karami specification

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would not be regarded by one skilled in the art as being a perforation. In addition, the windows described in column 7, lines 7-16 of the Karami specification are not left open, but instead, are covered by air-permeable bacterial barrier sheets.

Since the Karami patent does not disclose all of the limitations in claim 1, we cannot agree that this patent constitutes a proper anticipatory reference for the subject matter of claim 1 and hence for claims 2, 3, 6 and 7 which depend directly or indirectly from claim 1. Accordingly, we must reverse the § 102(b) rejection of these claims.

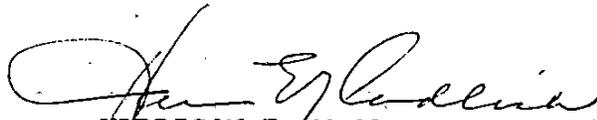
Turning now to the § 103 rejection of dependent claim 4, we cannot agree with appellant's contention on page 12 of the brief that Wanek's inner surge management layer is not absorbent inasmuch as Wanek discloses in column 4, lines 28-33, that this layer may contain as much as 90 percent by weight of cotton, which is known to be an absorbent material. This inner layer is disclosed as having a low density as compared with Wanek's overlying absorbent layer. Wanek states that this composite may be used as a wound dressing (see column 8, lines 30-31) and teaches that the purpose of the inner surge layer is to provide a relatively dry feel even after it has been wetted. Although such a teaching may have been ample motivation to substitute Wanek's

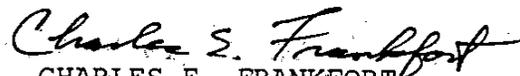
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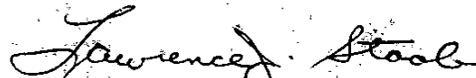
composite for Karami's multilayer absorbent pad, we nevertheless cannot sustain the § 103 rejection of claim 4, because even if this substitution were made, the result would meet the terms of claim 1 since neither reference has a teaching of perforating the outer or cover sheet of the dressing.<sup>3</sup>

The examiner's decision rejecting claims 1 through 3, 6 and 7 under § 102(b) and claim 4 under § 103 is reversed.

**REVERSED**

  
HARRISON E. McCANDLISH, Senior )  
Administrative Patent Judge )

  
CHARLES E. FRANKFORT ) BOARD OF PATENT  
Administrative Patent Judge ) APPEALS AND

  
LAWRENCE J. STAAB ) INTERFERENCES  
Administrative Patent Judge )

<sup>3</sup> We are not unmindful of the prior art TELFA dressing described on page 4 of appellant's specification. However, on the record before us there is no disclosure that the TELFA dressing has an outer sheet that is perforated.

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Davis J. Koris  
The Kendall Company  
15 Hampshire Street  
Mansfield, Massachusetts 02048

APPENDIX

1. In a wound dressing for covering a wound wherein an absorbent material for receiving and retaining wound fluids is sandwiched between opposed first and second perforated non-adherent sheet materials;

the improvement wherein the absorbent material is a multilayer structure comprising first and second absorbent layers, the first layer being a low density absorbent fabric having optimum absorption capacity for receiving wound fluids diffusing from the wound through the first perforated sheet material, the second layer being a high density absorbent fabric exhibiting optimum spreading or wicking characteristics for receiving and retaining wound fluid diffusing through the low density absorbent fabric, whereby to inhibit maceration caused by pooling of wound fluid on the wound surface.

2. A wound dressing as defined in Claim 1 wherein the dressing is an island dressing.

3. A wound dressing as defined in Claim 1 wherein the low density fabric has a density less than 0.1 gram per cubic centimeter and the high density fabric has a density on the order of 0.1 to 0.2 gram per cubic centimeter.

4. A wound dressing as defined in Claim 1 wherein the absorbent material contains a third absorbent layer disposed on the outer surface of the second absorbent layer, the third absorbent layer being a low density absorbent fabric, whereby the absorbent material consists of a high density absorbent fabric sandwiched between outer layers of low density absorbent fabric.

7. A wound dressing as defined in Claim 1 wherein the first sheet material is of greater dimensions than the absorbent material, the absorbent material has a surface facing the second sheet material, and the first sheet material has edges defining its dimensions, which edges overlap and abut the surface of the absorbent material facing the second sheet material.

6. A wound dressing as defined in Claim 7 wherein the second sheet material has a layer of pressure-sensitive adhesive facing the second sheet material; the absorbent material is substantially smaller than the second sheet material, thereby providing an island dressing wherein the adhesive surrounding the absorbent material can secure the dressing to cover the wound.