

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte LESLIE E. SEIBERT and PRASHANT CHAWLA

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Appeal No. 96-3720  
Application No. 08/230,825<sup>1</sup>

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ON BRIEF

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Before JOHN D. SMITH, GARRIS, and SPIEGEL, Administrative Patent Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claims 5-12 and from the refusal of the examiner to allow

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<sup>1</sup> Application for patent filed April 21, 1994.

claims 1-4 as amended subsequent to the final rejection. These are all the claims remaining in the application.

The subject matter on appeal relates to a material which comprises two sheets of microporous plastic film bonded together with an adhesive, the plastic film having pores of a sufficient size such that the adhesive migrates into the pores forming a continuous layer between the two sheets of film. Further details of this appeal subject matter are set forth in representative independent claim 1 which reads as follows:

1. A material for use in the manufacture of surgical gowns and the like and which comprises two sheets of microporous plastic film bonded together with an adhesive, the plastic film having pores of a sufficient size such that the adhesive migrates into pores forming a continuous layer between the two sheets of film to provide a breathable but substantially liquid and viral impervious laminated core, and two layers of fabric that cover and protect said core.

The reference relied upon by the examiner as evidence of obviousness is:

Lumb et al. (Lumb)  
1993

5,204,156

Apr. 20,

All of the claims on appeal stand rejected under 35 U.S.C. § 103 as being unpatentable over Lumb.

We cannot sustain this rejection.

As correctly indicated by the appellants, Lumb teaches in column 5 that the adhesive must be discontinuous so as not to interfere with the moisture vapor transport properties of the fabric whereas the claims on appeal expressly require that the adhesive forms "a continuous layer" (see each of the appealed independent claims 1, 5 and 9) between the sheets or layers of film. This argument by the appellants has not been even acknowledged much less rebutted by the examiner on the record before us. As a consequence, the examiner necessarily has failed to carry her initial burden of establishing a prima facie case of obviousness within the meaning of 35 U.S.C. § 103.

For the above stated reasons, we cannot sustain the § 103 rejection of claims 1-12 as being unpatentable over Lumb.

The decision of the examiner is reversed.

REVERSED

JOHN D. SMITH	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
BRADLEY R. GARRIS	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
CAROL A. SPIEGEL	)	
Administrative Patent Judge	)	

BRG/jlb

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