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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/044,547	01/27/2005	David Harry Melik	9501M	1931
27752	7590	02/01/2013	EXAMINER	
THE PROCTER & GAMBLE COMPANY Global Legal Department - IP Sycamore Building - 4th Floor 299 East Sixth Street CINCINNATI, OH 45202			COLE, ELIZABETH M	
			ART UNIT	PAPER NUMBER
			1789	
			NOTIFICATION DATE	DELIVERY MODE
			02/01/2013	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID HARRY MELIK, KELYN ANNE ARORA, and
JEFFREY ALLEN AUER

Appeal 2011-012363
Application 11/044,547
Technology Center 1700

Before BRADLEY R. GARRIS, TERRY J. OWENS, and
PETER F. KRATZ, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134, Appellants appeal from the Examiner's rejections under 35 U.S.C. § 103(a) of claims 1-18 and 20 as unpatentable over Hashimoto (US 2002/0045712 A1 published Apr. 18, 2002) in view of Hudson (US 5,738,745 patented Apr. 14, 1998), Ofosu (US 6,268,302 B1 patented Jul. 31, 2001), and Sugano (US 2003/0216527 A1 published Nov. 20, 2003) and of claim 19 as unpatentable over these references and further in view of Quantrille (US 5,804,286 patented Sep. 8, 1998). We have jurisdiction under 35 U.S.C. § 6.

We AFFIRM.

Appellants claim a spunbond fiber comprising a polymer composition which comprises polypropylene having a melt flow rate of from about 100 to about 1000 grams per 10 minutes and a polymer (e.g., polypropylene) having a melt flow rate of from about 10 to about 80 grams per 10 minutes, wherein the melt flow rate of the polymer composition is from greater than 100 to about 800 grams per 10 minutes (independent claim 15). Appellants also claim a nonwoven web having at least 80% extensibility comprising such spunbond fibers (independent claims 1 and 20).

Representative claim 15 reads as follows:

15. A spunbond fiber comprising a polymer composition wherein the polymer composition comprises:

a. from about 50% to about 95% of polypropylene having a melt flow rate of from about 100 to about 1000 grams per 10 minutes, and

b. from about 5 to about 50% of a polymer having a melt flow rate of from about 10 to about 80 grams per 10 minutes,
wherein the melt flow rate of the polymer composition is from greater than 100 to about 800 grams per 10 minutes.

We will sustain the above rejections for the reasons well expressed by the Examiner in the Answer. The following comments are added for emphasis.

The Examiner finds that Hashimoto (*see, e.g.*, Abst., paras. 305, 710, Ex. 7) discloses a polypropylene composition having the ingredient amounts and melt flow rates encompassed by the independent claims but does not disclose using this composition to make a spunbond fiber as required by claim 15 in the form of a nonwoven web as required by claims 1 and 20 (Ans. 3-4). The Examiner additionally finds that Hudson, Ofofu, and Sugano evince that it was known in the prior art to use polypropylene compositions for making spunbond fibers in the form of nonwoven webs (*id.* at 5-7). For example, the Examiner finds that Hudson (*see, e.g.*, col. 4, l. 63- col. 5, l. 22, Ex. 1) discloses making such fibers and webs from a composition of blended polypropylenes having low and high melt flow rates such that the melt flow rate of the composition itself may be about 100 g per 10 minutes (i.e., within the claimed range of greater than 100 g per 10 minutes) (Ans. 5-6, 10).

In light of these findings, the Examiner concludes that it would have been prima facie obvious to use the polymer composition of Hashimoto to make spunbond fibers and nonwoven webs based on the evidence of Hudson, Ofosu, and Sugano that polypropylene compositions were known in the prior art as suitable for use in making such fibers and webs (*id.* at 6-7).

Concerning the rejection of the independent claims generally and claim 15 specifically, Appellants argue that "there is no motivation to incorporate the composition of Hashimoto into a spunbond fiber" (Br. para. bridging 16-17), particularly since Hashimoto's composition is disclosed for use in molding processes which are said to be different from processes for making fibers and nonwoven webs (*id.* at 8).

Appellants' argument is not persuasive. As correctly noted by the Examiner and not disputed by Appellants, Hashimoto's composition is disclosed for use in a film-forming extrusion process (*see, e.g.*, Ex. 7), and spunbond fibers are also formed by an extrusion process (Ans. para. bridging 8-9). Further, the Examiner correctly reiterates the above finding that Hudson, Ofosu, and Sugano show it was known in the prior art to make spunbond fibers and nonwoven webs from polypropylenes generally and more specifically from blends of polypropylenes having different melt flow rates which yield a compositional melt flow rate within the claimed range (*id.*). These circumstances support a conclusion that it would have been prima facie obvious to use the polypropylene composition of Hashimoto for

making spunbond fibers and nonwoven webs based upon a reasonable expectation that this composition would be suitable for such a use.

With regard to the "at least 80% extensibility" limitation of independent claims 1 and 20, the Examiner states that the reference combination proposed above would result in a nonwoven web of spunbond fibers having a polymer composition identical to the claimed composition and concomitantly that the resulting web would necessarily have the same extensibility property as the indistinguishable web defined by these independent claims (Ans. paras. bridging 3-4 and 10-11). According to the Examiner, "[t]he fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious" (*id.* at 11).

There is merit in the Examiner's position that the web resulting from the combined references would necessarily possess the extensibility advantage of the otherwise identical web defined by claims 1 and 20. *See Ex parte Obiaya*, 227 USPQ 58, 60 (BPAI 1985), *aff'd. mem.*, *In re Obiaya*, 795 F.2d 1017 (Fed. Cir. 1986) ("The fact that appellant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious."). *See also In re Huai-Hung Kao*, 639 F.3d 1057, 1070 (Fed. Cir. 2011) (affirming a § 103 rejection based on a finding that the claimed "food effect" is an inherent property of prior art

oxymorphone and stating that "the claimed 'food effect' adds nothing of patentable consequence").

Appellants contest the Examiner's above position by presenting argument and evidence that the prior art provides no teaching, suggestion, or reasonable expectation of success for combining the applied references so as to produce a nonwoven web having the claimed at least 80% extensibility (Br. 9-16).

The deficiency of Appellants' argument and evidence is that they do not address the Examiner's rationale for determining that the extensibility limitation adds nothing of patentable consequence to independent claims 1 and 20. Instead, the proffered argument and evidence are based on the incorrect premise that the Examiner is relying on the 80% extensibility property as a reason for combining the applied references. In fact, as explained above, the Examiner's reason for combining the references is that the prior art evinces Hashimoto's composition would be suitable for making spunbond fibers and nonwoven webs. In contrast, the Examiner's position that the claimed extensibility adds nothing of patentable consequence is based on the proposition, which Appellants do not dispute in this appeal with any reasonable specificity, that the extensibility advantage would flow naturally from combining the references in the manner suggested by the prior art.

For the reasons stated above and in the Answer, we sustain the § 103 rejection of independent claims 1, 15, and 20 as well as not-separately-argued dependent claims 2-14 and 16-18 as unpatentable over Hashimoto, Hudson, Ofosu, and Sugano. We also sustain the separate § 103 rejection of dependent claim 19 as unpatentable over these references and further in view of Quantrille. As correctly noted by the Examiner and not disputed by Appellants, the argument against this rejection (*see* Br. 17) does not specifically address the Examiner's reason for relying on Quantrille in support of the prima facie obviousness conclusion (Ans. 14).

The decision of the Examiner is affirmed.

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

AFFIRMED

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