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EXAMINER

FETSUGA, ROBERT M

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AVC CORP.
Respondent, Requester

v.

WINTERBORNE, INC.
Appellant, Patent Owner

Appeal 2014-006678
Reexamination Control 95/002,351
Patent No. 7,726,480 B2¹
Technology Center 3900

Before STEVEN D.A. McCARTHY, JEFFREY B. ROBERTSON and
DANIEL S. SONG, Administrative Patent Judges.

McCARTHY, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ Issued June 1, 2010 to Joseph Nazari (the “’480 patent”). The ’480 patent issued from Appl. No. 11/374,769, filed March 14, 2006. The ’480 patent, along with related U.S. Patent 8,205,747 B2 (subject of *Inter Partes* Reexamination Control No. 95/002,352), has been the subject of litigation as detailed on page 2 of the “Patent Owner’s Appeal Brief under 37 C.F.R. § 41.67,” dated November 7, 2013 (“Appeal Brief” or “App. Br. PO”). As presently advised, pending litigation between the Patent Owner and the Requester is stayed. (*See* App. Br. PO 2)

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CLAIMED SUBJECT MATTER

Claim 1 is illustrative and self-explanatory:

1. A display pack for a product, comprising:

a first and a second overlaying corrugated cardboard sheets, the first cardboard sheet having a first upper facing, a first lower facing and a first inner corrugated member with first corrugations between the first upper and first lower facings, the second cardboard sheet having a second upper facing, a second lower facing and a second inner corrugated member with second corrugations between the second upper and second lower facings, the first and second overlaying corrugated cardboard sheets having an outer peripheral edge and an original thickness, at least one of the cardboard sheets defining at least one opening;

at least one container having a flat insertion portion and a chamber portion for holding the product, the insertion portion being sandwiched between the two cardboard sheets and the chamber portion protruding from a plane of the cardboard sheets via the opening, the overlaying cardboard sheets having an inner portion extending around the opening and covering the insertion portion, and a peripheral area extending from the inner portion to and including at least a segment of the outer peripheral edge; and

an adhesive between the first and the second corrugated cardboard sheets in at least a portion of the peripheral area to adhere the two corrugated cardboard sheets,

wherein the inner portion has substantially the original thickness, and the peripheral area of

1 pack in which the peripheral area of the corrugated cardboard sheets has, as
2 recited in claim 1, “a portion of the first upper facing, the first inner
3 corrugated member, the first lower facing, the second upper facing, the
4 second inner corrugated member, and the second lower facing . . . crushed
5 more than approximately 50% of the original thickness.” (*See* Reb. Br. PO
6 3). The sole issue in this appeal is whether one of ordinary skill in the art
7 familiar with the teachings of Ritter and Loheed would have had reason to
8 modify Ritter’s display pack *12* to satisfy this limitation.

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FINDINGS OF FACT

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The record supports the following findings of fact (“FF”) by a
12 preponderance of the evidence.

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1. Ritter teaches enhancing the security of a display pack *12*
against theft by joining the front and back cards *16, 24* of the display pack
together with the blister cavity *20* by means of a heat-seal coating placed on
the inside facing surfaces of the front and back cards *16, 24*. (Ritter, col. 9,
ll. 21–26). Ritter also teaches that the hot-melt coating material may be used
“sparingly, e.g., . . . primarily only around the common peripheral regions of
the respective front and rear cards.” (Ritter, col. 12, ll. 31–37).

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2. Loheed describes:

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[I]n a method of manufacturing a corrugated fibre
board blank having two spaced paper liners and an
intervening corrugated paper layer[,] the crests of
the corrugation of which are bonded to the liners,
at certain edge areas the board is crushed so that
the liners and paper layer are bonded at those areas
into a solid mass of substantially inseparable fibres
with a thickness less than half the thickness of the

1 uncrushed fibre board area, the solid board having
2 parallel surfaces.

3 (Loheed 1, ll. 52–63).

4 3. Loheed teaches that, when certain of the edge areas of the board
5 are crushed in this fashion:

6 [T]he adhesive, or bonding agent used to bond the
7 liners with the corrugated medium[,] will spread
8 out between the liners and corrugated medium
9 during the crushing process, to provide a solid
10 board of intertwining and intermingled fibres from
11 all three layers, the layers losing to a substantial
12 degree their identity as such by the crushing and
13 bonding operation.

14 (Loheed 3, ll. 55–63).

15 4. Loheed also describes a technique for fabricating a box for
16 containing a liquid from a corrugated cardboard blank. The technique
17 includes crushing ends of the blank, including upper edge area 36, into solid
18 board. (See Loheed 3, l. 126 – 4, l. 7 and Fig. 4). The technique preferably
19 also includes coating both sides of the blank with a hot melt adhesive
20 coating to render both surfaces of the blank impervious to liquid. (See
21 Loheed 4, ll. 26–29).

22 5. Loheed then teaches folding the blank and sealing overlapping
23 ends as at 40 to form a tube of rectangular cross-section. (See Loheed, 4, ll.
24 29–37 and Fig. 3). Loheed describes the “manufacturer’s joint” 40 as
25 “effected by heat sealing the overlapped ends 34 and 48, the hot melt
26 adhesive coating applied to the opposite sides of the blank being sufficient to
27 form the joint, when the overlapped ends are subjected to heat and pressure.”
28 (Loheed 4, ll. 29–37). Loheed teaches that:

1 The bonding of the crushed layers in the solid fibre
2 board areas together with the surface coating of hot
3 melt adhesive permits overlapped portions of such
4 solid board to be bonded together by the
5 [application] of heat and pressure, such that any
6 two or more superimposed areas of such solid fibre
7 board areas become in [effect] a single solid fibre
8 board section of thickness corresponding to the
9 number of superimposed layers bonded together.

10 (Loheed 4, ll. 54–64).

11 6. In order to close and seal the upper end of the box, one moves
12 upper opposite portions *130*, *132* of the upper crushed edge portion *36*
13 toward one another to form a fin or flattened cuff *141* running along the
14 center line *140* of the tube. (See Loheed 4, ll. 81–88 and Figs. 10, 10A, 10B
15 and 11). One then squeezes the fin or flattened cuff *141* between heating
16 and pressure bars *200*, *202*. (See Loheed 4, ll. 103–07; cf. Request 12 (“the
17 fin 141 is created by overlapping and gluing the opposing crushed edges”)).

18 Sufficient heat is applied to the cuff to fuse the hot
19 melt adhesive plastic coating material between the
20 facing surfaces of the cuff, whereby the cuff is
21 bonded into a solid fin, the fin 141 being
22 continuous, and of a thickness double the thickness
23 of the solid board [initially formed by crushing the
24 upper edge area *36*] except as at the
25 manufacturer’s joint 40, where three thicknesses
26 may be evident.

27 (Loheed 4, ll. 107–15).

28 7. Loheed teaches that sufficient adhesive either must be used in
29 manufacturing the corrugated cardboard material or must be added to the
30 material after manufacture to produce the solid board of intertwining and
31 intermingled fibers when an edge is crushed. (See, e.g., Loheed 6, ll. 92–

1 111). That said, Loheed recognizes that the “selective application of
2 adhesive to the corrugated layer during manufacture of the corrugated board
3 will evidence savings in the amount of adhesive employed.” (Loheed 7, ll.
4 28–32).

5

6

ANALYSIS

7 The Examiner in the RAN correctly concludes that it would have been
8 obvious “to crush the Ritter adhesive area, in order to enhance strength.”
9 (RAN 7). Ritter teaches enhancing the security of a display pack 12 against
10 theft by joining the front and back cards 16, 24 of the display pack together
11 with the blister cavity 20 by means of a heat-seal coating placed on the
12 inside facing surfaces of the front and back cards 16, 24. (FF 1). This
13 teaching would have provided one of ordinary skill in the art reason to seek
14 means for creating a strong, theft-resistant bond between the front and back
15 cards 16, 24. (*See* Resp. Br. Req’r 5).

16 Loheed teaches that crushing an edge of a corrugated cardboard blank
17 containing sufficient adhesive or bonding agent produces an edge consisting
18 of a solid board of intertwining and intermingled fibers. (FF 2 and 3).
19 Loheed also teaches forming a fin or flange joining edges of corrugated
20 cardboard material by crushing the edges; coating the edges with a hot melt
21 adhesive plastic coating material; moving the edges together; and squeezing
22 the edges together between heating and pressure bars. (FF 6). Loheed
23 teaches that the joint formed in this manner is continuous and has a thickness
24 double that of the crushed edges (*id.*); and that forming a “manufacturer’s
25 joint” by applying heat and pressure to overlapping, crushed edges of

1 corrugated cardboard material would yield, in effect, a single solid fiber
2 board section of thickness double that of the crushed edges (FF 5).

3 These teachings would have provided one of ordinary skill in the art a
4 reasonable expectation that crushing the peripheries of the front and back
5 cards of a display pack; coating the peripheries with a hot melt adhesive
6 plastic coating material; and squeezing the peripheries together between
7 heating and pressure bars would succeed in yielding strong and tenacious
8 joints between the front and back cards. (*See* Resp. Br. Req'r 5–6). These
9 teachings provide a rational underpinning for the Examiner's conclusion that
10 it would have been obvious to modify Ritter's display package by crushing a
11 portion, thereby satisfying the limitation reciting "a portion of the first upper
12 facing, the first inner corrugated member, the first lower facing, the second
13 upper facing, the second inner corrugated member, and the second lower
14 facing . . . [was] crushed more than approximately 50% of the original
15 thickness."

16 The Patent Owner argues that "Loheed's main purposes for crushing
17 the edge of a corrugated cardboard sheet is, in combination with sufficient
18 glue, to seal the edges from liquid penetration. . . . A secondary benefit
19 disclosed by Loheed is that crushing reduces the thickness of the
20 manufacturer's joint that is eventually created." (App. Br. PO 10). A patent
21 is prior art for what it reasonably discloses or suggests, *In re Aslanian*, 590
22 F.2d 911 (CCPA 1979), and not merely for what may be cast, in retrospect,
23 as its "main purpose." As the Requester points out, a "person of ordinary
24 skill in the art 'need not see the identical problem addressed in a prior art
25 reference to be motivated to apply its teachings.'" (Resp. Br. Req'r 6, citing

1 *Cross Med. Prods. Inc. v. Medtronics Sofamor Danek Inc.*, 424 F.3d 1293,
2 1323 (Fed. Cir. 2005)). Even assuming without deciding that the Patent
3 Owner’s characterization of “Loheed’s main purposes” is correct, one of
4 ordinary skill in the art familiar with the teachings of Ritter and Loheed as a
5 whole would have had reason to modify Ritter’s display pack in the fashion
6 claimed in claim 1.

7 The Patent Owner points out that Loheed teaches the addition of
8 sufficient adhesive or bonding agent to the corrugated cardboard material
9 during manufacture to produce a solid board when an edge of the material is
10 crushed. (*See* FF 7). Ritter teaches at one point that the hot melt adhesive
11 used to join the front and back cards of a display pack should be used
12 sparingly. (*See* FF 1). The Patent Owner argues that these teachings would
13 have discouraged one of ordinary skill in the art from using a method such
14 as that taught by Loheed to join the front and back cards of a display pack
15 such as Ritter’s. (Reb. Br. PO 6).

16 Our reviewing court instructs us that “a given course of action often
17 has simultaneous advantages and disadvantages, and this does not
18 necessarily obviate motivation to combine.” *Medichem, S.A. v. Rolabo, S.L.*,
19 437 F.3d 1157, 1165 (Fed. Cir. 2006). Loheed itself recognizes that the
20 sparing use of adhesive in manufacturing the corrugated cardboard material
21 may result in cost savings. (FF 7). Nevertheless, one of ordinary skill in the
22 art would have had reason to adopt a method similar to that of Loheed for
23 joining the peripheries of the front and back cards for better joint strength or
24 ease of manufacture notwithstanding additional costs which might have been
25 incurred due to the amount of adhesive required in the manufacture of the

1 corrugated cardboard used in the cards. *See Orthopedic Equipment*
2 *Company, Inc. et al. v. United States*, 702 F.2d 1005, 1013 (Fed. Cir. 1983)
3 ("the fact that the two disclosed apparatus would not be combined by
4 businessmen for economic reasons is not the same as saying that it could not
5 be done because skilled persons in the art felt that there was some
6 technological incompatibility that prevented their combination. Only the
7 latter fact is telling on the issue of nonobviousness.").

8 The Patent Owner also argues that the "sealed glue joint of Loheed
9 requires additional costs beyond just the cost of added glue at the edges, e.g.,
10 the cost attributed to the additional labor for manually applying the glue
11 and/or equipment to selectively apply the glue only to the edge regions."
12 (Reb. Br. PO 6). Nevertheless, Ritter's suggested solution to the problem of
13 applying the glue sparingly is selectively applying glue only to the edge
14 regions. (FF 1). This additional cost is not a persuasive reason why one of
15 ordinary skill in the art might have been discouraged from modifying
16 Ritter's display pack as proposed by the Examiner. *See Orthopedic*, 702
17 F.2d at 1013.

18 We sustain the rejection of claims 1–14 under § 103(a) as being
19 unpatentable over Ritter and Loheed.

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DECISION

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We AFFIRM the Examiner's decision rejecting claims 1–14.

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Requests for extensions of time in this *inter partes* reexamination
proceeding are governed by 37 C.F.R. § 1.956.

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In the event neither party files a request for rehearing within the time
provided in 37 C.F.R. § 41.79, and this decision becomes final and

Appeal 2014-006678
Reexamination Control 95/002,351
Patent No. 7,726,480 B2

1 appealable under 37 C.F.R. § 41.81, a party seeking judicial review must
2 timely serve notice on the Director of the United States Patent and
3 Trademark Office. *See* 37 C.F.R. §§ 90.1 and 1.983.

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AFFIRMED

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7 peb

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9 Patent Owner:

10 CHRISTIE, PARKER & HALE, LLP
11 PO BOX 29001
12 GLENDALE, CA 91209-9001

13

14 Third Party Requester:

15 LAUSON & TARVER LLP
16 880 APOLLO STREET
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
95/002,352	09/14/2012	8,205,747 B2	12-29271	8995
23363	7590	10/07/2014	EXAMINER	
CHRISTIE, PARKER & HALE, LLP			FETSUGA, ROBERT M	
PO BOX 29001			ART UNIT	PAPER NUMBER
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BEFORE THE PATENT TRIAL AND APPEAL BOARD

AVC CORP.
Respondent, Requester

v.

WINTERBORNE, INC.
Appellant, Patent Owner

Appeal 2014-006971
Reexamination Control 95/002,352
Patent No. 8,205,747 B2¹
Technology Center 3900

Before STEVEN D.A. McCARTHY, JEFFREY B. ROBERTSON and
DANIEL S. SONG, Administrative Patent Judges.

McCARTHY, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ Issued June 26, 2012 to Joseph Nazari (the “’747 patent”). The ’747 patent issued from Appl. No. 12/790,747, filed May 28, 2010. The ’747 patent, along with related U.S. Patent 7,726,480 B2 (subject of *Inter Partes* Reexamination Control No. 95/002,351), has been the subject of litigation as detailed on page 2 of the “Patent Owner’s Appeal Brief under 37 C.F.R. § 41.67,” dated November 18, 2013 (“Appeal Brief” or “App. Br. PO”). As presently advised, pending litigation between the Patent Owner and the Requester is stayed. (App. Br. PO 2).

1 CLAIMED SUBJECT MATTER

2 Claim 1 is illustrative and self-explanatory:

3 1. A display pack for a product,
4 comprising:

5 a corrugated cardboard sheet and a flat sheet
6 of paper overlaying each other in a stacked
7 configuration, the cardboard sheet having an upper
8 facing, a lower facing and an inner corrugated
9 member with corrugations defining air gaps
10 between the upper and lower facings,

11 the stacked configuration having an outer
12 peripheral edge and an original thickness,

13 the paper sheet defining at least one
14 opening;

15 at least one container having a flat insertion
16 portion and a chamber portion for holding the
17 product, the insertion portion being sandwiched
18 between the cardboard sheet and the paper sheet
19 and the chamber portion protruding from a plane
20 of the stacked configuration via the opening,

21 the stacked configuration having an inner
22 portion extending around the opening and covering
23 the insertion portion, and at least one peripheral
24 area extending from the inner portion to and
25 including at least a segment of the outer peripheral
26 edge;

27 and an adhesive between the corrugated
28 cardboard sheet and the paper sheet in at least a
29 portion of the peripheral area to adhere the
30 corrugated cardboard sheet and the flat sheet,²

² The “flat sheet” is understood to be the same element as the “paper sheet.”

1 limitation recited in claim 1 except one: Ritter does not describe a display
2 pack in which the peripheral area of the corrugated cardboard sheets has, as
3 recited in claim 1, “a portion of the upper facing, the inner corrugated
4 member, and the lower facing . . . crushed with reduced air gaps therein to a
5 thickness up to approximately 50% of the original thickness.” (*See* Reb. Br.
6 PO 2). The sole issue in this appeal is whether one of ordinary skill in the
7 art familiar with the teachings of Ritter and Loheed would have had reason
8 to modify Ritter’s display pack *12* to satisfy this limitation.

9

10

FINDINGS OF FACT

11

The record supports the following findings of fact (“FF”) by a
12 preponderance of the evidence.

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1. Ritter teaches enhancing the security of a display pack *12*
against theft by joining the front and back cards *16, 24* of the display pack
together with the blister cavity *20* by means of a heat-seal coating placed on
the inside facing surfaces of the front and back cards *16, 24*. (Ritter, col. 9,
ll. 21–26). Loheed also teaches that the hot-melt coating material may be
used “sparingly, e.g., . . . primarily only around the common peripheral
regions of the respective front and rear cards.” (Ritter, col. 12, ll. 31–37).

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2. Loheed describes:

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[I]n a method of manufacturing a corrugated fibre
board blank having two spaced paper liners and an
intervening corrugated paper layer[,] the crests of
the corrugation of which are bonded to the liners,
at certain edge areas the board is crushed so that
the liners and paper layer are bonded at those areas
into a solid mass of substantially inseparable fibres

1 with a thickness less than half the thickness of the
2 uncrushed fibre board area.

3 (Loheed 1, ll. 52–63).

4 3. Loheed teaches that, when certain of the edge areas of the board
5 are crushed in this fashion:

6 [T]he adhesive, or bonding agent used to bond the
7 liners with the corrugated medium[,] will spread
8 out between the liners and corrugated medium
9 during the crushing process, to provide a solid
10 board of intertwining and intermingled fibres from
11 all three layers, the layers losing to a substantial
12 degree their identity as such by the crushing and
13 bonding operation, the solid board having parallel
14 surfaces.

15 (Loheed 3, ll. 55–63).

16 4. Loheed also describes a technique for fabricating a box for
17 containing a liquid from a corrugated cardboard blank. The technique
18 preferably includes crushing ends of the blank, including upper edge area 36,
19 into solid board. (See Loheed 3, l. 126 – 4, l. 7 and Fig. 4). The technique
20 also includes coating both sides of the blank with a hot melt adhesive
21 coating to render both surfaces of the blank impervious to liquid. (See
22 Loheed 4, ll. 26–29).

23 5. Loheed then teaches folding the blank and sealing overlapping
24 ends as at 40 to form a tube of rectangular cross-section. (See Loheed, 4, ll.
25 29–37 and Fig. 3). Loheed describes the “manufacturer’s joint” 40 as
26 “effected by heat sealing the overlapped ends 34 and 48, the hot melt
27 adhesive coating applied to the opposite sides of the blank being sufficient to

1 form the joint, when the overlapped ends are subjected to heat and pressure.”

2 (Loheed 4, ll. 29–37). Loheed teaches that:

3 The bonding of the crushed layers in the solid fibre
4 board areas together with the surface coating of hot
5 melt adhesive permits overlapped portions of such
6 solid board to be bonded together by the
7 [application] of heat and pressure, such that any
8 two or more superimposed areas of such solid fibre
9 board areas become in [effect] a single solid fibre
10 board section of thickness corresponding to the
11 number of superimposed layers bonded together.

12 (Loheed 4, ll. 54–64).

13 6. In order to close and seal the upper end of the box, one moves
14 upper opposite portions *130*, *132* of the upper crushed edge portion *36*
15 toward one another to form a fin or flattened cuff *141* running along the
16 center line *140* of the tube. (See Loheed 4, ll. 81–88 and Figs. 10, 10A, 10B
17 and 11). One then squeezes the fin or flattened cuff *141* between heating
18 and pressure bars *200*, *202*. (See Loheed 4, ll. 103–07; cf. Request 12
19 (“[seam] *141* was originally made by overlapping corrugated sheets *143* and
20 *145*, aligning their respective crushed edges, gluing those edges together,
21 then folding that edge over”).

22 Sufficient heat is applied to the cuff to fuse the hot
23 melt adhesive plastic coating material between the
24 facing surfaces of the cuff, whereby the cuff is
25 bonded into a solid fin, the fin *141* being
26 continuous, and of a thickness double the thickness
27 of the solid board [initially formed by crushing the
28 upper edge area *36*] except as at the
29 manufacturer’s joint *40*, where three thicknesses
30 may be evident.

31 (Loheed 4, ll. 107–15).

1 7. Loheed teaches that sufficient adhesive either must be used in
2 manufacturing the corrugated cardboard material, or must be added to the
3 material after manufacture, to produce the solid board of intertwining and
4 intermingled fibers when an edge is crushed. (*See, e.g.*, Loheed 6, ll. 92–
5 111). That said, Loheed recognizes that the “selective application of
6 adhesive to the corrugated layer during manufacture of the corrugated board
7 will evidence savings in the amount of adhesive employed.” (Loheed 7, ll.
8 28–32).

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ANALYSIS

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The Examiner in the RAN correctly concludes that it would have been obvious “to crush the Ritter adhesive area, in order to enhance strength by creating a solid sheet portion.” (RAN 7). Ritter teaches enhancing the security of a display pack *12* against theft by joining the front and back fibrous sheets *16, 24* of the display pack together with the blister cavity *20* by means of a heat-seal coating placed on the inside facing surfaces of the front and back cards *16, 24*. (FF 1). This teaching would have provided one of ordinary skill in the art reason to seek means for creating a strong, theft-resistant bond between the front and back fibrous sheets *16, 24*. (*See Resp. Br. Req’r 5*).

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Loheed teaches that crushing an edge of a corrugated cardboard blank containing sufficient adhesive or bonding agent produces an edge consisting of a solid board of intertwining and intermingled fibers. (FF 2 and 3). Loheed also teaches forming a fin or flange joining edges of corrugated cardboard material by crushing the edges; coating the edges with a hot melt

1 adhesive plastic coating material; moving the edges together; and squeezing
2 the edges together between heating and pressure bars. (FF 6). Loheed
3 teaches that the joint formed in this manner is continuous and has a thickness
4 double that of the crushed edges (*id.*); and that forming a “manufacturer’s
5 joint” by applying heat and pressure to overlapping, crushed edges of
6 corrugated cardboard material would yield, in effect, a single solid fiber
7 board section of thickness double that of the crushed edges (FF 5).

8 These teachings would have provided one of ordinary skill in the art a
9 reasonable expectation that crushing the periphery of a back card of a
10 display pack; coating the peripheries of either the front sheet or the back
11 card, or both, with a hot melt adhesive plastic coating material; and
12 squeezing the peripheries together between heating and pressure bars would
13 succeed in yielding strong and tenacious joints between the front and back
14 fibrous sheets. (*See Resp. Br. Req’r 5*). These teachings provide a rational
15 underpinning for the Examiner’s conclusion that it would have been obvious
16 to modify Ritter’s display package by crushing a portion, thereby satisfying
17 the limitation reciting “a portion of the upper facing, the inner corrugated
18 member, and the lower facing [was] crushed with reduced air gaps therein to
19 a thickness up to approximately 50% of the original thickness.”

20 The Patent Owner argues that “Loheed’s main purposes for crushing
21 the edge of a corrugated cardboard sheet is, in combination with sufficient
22 glue, to seal the edges from liquid penetration. . . . A secondary benefit
23 disclosed by Loheed is that crushing reduced the thickness of the
24 manufacturer’s joint that is eventually created.” (App. Br. PO 12). A patent
25 is prior art for what it reasonably discloses or suggests, *In re Aslanian*, 590

1 F.2d 911(CCPA 1979), and not merely for what may be cast, in retrospect,
2 as its “main purpose.” As the Requester points out, a “person of ordinary
3 skill in the art ‘need not see the identical problem addressed in a prior art
4 reference to be motivated to apply its teachings.’” (Resp. Br. Req’r 6, citing
5 *Cross Med. Prods. Inc. v. Medtronics Sofamor Danek Inc.*, 424 F.3d 1293,
6 1323 (Fed. Cir. 2005)). Even assuming without deciding that the Patent
7 Owner’s characterization of “Loheed’s main purposes” is correct, the
8 teachings of Loheed nevertheless are sufficient that one of ordinary skill
9 would have had reason to modify Ritter’s display pack in the fashion
10 claimed in claim 1.

11 The Patent Owner points out that Loheed teaches the addition of
12 sufficient adhesive or bonding agent to the corrugated cardboard material
13 during manufacture to produce a solid board when an edge of the material is
14 crushed. (*See* FF 7). Ritter teaches at one point that the hot melt adhesive
15 used to join the front and back fibrous sheets of a display pack should be
16 used sparingly. (*See* FF 1). The Patent Owner argues that these teachings
17 would have discouraged one of ordinary skill in the art from using a method
18 such as that taught by Loheed to join the front sheet and back card of a
19 display pack such as Ritter’s. (Reb. Br. PO 4–5). Our reviewing court
20 instructs us that “a given course of action often has simultaneous advantages
21 and disadvantages, and this does not necessarily obviate motivation to
22 combine.” *Medichem, S.A. v. Rolabo, S.L.*, 437 F.3d 1157, 1165 (Fed. Cir.
23 2006). Loheed itself recognizes that the sparing use of adhesive in
24 manufacturing the corrugated cardboard material may result in cost savings.
25 (FF 7). Nevertheless, one of ordinary skill in the art would have had reason

1 to adopt a method similar to that of Loheed for joining the peripheries of the
2 front sheet and the back card for better joint strength notwithstanding any
3 additional costs which might be incurred due to the amount of adhesive
4 required in the manufacture of the corrugated cardboard used in the cards.
5 *See Orthopedic Equipment Company, Inc. et al. v. United States*, 702 F.2d
6 1005, 1013 (Fed. Cir. 1983) ("the fact that the two disclosed apparatus
7 would not be combined by businessmen for economic reasons is not the
8 same as saying that it could not be done because skilled persons in the art
9 felt that there was some technological incompatibility that prevented their
10 combination. Only the latter fact is telling on the issue of nonobviousness.").

11 The Patent Owner also argues that the "sealed glue joint of Loheed
12 requires additional costs beyond just the cost of added glue at the edges, e.g.,
13 the cost attributed to the additional labor for manually applying the
14 additional glue and/or equipment to selectively apply the glue only to the
15 edge regions." (Reb. Br. PO 5). Nevertheless, Ritter's suggested solution to
16 the problem of applying the glue sparingly is selectively applying glue only
17 to the edge regions. (FF 1). This additional cost is not a persuasive reason
18 why one of ordinary skill in the art might have been discouraged from
19 modifying Ritter's display pack as proposed by the Examiner. *See*
20 *Orthopedic*, 702 F.2d at 1013.

21 We sustain the rejection of claims 1–20 under § 103(a) as being
22 unpatentable over Ritter and Loheed.

23

24

DECISION

25 We AFFIRM the Examiner's decision rejecting claims 1–20.

1 Requests for extensions of time in this *inter partes* reexamination
2 proceeding are governed by 37 C.F.R. § 1.956.

3 In the event neither party files a request for rehearing within the time
4 provided in 37 C.F.R. § 41.79, and this decision becomes final and
5 appealable under 37 C.F.R. § 41.81, a party seeking judicial review must
6 timely serve notice on the Director of the United States Patent and
7 Trademark Office. *See* 37 C.F.R. §§ 90.1 and 1.983.

8

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AFFIRMED

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17 peb

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