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PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KIRK SNEDDON

Appeal 2011-012683
Application 12/290,819
Technology Center 1700

Before ROMULO H. DELMENDO, GEORGE C. BEST, and
GRACE KARAFFA OBERMANN, *Administrative Patent Judges*.

OBERMANN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant seeks relief under 35 U.S.C. § 134 from the following rejections of claims 1 and 18-26 directed to a pressure vessel: Claims 1 and 18 under 35 U.S.C. § 102(b) as anticipated by, or in the alternative, under § 103(a) as unpatentable over, both Seal (US 5,822,838) and, separately, Phillips (US 4,421,827); claims 19-26 as unpatentable under § 103(a) over Seal and, separately, Phillips, both in view of Pocius (*Adhesion*, Kirk-Othmer Encyclopedia of Chemical Technology, Wiley Online Library: Book Article, 1-11 (2002)). We have jurisdiction under 35 U.S.C. § 6.

We REVERSE.

Claim 1 is representative of the subject matter on appeal and is set forth below:

1. A pressure vessel for containing materials under elevated pressures, said pressure vessel comprising:

a liner;

an adhesive layer, applied directly to an outer surface of said liner, said adhesive layer having a texture formed by a peel ply applied to said adhesive layer prior to cure then removed post cure to transfer said texture from said peel ply to said adhesive layer; and

an overwrap layer applied onto said adhesive layer post cure, said overwrap layer formed by winding an impregnated filamentary material around said adhesive layer such that said impregnated filamentary material binds with said adhesive layer.

The independent claims are 1 and 24. Claim 1 specifies an “adhesive layer having a texture formed by a peel ply” in a process that “transfer[s] said texture from said peel ply to said adhesive layer[.]” Claim 24 specifies an “adhesive layer having a texture formed thereon,” wherein the “texture forms an open surface porosity at a micromechanical level[.]”

The Examiner identifies no process in either primary reference (Seal or Phillips) whereby a texture is transferred to, or formed on, the surface of an adhesive layer as specified in claims 1 or 24. Ans. 4-6. Instead, the Examiner concludes that these are product-by-process claims, and that as such, the specified “texture” is met by any adhesive layer, because “all layers intrinsically have a textured surface.” Ans. 5 (applying Seal to claim 1); Ans. 6 (applying Phillips to claim 1); Ans. 9 (finding that “all limitations as to” claim 24 “have been disclosed above”).

Specifically, the Examiner reasons that the “broadly used [] term texture” is met by “the surfaces in Seal [] and Phillips” because they “must inherently have a texture, whether it be smooth, bumpy or [having] open surface porosity on a micromechanical level[.]” Ans. 10. But that is not how Appellant uses the term “texture” in the Specification. According to the Specification, a “texture” is imparted to the adhesive layer, for example, by placing a peel ply in “100% surface contact” with that layer to give “volatiles a low resistance path for evacuation.” Spec. 11:16-17 and 12:1-4.

The Specification consistently supports the plain language of claims 1 and 24, which specify that a particular “texture” is imparted to the surface of the adhesive layer by the surface of the peel ply. The plain terms of claim 1 require an “adhesive layer having a texture formed by a peel ply” wherein the texture transfers “from said peel ply to said adhesive layer.” The plain terms of claim 24 require an “adhesive layer having a texture formed thereon, said texture form[ing] an open surface porosity at a micromechanical level.”

We thus agree with Appellant that the Examiner’s view that “every surface has a texture, inherently, and thus any surface can meet the claims” is based on an overly broad interpretation of the term “texture.” Reply Br. 1 (emphasis omitted). As Appellant points out, the Examiner makes no showing that the inherent texture of the adhesive layer disclosed in Seal or Phillips “would be equivalent to a texture formed by a peel ply.” *Id.* at 2 (emphasis omitted). Moreover, transferring the texture of a peel ply to the surface of an adhesive layer (claim 1), or forming on an adhesive layer a texture having “open surface porosity at a micromechanical level” (claim 24), necessarily results in a “final texture” that is different from the intrinsic

“initial texture” that characterizes the adhesive layer prior to application of a peel ply. *Id.* Stated in a slightly different way, the Examiner fails to show that a peel ply does not alter the surface of an adhesive layer.

Critically lacking here is any evidence establishing that the intrinsic surface texture of the adhesive layer disclosed in Seal or Phillips is structurally identical to “a texture formed by a peel ply” (claim 1), or “a texture formed” to leave “an open surface porosity at a micromechanical level” (claim 24). The secondary reference (Pocius) generally explains the interplay between surface roughness and adhesion, but the Examiner does not explain with specificity how the Seal or Phillips disclosure is to be modified in view of Pocius in the manner claimed.

We thus reverse the rejections of claims 1 and 18-26.

REVERSED

kmm