

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte GARY M. BACH

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Appeal No. 1998-0122  
Application No. 08/548,365

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ON BRIEF

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Before COHEN, PATE, and STAAB, Administrative Patent Judges.

PATE, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 8, 9 and 11-14. These are the only claims remaining in the application.

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The claimed invention is directed to a geotechnical fabric used for the confinement of stones. Such a fabric is useful in building roads, walls and other foundation.

A further understanding of the claimed invention can be had by reference to claim 8, the independent claim on appeal, appended to appellant's brief.

The references of record relied upon by the examiner as evidence of obviousness are:

Bach et al. ('309)	4,778,309	Oct. 18,
1988		
Bach et al. ('543)	5,449,543	Sep.
12, 1995		
Yamamoto (JP-A Kokai)	JP-A 56-16730	Feb. 18, 1981
(PTO Translation) <sup>1</sup> .		

Claims 8, 9 and 11-13 stand rejected under 35 U.S.C. § 103 as unpatentable over Bach '309 in view of Yamamoto. According to the examiner, it would have been obvious to modify the geotechnical cell structure of Bach in the manner taught by the Yamamoto reference.

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<sup>1</sup>Our understanding of the Japanese Yamamoto patent is by reference to two translations that have being provided to appellant by the Patent and Trademark Office.

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Claim 14 stands rejected under 35 U.S.C. § 103 as unpatentable over Bach '309 in view of Yamamoto and Bach '543. The Bach '543 patent teaches the use of tendons for additional reinforcement of the cellular structure. According to the examiner, it would have been obvious to use such tendons in the cellular structure of Bach '309 modified according to the Yamamoto teaching.

#### OPINION

We have carefully reviewed the rejections on appeal in light of the arguments of the appellant and the examiner. As a result of this review, we have reached the conclusion that the applied prior art does not establish a prima facie case of obviousness with respect to the rejections on appeal. Therefore these rejections are reversed. Our reasons follow.

As an initial matter, we find it necessary to construe the scope of claim 8, the independent claim on appeal. Initially, we note the following quotation from appellant's brief:

The key to the difference between Appellant's invention and Yamamoto is in the fill material used in combination with the web to form the complete structure. As *claimed* by Appellant, the fill material is stones which have diameters in excess of

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the diameter of the apertures such that the stones become lodged in the apertures and thereby increase the load bearing capacity of the structure. (Brief page 4 (pages are unnumbered by the appellant)(emphasis supplied).

Turning to claim 8, we note that the preamble thereof, directs the claim to a cell structure "for use in combination with confinement material of stones." The examiner has interpreted this limitation as simply a use limitation and does not consider the claim to be directed to a specific geotechnical cellular structure of utility expressly for stone, but rather as a structure of general utility for any fill material. However, in the body of the claim, we note the limitation that the stones are of sizes "to permit said stones filling said cells to become lodged in said apertures." In our view, this recitation in the body of the claim breathes life and meaning into the preambular recitation of a cell structure for use in combination with confinement material of stones. Accordingly, we interpret the claim as directed to a cellular structure expressly for use with stone or rock.

Interpreted in this light, it is apparent that both the primary reference to Bach '309 and the secondary reference to Yamamoto, if combined would not render the claimed subject

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matter *prima facie* obvious. We agree with appellant, that both of these references are directed to stabilizing soils or materials composed of fine particles. Indeed, the disclosure of Yamamoto is directed to materials fine enough to be placed hydraulically. Thus, when Yamamoto discusses emplacing crushed stone, as pointed out by the examiner, it is our interpretation that Yamamoto is referring to crushed stones of similar diameter to that of sand or soil that can be jetted into place and not stones of greater diameter than the fabric's apertures as specified in the independent claim on appeal.

We have further considered the teachings of the additional Bach' 543 patent but find no disclosure therein that when combined with the Bach and Yamamoto teachings with regard to claim 8 would have rendered claim 14 *prima facie* obvious. Since we have found that, by appellant's argument and by the express language of the claim, the cell structure subject matter herein claimed is directed to a cell structure for use with stones, we have reversed the examiner's rejections on appeal.

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**REVERSED**

IRWIN CHARLES COHEN	)	
Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
WILLIAM F. PATE, III	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
LAWRENCE J. STAAB	)	
Administrative Patent Judge	)	

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APJ PATE

APJ STAAB

APJ COHEN

DECISION:

Send Reference(s): Yes No  
or Translation (s)  
Panel Change: Yes No  
Index Sheet-2901 Rejection(s):  
Prepared: December 17, 2001

Draft                  Final

3 MEM. CONF.    Y                  N

OB/HD                  GAU

PALM / ACTS 2 / BOOK  
DISK (FOIA) / REPORT