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Roberts Mlotkowski Safran Cole & Calderon, P.C. 7918 Jones Branch Drive Suite 500 McLean, VA 22102			SCHIFFMAN, BENJAMIN A	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte NORBERT KALWA

Appeal 2014-009515
Application 12/037,367
Technology Center 1700

Before CHUNG K. PAK, N. WHITNEY WILSON, and
JEFFREY R. SNAY, *Administrative Patent Judges*.

WILSON, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's November 1, 2013 decision finally rejecting claims 1–12, and 16 (“Final Act”). We have jurisdiction over the appeal under 35 U.S.C. § 6(b). An oral hearing was held on October 6, 2016.

We affirm.

¹ Appellants identify the Real Party in Interest as Flooring Technologies Ltd. (Appeal Br. 2).

CLAIMED SUBJECT MATTER

Appellant's invention is directed to a method for finishing a wood material board. Details of the claimed invention are set forth in representative claim 1, which is reproduced below from the Claims Appendix of the Appeal Brief:

1. A method for finishing a wood material board comprising:
applying a decorative layer to a top side,
applying a sealing varnish layer onto the decorative layer,
completely curing of the varnish layer by use of electron beams,
and
embossing a structure into the varnish layer,
wherein a gloss degree of the top side before the
embossing is 88 points (60°) and the embossing in the varnish is
to a depth of 100 to 200 µm,
*wherein the embossing the structure is into the completely
cured varnish layer.*

REJECTIONS

I. Claims 1–9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Braun² in view of Hardy³ and Mirous.⁴

II. Claims 10–12 and 16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Braun in view of Hardy and Mirous, and further in view of Matzke⁵ and Garcia.⁶

DISCUSSION

² Braun et al., WO 2005/116361 A1, published December 8, 2005.

³ Hardy et al., U.S. Patent No. 4,285,846, issued August 25, 1981.

⁴ Mirous et al., U.S. Patent No. 5,719,239, issued February 17, 1998.

⁵ Matzke, U.S. Patent No. 3,869,326, March 4, 1975.

⁶ Garcia, U.S. Patent Pub. 2003/0205013 A1, published November 6, 2003.

Appellant's principal arguments are directed to the rejection of claim 1 over Braun in view of Hardy and Mirous (*see, generally*, Appeal Br. 3–18). Appellant makes separate argument in support of claims 10–12 and 16. These claims will be addressed separately.

After reviewing the arguments and evidence set forth in the Appeal Brief and the Reply Brief and elucidated during the oral hearing, we determine that Appellant has not shown reversible error in the Examiner's findings and determination of unpatentability, essentially for the reasons set forth in the Final Action and the Answer. We add the following for emphasis.

Appellant admits that Braun teaches the use of a varnish, but argue that Braun's varnish layer is thinner (less than 120 μm) than that recited in the claims (100–200 μm) (Appeal Br. 4–6). However, as explained by the Examiner (Ans. 2–3), the thickness of Braun's varnish layer overlaps with the claimed varnish thickness. A *prima facie* case of obviousness exists in situations where, as in this instance, the claimed ranges overlap the ranges disclosed by the prior art. *See In re Geisler*, 116 F.3d 1465, 1469 (Fed. Cir. 1997); *In re Woodruff*, 919 F.2d 1575, 1578 (Fed. Cir. 1990). As noted by the Examiner (Ans. 3), Appellant has not shown the criticality of the claimed range. *Woodruff*, 919 F.2d at 1578 (“The law is replete with cases in which the difference between the claimed invention and the prior art is some range or other variable within the claims. These cases have consistently held that in such a situation, the applicant must show that the particular range is critical, generally by showing that the claimed range achieves unexpected results relative to the prior art range.”)

Because of the overlapping ranges for the thicknesses of the varnish layer, Appellant's arguments which are summarized on pages 9–10 of the Appeal Brief are not persuasive of reversible error.

Appellant also argues that the Examiner has not adequately established a reason why a person of skill in the art would have modified Braun's varnish layer so that it has a gloss degree of 88 points at 60°. However, the Examiner finds that Braun discloses that gloss may be adjusted with functional additives (Final Act. 4 (citing Braun 5:10–22, 10:1–4)), and that Hardy teaches a known method of optimizing (controlling) gloss levels (*id.*). Appellant contends that Hardy is actually directed to reducing gloss (Appeal Br. 11–12), not optimizing gloss. However, the Examiner finds that Braun discloses that gloss may be adjusted with functional additives, and Hardy discloses that (and how) it may be adjusted to the claimed value. *See also In re Boesch*, 617 F.2d 272, 276 (CCPA 1980) (“[D]iscovery of an optimum value of a result effective variable in a known process is ordinarily within the skill of the art.”) Appellant does not persuasively dispute these findings.

Finally, Appellant disputes the Examiner's finding that Mirous discloses completing curing a varnish layer prior to an embossing step (Appeal Br. 13–18). However, as found by the Examiner, Mirous discloses an embossed varnish coating of a cellulosic panel wherein the coating is cured prior to being embossed (Final Act. 4). In particular, the Examiner finds that Mirous states that its coating is hardened prior to being softened by heating for embossment purposes (*id.*, citing Mirous 3:17–23, 3:55–65).

In response, Appellant alleges that “[a] softened top coat . . . is not fully cured” because “it is not possible to soften a plastic material (varnish) by heating after such material is fully cured” and, therefore, Mirous cannot disclose a fully cured varnish layer which is then embossed (Appeal Br. 14). However, Appellant does not offer any evidence or reasoning as to why the claim term “completely cured” should be construed in the manner set forth in the Appeal Brief and quoted above. Indeed, at the oral hearing, counsel for Appellant took the position that “completely cured” meant that the layer was ready for use in its intended application. In this regard, Mirous explicitly states that its panels can be completely formed (i.e., the varnish layer is completely cured) prior to the embossing step (Mirous 10:14–20). It is apparent that the boards of Mirous can be used without an embossing step, and thus meet the definition of completely cured proffered by Appellant’s counsel at the oral hearing (though this definition was not specifically offered in the briefs). Thus, we determine that, based on the evidence of the appeal record, Appellant has not demonstrated reversible error in the Examiner’s finding that Mirous discloses completely curing a layer prior to embossing it, as set forth in claim 1.

With respect to dependent claims 10–12 and 16, Appellant does not dispute the Examiner’s reliance on the prior decision on Appeal No. 2012-001370 (Application 12/037,367) (“the earlier Decision”), which held that “the temperatures and pressures required to emboss Braun's varnish layer to a 100-119 μm depth, determined by no more than routine experimentation, include temperatures and pressures required to emboss the Appellant's varnish layer to that depth, such as those recited in the Appellant's claims 10-12 and 16.” *See* the earlier Decision 4–5 and Final Act. 6 (“[A] person of

ordinary skill in the art would recognize that the temperature and pressure of the embossing step would be optimized based on the desired depth taking into account the physical properties (melting point, viscosity, et.) of the material being embossed....[A]s discussed in the Patent Board Decision the combination of Braun and Hardy clearly suggest[s] a process of embossing as claimed...”) Although Appellant contends that using the claimed pressures and/or temperatures, for example, taught by Matzke and Garcia on Braun’s varnish layer would destroy that layer, Appellant does not argue or point to any teaching or evidence, which indicates that the fully cured panel suggested by Braun and Mirous would be susceptible to destruction under such pressures and temperatures (Appeal Br. 19–20). Accordingly, on this record, we also determine that Appellant does not identify reversible error in the Examiner’s § 103(a) rejection of claims 10–12 and 16.

CONCLUSION

We AFFIRM the rejection of claims 1–9 under 35 U.S.C. § 103(a) as being unpatentable over Braun in view of Hardy and Mirous.

We AFFIRM the rejection of claims 10–12 and 16 under 35 U.S.C. § 103(a) as being unpatentable over Braun in view of Hardy and Mirous, and further in view of Matzke and Garcia.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1) (iv).

AFFIRMED