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Row 1: 11/400,989, 04/10/2006, William Masek, 00216-720001 / Case 8173, 5636
Row 2: 27752, 7590, 03/15/2013, THE PROCTER & GAMBLE COMPANY, EXAMINER SCRUGGS, ROBERT J
Row 3: Global Legal Department - IP, Sycamore Building - 4th Floor, 299 East Sixth Street, CINCINNATI, OH 45202, ART UNIT 3723, PAPER NUMBER
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* WILLIAM MASEK,  
MATTHEW J. GUAY, MICHAEL J. BOND,  
JOSEPH A. DEPUYDT, and MING LAURA XU

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Appeal 2011-000607  
Application 11/400,989  
Technology Center 3700

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Before JAMES P. CALVE, JILL D. HILL, and JEREMY M. PLENZLER,  
*Administrative Patent Judges.*

CALVE, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from the rejection of claims 1-3, 5-13, and 36-39. App. Br. 1.<sup>1</sup> Claims 4 and 14-35 are cancelled. *Id.*

We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

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<sup>1</sup> Refers to Supplemental Appeal Brief, filed March 29, 2010. All other references are to Appeal Brief, filed February 16, 2010.

### CLAIMED SUBJECT MATTER

Claim 1, the sole independent claim on appeal, is reproduced below:

1. A cutting member for a shaving razor, the cutting member comprising

an elongated blade portion that tapers to a cutting edge, the elongated blade portion being formed from a blade strip having slits with adjoining slots that extend inwardly from the cutting edge wherein the slots are spaced apart by a distance that corresponds to a width of the elongated blade portion;

an elongated base portion that is integral with the blade portion;

a bent portion, intermediate the blade portion and the base portion, and

wherein at least part of the cutting member has a thickness of at least about 0.005 inch (0.127 millimeter).

### REJECTIONS

Claims 1-3, 5-11, 13, and 36-38 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Neamtu (US 5,010,646; iss. Apr. 30, 1991) and Mesquita (US 2,674,039; iss. Apr. 6, 1954).

Claims 12 is rejected under 35 U.S.C. § 103(a) as unpatentable over Neamtu, Mesquita, and Vander Voort (US 4,287,007; iss. Sep. 1, 1981).

Claim 39 is rejected under 35 U.S.C. § 103(a) as unpatentable over Neamtu, Mesquita, and Wain (US 2003/0204954 A1; pub. Nov. 6, 2003).

### ANALYSIS

*Claims 1-3, 5-11, 13, and 36-38 unpatentable over Neamtu and Mesquita*

Appellants argue claims 1-3, 5-11, 13, and 36-38 as a group. App. Br. 2-3. We select claim 1 as representative. 37 C.F.R. 41.37(c)(1)(vii) (2011). Claims 2, 3, 5-11, 13, and 36-38 stand or fall with claim 1.

The Examiner found that Neamtu discloses a cutting member for a shaving razor comprising an elongated blade 62 that tapers to a cutting edge 64, an elongated base portion 60, and a bent portion 66 wherein at least part of the cutting member has a thickness of at least 0.0005 inch, but does not disclose that the blade portion is formed from a blade strip having slits with adjoining slots. Ans. 3-4. The Examiner found that Mesquita teaches a technique of forming a blade portion 5 from a blade strip 15 with slits and slots and illustrated these findings in marked-up versions of Figure 4 of Mesquita at pages 5 and 12 of the Answer. Ans. 4-5, 11-12. The Examiner determined that it would have been obvious to modify the device of Neamtu with the known technique of forming a blade from a strip having slits with adjoining slots corresponding to a width of the elongated blade portion as taught by Mesquita for predictable results. Ans. 4.

Appellants argue that Neamtu lacks a teaching to incorporate slits with adjoining slots that extend inwardly from the cutting edge. App. Br. 3. This argument is not persuasive because the Examiner relied on Mesquita to disclose this feature. Ans. 10-11. Appellants appear to allege that Neamtu teaches away from the Examiner's proposed modification simply because Neamtu does not specifically teach incorporating slits with adjoining slots. App. Br. 3. The absence of such a teaching in Neamtu does not, of itself, constitute a teaching away from the use of slits and adjoining slots. *See In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004) (a disclosure of alternative designs does not teach away from a claimed invention unless the prior art criticizes, discredits, or discourages the claimed solution).

Appellants also argue that Mesquita fails to teach slits with adjoining slots that extend inwardly from the cutting edge because the claimed slits are

narrower than Mesquita's slots and further apart from one another than their corresponding slots as indicated in Appellants' Specification. App. Br. 3. This argument does not persuade us of error in the Examiner's findings that Mesquita discloses slits with adjoining slots and determination that it would have been obvious to include these slits and slots on Neamtu. Ans. 4-5, 11-12. Claim 1 does not recite any dimensions of the slits and slots or features that distinguish over Mesquita. We decline to read unclaimed limitations from the Specification into claim 1.

We sustain the rejection of claims 1-3, 5-11, 13, and 36-38.

*Claims 12 unpatentable over Neamtu, Mesquita, and Vander Voort*

The Examiner found that Neamtu and Vander Voort disclose all of the materials recited in claim 12. Ans. 8. Appellants argue that Vander Voort does not cure deficiencies of Neamtu and Mesquita as to claim 1 from which claim 12 depends. App. Br. 3-4. Because we sustain the rejection of claim 1 as unpatentable over Neamtu and Mesquita, there are no deficiencies for Vander Voort to cure. We sustain the rejection of claim 12.

*Claim 39 unpatentable over Neamtu, Mesquita, and Wain*

The Examiner found that Neamtu does not disclose that the bent portion of the cutting member has an average thickness at least about 5 percent less than an average thickness of the base portion as recited in claim 39. Ans. 8. The Examiner also found that Appellants failed to disclose any criticality or unexpected results of the claimed thicknesses so that it would have been obvious to discover optimum or workable ranges where the general conditions of the claim are disclosed in the prior art and a skilled artisan could modify the thickness of the bent portion to have a desired thickness for a particular application and to provide more flexibility. Ans. 8-

9. The Examiner found that Wain discloses a blade with a bent portion at least 5 percent less than an average thickness of a base portion as illustrated in Figure 12 and determined that it would have been obvious to modify the bent portion of Neamtu to be at least 5 percent less than an average thickness of the base portion to provide improved flexibility. Ans. 9-10, 12-13.

Appellants argue that a skilled artisan would not have been motivated to arrive at the claimed invention because Wain does not disclose a bent portion with the claimed reduced thickness and no such dimensions can be realized or estimated based on Wain's Figure 12. App. Br. 4. We agree.

The Examiner has not established by a preponderance of evidence that Wain discloses a cutting member with a bent portion having an average thickness that is at least about 5 percent less than an average thickness of a base portion. The Examiner did not identify any disclosure of thicknesses in Wain or any disclosure that the drawings of Wain are to scale such that they can be relied on to disclose relative dimensions or proportions. *See* Ans. 8-10, 12-13; *Hockerson-Halberstadt, Inc. v. Avia Gp. Int'l, Inc.*, 222 F.3d 951, 956 (Fed. Cir. 2000) (patent drawings cannot be relied on to define precise proportions of elements or particular sizes if the specification is completely silent on the issue). Nor has the Examiner established that Wain recognizes that the thickness of the bent portion relative to the base portion is a result-effective variable to be optimized through routine experimentation. We do not sustain the rejection of claim 39.

#### DECISION

We AFFIRM the rejection of 1-3, 5-13, and 36-38 and REVERSE the rejection of claim 39.

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Application 11/400,989

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

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