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DINSMORE & SHOHL LLP FIFTH THIRD CENTER, ONE SOUTH MAIN STREET SUITE 1300 DAYTON, OH 45402-2023			WEDDLE, ALEXANDER MARION	
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BEFORE THE PATENT TRIAL AND APPEAL  
BOARD

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*Ex parte* W. TORIRAN FLINT and  
JOSEPH L. BYERS

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Appeal 2011-013385  
Application 12/355,050  
Technology Center 1700

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Before BEVERLY A. FRANKLIN, MARK NAGUMO, and  
KAREN M. HASTINGS, *Administrative Patent Judges*.

HASTINGS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1-14. Appellants appeal the "rejection of claims 3-8 and 12 only" (App. Br. 2)<sup>1</sup>. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

We AFFIRM.

Sole independent claims 1 and claim 12 are illustrative of the claimed subject matter:

1. A method of making a composite packing material for use with a printing blanket construction on a printing cylinder comprising:

providing a substrate having first and second surfaces which is selected from the group consisting of fabric, scrim and film;

applying to at least one of said first and second surfaces of said substrate a polymeric compound selected from polyvinyl chloride, urethanes, compounded synthetic rubbers, and blends thereof to form said composite packing material; and

positioning said composite packing material between a printing blanket and a printing cylinder to which the printing blanket is mounted.

12. The method of claim 1 wherein said polymeric compound is applied to said first and second surfaces of said substrate.

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<sup>1</sup> Consistent with the holding of BPAI precedential opinion *Ex Parte Ghuman*, 88 USPQ2d 1478, 1480 (BPAI 2008), the Examiner should cancel non-appealed claims 1, 2, 9-11, 13, 14.

The Examiner maintains the following rejections:

- 1) Claims 1, 2, and 9-14 under 35 U.S.C. § 102(b) as being anticipated by Sagawa (JP 11042869 published Feb. 1999; as translated); as stated previously, Appellants appeal this rejection only as it applies to claim 12;
- 2) claims 6-8 under 35 USC § 103(a) as unpatentable over Sagawa;
- 3) claim 3 under 35 USC § 103(a) as unpatentable over the combined prior art of Sagawa and Ellison (US 4,615,934, issued Oct. 1986); and
- 4) claims 4 and 5 under 35 USC § 103(a) as unpatentable over the combined prior art of Sagawa and Ogita (JP S63-94767, also known as JP application No. S61-190420, published June, 1988; as translated).

Upon consideration of the evidence on this record and each of Appellants' contentions, we find that the preponderance of evidence on this record supports the Examiner's finding that the subject matter of Appellants' claim 12 is anticipated by Sagawa. We likewise find that the preponderance of evidence on this record supports the Examiner's conclusion that the subject matter of Appellants' dependent claims 3-8 is unpatentable over the prior art as applied. Accordingly, we sustain each of the Examiner's rejections of claims 3-8 and 12 on appeal substantially for the reasons set forth in the Answer.

We provide the following for emphasis only. The main issue on appeal for claim 12 turns on whether the language of claim 12 "said polymeric compound is applied to said first and second surfaces of said

substrate” encompasses the disclosure at paragraph [0022] of Sagawa. Appellants’ argument that Sagawa does not “positively teach[] that ‘a polymeric compound’ (i.e., the same polymeric compound) is applied to the first and second surfaces of ‘a substrate’” (Reply Br. 2 (emphasis in original)) is unavailing. Sagawa at paragraph [0022] describes that “an NBR based rubber paste” is applied to the lower side of a polyester substrate (as an adhesive layer between two polyester substrate fabrics) and is subsequently applied to the upper side of that same polyester substrate as a surface rubber layer in the process of forming a planar under blanket for a printing apparatus. The broadest reasonable interpretation of the claim language “applied to said first and second surfaces” in claim 12 encompasses applying the NBR rubber paste to a first surface of a first substrate as an adhesive layer, then, after adhering a second substrate to the first substrate, applying the NBR paste to the second surface of the first substrate as a surface rubber layer, as described in Sagawa.

It is well established that “the PTO must give claims their broadest reasonable construction consistent with the specification . . . Therefore, we look to the specification to see if it provides a definition for claim terms, but otherwise apply a broad interpretation.” *In re ICON Health & Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007) “[A]s applicants may amend claims to narrow their scope, a broad construction during prosecution creates no unfairness to the applicant or patentee.” *Id.* While the Examiner has set forth a broad interpretation of the claim language (Ans. 3, 7-9), Appellants have not pointed to any definitions in the Specification or otherwise clearly explained why the Examiner’s interpretation is unreasonable. Notably, Appellants have provided no evidence, or any persuasive line of technical

reasoning, explaining why the Examiner's broadest reasonable interpretation is in error (*see generally* Br.; Reply Br.).

With respect to claims 6, 7, and 8 which require that the polymeric compound has a compression set of less than 25, 20, or 4 respectively, a preponderance of the evidence supports the Examiner's position that compression set is a known result effective variable (Ans. 10-12). Furthermore, Appellants have not shown any error in the Examiner's position that since the NBR as used in Sagawa is essentially incompressible, it is reasonably expected that the compression set of the NBR polymeric compound and the composite packing material of Sagawa is within the recited range (e.g., *id.* at 10).

With respect to claim 3 which recites that the substrate comprises a "weft insertion fabric comprising yarns of at least 1000 denier", a preponderance of the evidence supports the Examiner's position that one of ordinary skill would have reasonably used such a substrate fabric, as exemplified in Ellison as having good mechanical properties in lamination and coating techniques, in Sagawa, for its known, predictable use (*id.* at 12, 13).

Claims 4 and 5 require that the polymer compound "comprises polyvinyl chloride" (claim 4). Appellants have not convinced us of any error in the Examiner's determination that since Sagawa expressly discloses using an oil resistant polymer, the use of polyvinyl chloride as exemplified in Ogita to be a known oil resistant polymer in preparing an offset blanket for printing would have been no more than the predictable use of a known prior art compound (e.g., Ans. 13, 14).

Accordingly, we sustain all of the rejections on appeal.

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Application 12/355,050

**ORDER**

The rejection of claim 12 under 35 U.S.C. § 102(b) is affirmed.

The rejections of claims 3-8 under 35 U.S.C. § 103(a) are affirmed.

**TIME PERIOD FOR RESPONSE**

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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