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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LARON BROWN, KEDZIE FERNHOLZ,
and STANLEY STANISZEWSKI

Appeal 2012-000940
Application 11/766,813
Technology Center 1700

Before BRADLEY R. GARRIS, CHUNG K. PAK, and
BEVERLY A. FRANKLIN, *Administrative Patent Judges*.

Per Curium.

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 independent claims 10, 24, and 28 as unpatentable over Papendick et al. (US 5,037,680, patented Aug. 6, 1991) in view of Minhinnick (US 4,039,215, patented Aug. 2, 1977) and of remaining dependent claims 11, 12, 14-18, 21-23, 25-27, and 29-32 as unpatentable over these references alone or further in view of other prior art. We have jurisdiction under 35 U.S.C. § 6.

We AFFIRM.

Appellants claim a molded-in-color panel formed in the steps comprising:

providing a mold having a concealed portion forming surface for forming a concealed portion of a panel, "the concealed portion forming surface being free of any protuberances and ancillary structural members for facilitating ideal surface characteristics of the appearance portion of the panel such that the appearance portion of the panel is free of visible appearance of knit lines, flow lines and sink marks;"

injecting molded-in-color resin in the mold;
cooling the molded-in resin to form a molded-in-color panel; and
"laser welding at least one ancillary structural member to the concealed portion of the panel" (independent claim 10; *see also* remaining independent claims 24 and 28).

As an initial matter, we observe that Appellants do not present separate arguments specifically directed to the dependent claims including the separately rejected dependent claims (*see* App. Br. 6-14). Accordingly, the dependent claims on appeal will stand or fall with their parent independent claims.

We sustain the § 103 rejections advanced in this appeal based on the findings of fact, conclusions of law, and rebuttals to argument well expressed by the Examiner in the Answer. The following comments are added for emphasis.

The Examiner emphasizes that patentability of the product-by-process claims under rejection is based on the structure of the claimed panel rather than the process by which it is made (Ans. 4-5). With this in mind, the

Examiner concedes that the concealed portion of Papendick's injection molded panel does not appear to include an ancillary structural member as required by the independent claims (*id.* at 6). The Examiner concludes that it would have been obvious "to modify the injection molded panel of Papendick by including [integrally molded] attachment studs [ancillary members] on the non-visible side as taught by Minhinnick in order to produce a panel which can be attached to a frame" (*id.* at 7). The Examiner further concludes that it would have been obvious and consistent with the teachings of Papendick and Minhinnick to mold the resulting panel and attachment studs such that the exterior portion is free of visible knit lines, flow lines and sink marks (*id.* at 7-8).

The Examiner has established a convincing rationale for the proposition that the panel formed by the process steps recited in the independent product-by-process claims 10, 24, and 28 is indistinguishable from the panel resulting from the above combination of Papendick and Minhinnick. For this reason, the burden has shifted to Appellants to come forward with evidence establishing an unobvious difference between the claimed product and the product resulting from the combined prior art references. *See In re Marosi*, 710 F.2d 798, 802 (Fed. Cir. 1983).

Appellants have failed to come forward with any such evidence in the record of this appeal. Appellants emphasize that the independent claims require the appearance portion of the panel to be free of visible appearance of knit lines, flow lines and sink marks (Reply Br. 2) and argue that "[m]odifying the molded-in-color panels of Papendick to have integrally molded structural members like those in Minhinnick would yield surface

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defects" (*id.* 3). However, Appellants have not provided any evidence in support of this argument. Based on the record before us, the argument is an unsupported assertion which lacks persuasive merit.

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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