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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ANDERS STRALIN, HANNU AHONIEMI, LARS FINGAL,
and MIKAEL STRANDQVIST

Appeal 2013-004549
Application 11/643,902
Technology Center 1700

Before CHARLES F. WARREN, BEVERLY A. FRANKLIN, and
JAMES C. HOUSEL, *Administrative Patent Judges*.

FRANKLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134 from the Examiner's rejection of claims 1, 3–19, 25, 26, 28, and 29. We have jurisdiction under 35 U.S.C. § 6.

STATEMENT OF THE CASE

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

1. A hydroentangled integrated composite nonwoven material, comprising:
a mixture of randomized continuous filaments and staple fibres, wherein

the staple fibres are splittable shortcut staple fibres having a length of 3 to 16 mm, and
there are no thermal bonding points between the continuous filaments.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Austin et al. (hereafter "Austin")	US 5,144,729	Sept. 8, 1992
Johansson et al. (hereafter "Johansson")	US 6,163,943	Dec. 26, 2000
Clark et al. (hereafter "Clark")	US 7,194,788 B2	Mar. 27, 2007
Pike	EP 1 314 808 A2	May 28, 2003

THE REJECTIONS

1. Claims 26 and 28 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.
2. Claims 1, 3, 5–18, 25, and 29 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Austin in view of Pike and Johansson.
3. Claim 19 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Austin, Pike, and Johansson as applied to claim 1 above, and in view of Clark.
4. Claims 1, 3–19, 25, 26, 28, and 29 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Clark in view of Pike and Johansson.

ANALYSIS

Rejection 1

It is the Examiner's position that claims 26 and 28 are indefinite regarding the tensile strength property recited, specifically, the scope of the term a tensile strength dry MD of 3031 to 5395 N/m and a tensile strength dry CD of 2057 to 2966 N/m. The Examiner states that the scope is not clear because Appellants do not teach how these values are determined. Ans. 2, 3, 8, and 9.

Appellants argue that tensile strength is determined using well known methods in the art, for the reasons expressed on pages 4–7 of the Brief. Appellants point out that since tensile strength is an intensive property, the results can be correlated to any other tensile strength machine used in measuring tensile strength. Br. 6.

In reply, the Examiner states that there are various factors in measuring tensile strength that can influence the tensile strength values produced by the test, for the reasons expressed on pages 8–9 of the Answer.

We refer to a case on point, *Takeda Pharmaceutical Co. v. Zydus Pharmaceuticals USA, Inc.*, 743 F.3d 1359, 1366-1367 (Fed. Cir. 2014), wherein the Court determined that because there was no evidence that the differences between techniques used in measuring were in fact significant, and because there is evidence of a correlation for the results between techniques used, that the claims were not indefinite. For similar reasons, we likewise determine that the claims are not indefinite herein. Appellants have directed us to evidence that results can be correlated (Br. 6), and the

Examiner has not shown that any differences between techniques are significant.

We thus reverse Rejection 1.

Rejections 2, 3, and 4

We affirm these rejections for the reasons provided by the Examiner in the Answer. We add the following. We note that to the extent that Appellants have presented substantive arguments for the separate patentability of any individual claims on appeal, we will address them separately consistent with 37 C.F.R. § 41.37(c)(1)(vii).

Appellants argue that Austin fails to teach no thermal bonding points (as recited in claim 1 and in claim 25) and refers to Austin's description of the reinforcing fabric, stating that the filaments are self-bonded, i.e., bonded without the aid of a binder resin (Appeal Brief, pages 8-10).

The Examiner correctly points out that the term "no thermal bonding points" is interpreted according to the Specification as set forth on page 15 (reproduced below):

[b]y no thermal bonding is meant that there are substantially no points where the filaments have been exerted to heat and pressure e.g. between heated rollers, to render the filaments pressed together such that they will be softened and/or melted together to deformation in points of contact. *Some bond points could especially for meltblown result from residual tackiness at the moment of laying down*, but these will be without deformation in the points of contact, and would probably be so weak as to break up under the influence of the force from the hydroentangling water jets (emphasis added).

Ans. 9.

The Examiner correctly states that the aforementioned disclosure indicates that the term "no thermal bonding points" allows for some bond

points between the filaments formed as a result of filaments own tackiness which will readily break apart under the influence of the water jets. Ans. 10. The Examiner therefore interprets this term to include lightly bonded filaments which readily break apart allowing free movement of the filaments during hydroentanglement. *Id.*

We agree with the Examiner's claim interpretation for the reason stated by the Examiner. As such, we are unpersuaded by Appellants' arguments made on pages 7–16 of the Brief against the applied art as they pertain to this claim term. We refer to the Examiner's reply to such argument made on pages 10–11 and incorporate it as our own. We note that "[i]t is a bedrock principle of patent law that the claims of a patent define the invention to which the patentee is entitled the right to exclude." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (internal quotations omitted). In other words, "the name of the game is the claim." *In re Hiniker Co.*, 150 F.3d 1362, 1369 (Fed. Cir. 1998).

With regard to Appellants' arguments concerning "splittable fibers" (as recited, e.g., in claims 1 and 19) versus "staple fibers" (Br. 9, 10, 12, and 13), we refer to the Examiner's reply made on pages 12–13 of the Answer. Therein, the Examiner explains why it would have been obvious to have utilized a splittable bicomponent fiber to achieve the associated properties in view of the teachings of Pike. We do not find Appellants' arguments persuasive because Appellants do not address the Examiner's rationale.

With regard to Appellants' arguments pertaining to "randomized nonwoven structure" (e.g., Br. 11–17), we refer to the Examiner's reply

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made on pages 13–14 of the Answer, and are unpersuaded by such argument for the reasons stated therein. We note that Appellants do not dispute the Examiner’s claim interpretation as explained therein.

Finally, with regard to Appellants’ arguments against Clark (Clark is applied in Rejections 3 and 4), we agree with the Examiner’s stated position as set forth on page 14 of the Answer, and are unpersuaded by such argument for the reason provided by the Examiner therein.

In view of the above, we affirm Rejections 2–4.

CONCLUSIONS OF LAW AND DECISION

Rejection 1 is reversed.

Rejections 2, 3, and 4 are 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

cdc