EXHIBIT M

COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT
CIVIL ACTION NO.: 02-CV-1267(AVC)

INTERMARK FABRIC CORPORATION, :
Plaintiff, :
vs. :
MICROFIBRES, INC., :
Defendant. :

Computer-aided transcript of deposition testimony of DAVID S. BROOKSTEIN, Sc.D., taken stenographically in the above-entitled matter before LUCILLE A. KELLY, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, held at the offices of Drinker, Biddle & Reath, Esquires, One Logan Square, 18th and Cherry Streets, Philadelphia, Pennsylvania, on Wednesday, September 10, 2003, commencing at 10:10 a.m.

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MR. CASS: We will mark that as Exhibit 25.

(Whereupon, Plaintiff Intermark Fabric Corporation's First Amended Answers to Defendant Microfibres, Incorporated's First Set of Interrogatories dated 8/21/03 is received and marked Plaintiff's Exhibit 25 for Identification.)

A. The next is the Squires Patent 4,895,748.

MR. CASS: That's Exhibit 26.

(Whereupon, Squires U.S. Patent 4,895,748 is received and marked Plaintiff's Exhibit 26 for Identification.)

A. The next is Answer of Defendant Microfibres, Incorporated to Plaintiff Intermark Fabric Corporation's First Set of Interrogatories dated December 13th, 2002.

(Whereupon, Answer of Defendant Microfibres, Incorporated to Plaintiff Intermark Fabric Corporation's First Set of Interrogatories dated December 13th, 2002, is received and marked Plaintiff's Exhibit 27 for Identification.)

A. The next is a set of letters that were sent by James Fulks, F-U-L-K-S, Executive

Vice President of Microfibres, to a group of manufacturers of flocked fabrics. You can go through all these letters. They are all the same.

MR. CASS: We will mark those as Exhibit 28.

(Whereupon, Set of letters sent by James Fulks, Executive Vice President of Microfibres, to a group of manufacturers of flocked fabrics is received and marked Plaintiff's Exhibit 28 for Identification.)

A. The next is the patent by Masaki, M-A-S-A-K-I, 4,314,813.

(Whereupon, Masaki U.S. Patent 4,314,813 is received and marked Plaintiff's Exhibit 29 for Identification.)

A. The next is the Squires Patent 5,543,195.

MR. CASS: This is 30.

(Whereupon, Squires U.S. Patent 5,543,195 is received and marked Plaintiff's Exhibit 30 for Identification.)

A. The next is the Squires Patent 5,863,633.

MR. CASS: Exhibit 31.

(Whereupon, Intermark's Objection to Documents Submitted by Microfibres, Incorporated in Support of Its Opposition to Plaintiff's Motion for Summary Judgment, Plaintiff Intermark Fabric Corporation's Memorandum of Law and Reply to Defendant's Opposition to Plaintiff's Motion for Summary Judgment, and Declaration of Charles F. O'Brien in Support of Plaintiff's Reply Brief in Support of Plaintiff's Motion for Summary Judgment is received and marked Plaintiff's Exhibit 33 for Identification.)

A. I then have a large group of documents which is the file wrapper for -021.

MR. CASS: We will mark that as Exhibit 34.

(Whereupon, File wrapper for McCulloch U.S. Patent 5,981,021 is received and marked Plaintiff's Exhibit 34 for Identification.)

A. I have a copy here of the deposition of Luther Boyd Madren.

(Whereupon, Deposition of Luther Boyd Madren is received and marked Plaintiff's Exhibit 35 for Identification.)

A. Earlier I said everything I've

Q. Well, you have a copy of the file wrapper in your box?

A. Yes. I would have to go through it page by page to make sure. I assume that it is the full wrapper, but, as you know, the wrapper has a lot of code that comes from the patent office, and I would have to know the art unit that Squires was examined under. I would have to know how that art unit corresponds to the notes by the patent examiner. In fact, it all might be here, but I don't have that information. So you would have to give me much more information to answer that question.

Q. So it's your understanding that these patents listed on the front of Exhibit Number 41, the -021 patent --

A. Yes.

Q. -- those are only patents which the applicant provides to the patent office? Is that your understanding, sir?

A. That is my understanding.

Q. And it's not your understanding that these are the references which were cited by the examiner?

A. I'm not sure how that works, to be

honest with you.

Q. Well, would you at least agree with me, sir, that Squires isn't referenced anywhere in this cover sheet?

A. Yes. It's in black-and-white. It's not referenced on the cover sheet.

Q. Okay. Now, you brought a copy of the file wrapper, sir?

A. Yes.

Q. Let's just see if the Squires is mentioned anywhere in your copy of the file wrapper.

A. Again, I'm coming back to the same pages that I saw in the copy of the file wrapper you gave me which lists classes and subclasses of search materials by the examiner, and I have no way of knowing if these classes or subclasses are connected with Squires or not. It's not sufficient information.

Q. Well, let me show you a copy of the Squires patent, sir.

MR. CASS: Can we have that marked as Exhibit Number 44.

(Whereupon, Squires U.S. Patent 4,895,748 is received and marked Plaintiff's

Exhibit 44 for Identification.)

Q. I think you testified that the Squires reference is the only reference which mentioned both flocking and transfer printing and pigmented adhesive; is that correct?

A. I'm not sure what I said, but it's the only one I can recall.

Q. What I'm trying to find out, sir, is do you know whether or not the examiner considered the Squires reference? I'm not trying to confuse you.

A. I understand that, but there is no way of knowing, unless I know what the art units are and the search codes that go with the file wrapper.

Q. Wouldn't you agree that the art units are cited right on the very front page of the patent?

A. Yes. I could go through that.

Q. Well, let's compare it with the -021 patent, Exhibit Number 44 and Exhibit Number 41, if we could.

A. Say that again.

Q. Well, Squires is Exhibit 44, sir.

A. Right.

Q. And the -021 patent is Exhibit Number 41.

A. Right.

Q. Why don't you compare the art units, sir, and tell me whether there is any overlap?

A. Okay. We are going to go by U.S. class?

Q. Sure.

A. Okay. We will do that. I need a -- I have got to write on something. I can't do this all in my head.

Q. I have no objection to you using a piece of paper.

A. This is going a take a little while.

Q. Let me ask you, before you get started, sir, it's your understanding that even though the examiner may have considered another reference, it wouldn't be listed on the front of the patent?

A. Could you restate that? I mean repeat that?

Q. It's your understanding, as you sit here today, that an examiner might have considered a patent reference which isn't listed on the front of the patent under references

print on virtually any kind of fiber. It's not a chemical dyeing process. It's a pigmentation process.

Q. But for use in the textile industry you need a certain -- in flocked materials, you need a certain type of nylon, don't you, sir, to do the transfer?

A. Not necessarily, no.

Q. So it's your testimony today that any type of nylon -- I think you mentioned there is Type 66 and Type 6?

A. Right.

Q. Are you aware of any other types?

A. Yes. There are some, and I don't recall the actual nomenclature, but there are some other small modifications nylon, but I think it is safe to say that the overwhelming majority of nylon used in this country is Type 66 or 6. Probably over 98, 99 percent of all nylon.

Q. And you can transfer print on Type 6?

A. There would be no reason not to, based on what the transfer printing -- what is involved in the transfer printing process.

Q. And your study in this field of

flocked fabrics, is that what indicates to you there's two predominant fabrics, that 66 has 98 percent of the market?

A. Oh, no. That goes back to when I was a young textile engineer at Georgia Tech in 1967 -- or '69, '69. That's not new information.

Q. But with respect to flocking, sir, Type 66, is that particularly used for flocking, or is some other designation?

A. No. There is no distinguishing feature about Type 66 that would make it more suitable for flocking than other fibers. You could flock almost any kind of fiber, any kind of polymer that turns into a fiber. For instance, polyester, and, of course, polyamide, which, of course, is nylon.

MR. CASS: Excuse me just a second.

(Whereupon, a brief recess is taken.)

Q. Dr. Brookstein, have you ever examined the materials provided by Culp in this action?

A. No, I have not.

Q. Have you ever examined the materials provided by Leathertex in this action?

A. I don't recall.

Q. Well, would you agree with me there are no production logs in your box here on this table today?

A. I don't recall, but if you want me to be specific, I would like to look again. There is a lot in that box.

Q. Okay. Well, let's look in the box.

A. This is for Intermark?

Q. For Intermark.

A. Can you give me a hint where I should look.

Q. I wouldn't look in the file wrapper.

A. If one were to give me a tab, would that be possible?

Q. No, sir. I am asking you.

A. I will have to go through each page.

Q. It's not in the file wrapper, if that's what you are looking at.

A. You just said file wrapper.

Q. No, no. I said it's not in the file wrapper.

A. Oh. I thought you said it was in the file wrapper.

MR. GRIMM: We will stipulate that

there are no Intermark production logs in the box.

Q. Dr. Brookstein, you have just heard your counsel stipulate that there are no Intermark Fabric Corporation production logs in the box that you have brought here today. Would you agree with me, then, that you have never looked at the production records for the Intermark Fabric Corporation?

A. If they are not in the box, I did not look at them.

Q. Do you have an understanding with respect to what Intermark's process was in 1989 with respect to the manufacture of the Frosty product?

A. In broad terms, yes.

Q. What is your understanding?

A. It's my understanding that it's a flocked --

MR. GRIMM: Objection to form. 1989?

MR. CASS: Yes.

A. It is my understanding that they flocked fabrics -- excuse me, flocked short fibers onto adhesive -- textile fabrics with

patents?

A. Well, she mentions Orton, too.

Q. Okay. Let's include Orton.

A. And she also mentions Bernard.

Q. Okay. Let's include Bernard.

A. And the question is?

Q. Do any of these references singularly teach a flocked fabric having a dark pigmented adhesive used to adhere the flocked substrate and naturally colored flock?

A. Well, she brings up about Rejto and Masaki. They do not teach pigmenting the adhesive used to adhere the flock to the base. She does not talk about here whether the fibers were natural color or subsequently colored.

Q. So you at least agree that, according to the examiner, Rejto and Masaki don't teach that?

A. Oh, I agree totally with the examiner.

Q. And Smith, would you agree with me that Smith doesn't teach a flocked fabric having a dark pigmented adhesive used to adhere the flock to the substrate?

A. I agree with what she says about

Number 42, sir.

A. 34?

Q. Tab 34, yes.

A. Yes, sir.

Q. Have you reviewed this document, sir?

A. Well, I've looked at the whole file wrapper. I don't recall this document in particular, but it was part of the whole package I looked at.

Q. Do you recall if the statement, Applicant further states that Smith, et al., provides an adhesive composition with so little blue pigment as to impart no color to that adhesive or cement?

A. Whoa. Where are you reading from?

Q. IFC02417, sir.

A. And where on that page?

Q. The first full paragraph, sir.

A. Applicant further states that Smith provides. Yes.

Q. Do you agree with that statement, sir?

A. My general approach is I agree with the patent examiner, and if the patent examiner

see if those words appear. There are a lot of words in here. I would have to sit and look at every word.

Q. But you have studied this patent before?

A. Oh, I have studied it, but, as I indicated to you earlier, there are so many patents here, my memory just doesn't pop out at me.

Q. But at least with respect to the Notice of Allowance, there were one, two, three, roughly four references that talked about it in Paper 8?

A. I see the first one here.

Q. Let's just list them. There is Rejto, Masaki, Smith, and Orton, and Bernard?

A. Right.

Q. So there are five references?

A. Right.

Q. So do you have Orton with you here today, sir?

A. No.

Q. So you need to see a copy of Orton and a copy of Rejto; is that right?

A. I suspect, yes.

Q. And you have Bernard here, correct?
A. I do have Bernard.
Q. Did Bernard disclose a dark -- a flocked fabric having a dark pigmented adhesive used to adhere the flock to the base?
A. In the detailed description in Column 3, line 23, it says, The coating adhesive may be colorless or it may contain a heat sublimable dye selected for ultimate color contrast with that which had been printed on the substrate fabric.
Q. What does that teach to you in terms of darkness?
A. It doesn't teach me anything.
Q. With respect to -- okay. Let me see if I can get you a copy of Orton and a copy of Rejto. Those are the two references you don't have in front of you, sir?
A. Yes.
Q. Would you agree with me that none of the references which we just mentioned, that would be Smith, Masaki, Smith or Masaki, teaches a flocked fabric having a dark pigmented adhesive to adhere the flock to the base?
A. A re-cursory look, I would agree

C E R T I F I C A T E

I, LUCILLE A. KELLY, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, certify that the foregoing is a true and accurate transcript of the deposition of said witness who was first duly sworn by me, on the date and place hereinbefore set forth.

I FURTHER CERTIFY that I am neither attorney, nor counsel for, nor related to or employed by, any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed in this action, nor am I financially interested in this case.



LUCILLE A. KELLY, CSR, RMR
LICENSE NO. XI01052

Dated: September 14, 2003

My Notary Commission expires March 8, 2005