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REINHART BOERNER VAN DEUREN P.C. 2215 PERRYGREEN WAY ROCKFORD, IL 61107			TOLAN, EDWARD THOMAS	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte VOLKER DENKMANN, WOLF OETTING,
ANDREAS SIEMEN, WILHELM SCHENKEL, and
BORIS KASPER

Appeal 2014-009917
Application 12/988,369
Technology Center 3700

Before: JOHN C. KERINS, STEFAN STAICOVICI, and LEE L. STEPINA,
Administrative Patent Judges.

STEPINA, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1–9. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

CLAIMED SUBJECT MATTER

The claims are directed to a method for producing a strip for packaging purposes. Claim 1, reproduced below, is representative of the claimed subject matter:

1. Method for producing a strip consisting of aluminum or an aluminum alloy for packaging purposes, the method comprising embossing decorative or other identification elements into the strip during a last rolling pass of cold rolling, the strip thickness is greater in an area of the decorative or identification elements than in remaining areas of the strip and an amplitude of an embossing profile in the strip is at most 4 μm .

REFERENCES

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

Sheu	US 5,537,851	July 23, 1996
Eschauzier	US 6,187,455 B1	Feb. 13, 2001
Leroux	US 6,453,709 B2	Sept. 24, 2002
Boegli	US 7,147,453 B2	Dec. 12, 2006

REJECTIONS

(I) Claims 1–5, 8, and 9 are rejected under 35 U.S.C. § 103(a) as unpatentable over Eschauzier and Sheu.

(II) Claims 1–6, 8, and 9 are rejected under 35 U.S.C. § 103(a) as unpatentable over Boegli, Eschauzier, and Sheu.

(III) Claim 7 is rejected under 35 U.S.C. § 103(a) as unpatentable over Eschauzier, Sheu, and Leroux.

ANALYSIS

Rejection (I)

Claim 1 recites, in part, “the strip thickness is greater in an area of the decorative or identification elements than in remaining areas of the strip.”

Appeal Br. (Claims App. 1).

The Examiner finds that Eschauzier discloses “embossing identification elements (21) in the strip (2)” and that “Figure 4 shows thicker and thinner strip features on the strip surface (17, 19).” Final Act. 2.

Appellants argue that “Eschauzier teaches embossing identification elements into a strip such that the identification elements protrude inwardly into a strip as a result of outwardly projecting structures on the corresponding embossing roller.” Appeal Br. 6. Appellants thus assert that “the identification elements presented in Eschauzier are not in an area of the Eschauzier strip that has a greater strip thickness than in the remaining areas of the strip,” and that the recited configuration “is the opposite which is taught by Eschauzier.” *Id.* Appellants contend that “Sheu does not rectify the foregoing deficiency,” because “any raised portions in the Sheu surface are not in any way an identification or decorative element.” *Id.*

The Examiner responds that “[t]he thicker portions of Eschauzier are identification portions, an observer can look at the thicker portions and tell that they are thicker, therefore they are identifiable, especially as shown in Fig. 5A and 5B, there are thicker and thinner portions that are identifiable.” Ans. 6. The Examiner notes that the method of Sheu “leads to microscopic prows as the final sheet surface texture, as the sheet issues from the last stand of a rolling mill, which are raised relative to the average sheet roughness.” *Id.* (citing Sheu, col. 20, ll. 58–65). In view of this, the Examiner takes the position that, “[i]f they are raised, they are thicker.” *Id.*

In reply, Appellants argue that “the claimed decorative or identification elements are not simply elements which are *identifiable* because of their thickness or some other randomly selected parameter as

chosen by the Examiner.” Reply Br. 9. Appellants assert that “the construction of elements that are identifiable by an Examiner-chosen parameter is beyond the broadest reasonable interpretation of the claimed identification elements.” *Id.* at 10. Appellants reiterate that the thicker portions of Sheu are not a “type of decorative or identification element as claimed.” *Id.* at 8.

We agree with Appellants. Eschauzier discloses that “the term ‘depth of indentations’ is meant the depth of the indentations **21** in the strip **2** relative to the mean thickness of the strip **2** after roll-pressing in accordance with this invention.” Eschauzier, col. 3, ll. 29–32. Eschauzier also discloses that, “FIG. 4 is a cross-section of a roll-patterned strip **2** of this invention,” which shows that “[t]he depth of the indentations **21** of each roll-pattern C and D is between 0.001 and 0.05 mm and preferably between 0.02 and 0.035 mm.” *Id.* at col. 4, ll. 18–26. We reproduce Figure 4 of Eschauzier below.

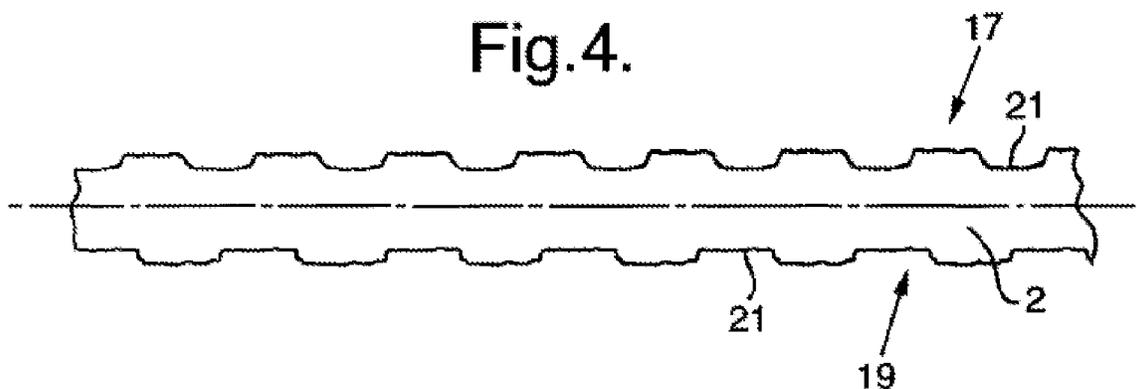


Figure 4 shows a cross-section of a strip of Eschauzier which is roll-patterned on each side and shows indentations **21**.

Based on the above-noted disclosure and Figure of Eschauzier, the roll patterns, or identifying elements, of Eschauzier, are formed by (are part

of) indentations 21 in the strip at portions of the strip that are thinner than other portions of the strip. Although we appreciate that an observer can identify that the raised portions are thicker, because the raised portions of Eschauzier do not have decorative or identification elements in an area of the thicker portion, Eschauzier does not disclose the claimed feature. The Examiner relies on the disclosure of Sheu in a similar manner (*see* Answer 6), but does not adequately explain why the thicker portions of Sheu include decorative or identification elements. Accordingly, we do not sustain the rejection under 35 U.S.C. § 103(a) of claims 1–5, 8, and 9 based on Eschauzier and Sheu.

Rejection (II)

The Examiner finds that Boegli discloses an aluminum strip product “wherein identification elements are embossed onto the strip by embossing rollers (2, 3, 4).” Final Act. 4. The Examiner also finds that Eschauzier teaches a method of making an aluminum strip having “embossing identification elements (21) in the strip (2),” and that Eschauzier’s “Figure 4 shows thicker and thinner strip features on the strip.” *Id.* at 4–5.

Appellants assert that, in the Boegli configuration, “the teeth 8 therein are in the form of truncated pyramids such that indentations are formed in the Boegli strip medium.” Appeal Br. 10. Appellants thus argue that Boegli fails to disclose that “the strip thickness is greater in an area of the decorative or identification elements than in remaining areas of the strip.” *Id.* at 10–11. Appellants also argue that, for the reasons discussed above in

Rejection (I), “neither Eschauzier nor Sheu teach or suggest that the strip thickness is greater in the area of the decorative or identification elements.”
Id. at 10.

We agree with Appellants on this point inasmuch as the Examiner does not adequately explain why the rolls of Boegli would produce a strip thickness that is greater in an area of the decorative or identification elements than in remaining areas of the strip. Boegli discloses a device having a plurality of rolls 2, 3, 4 that emboss medium 6. Boegli, col. 3, ll. 4–15; Figs. 1 and 1A. The Examiner does not identify, nor do we find in Boegli, a disclosure that medium 6 has a thickness that is greater in an area of the decorative or identification elements than in remaining areas of the strip, as required by claim 1. As discussed *supra* in Rejection (I), neither Eschauzier nor Sheu disclose this feature. In view of this, the Examiner has not established by a preponderance of the evidence that one of ordinary skill in the art would have understood that the combined teachings of Boegli, Eschauzier, and Sheu suggest that “the strip thickness is greater in an area of the decorative or identification elements than in remaining areas of the strip,” as required by claim 1. Accordingly, we do not sustain the rejection under 35 U.S.C. § 103(a) of claims 1–6, 8, and 9 based on Boegli, Eschauzier, and Sheu.

Rejection (III)

The Examiner does not rely on the disclosure of Leroux in any manner that would remedy the deficiency in the rejection of claim 1, from which claim 7 depends, based on Eschauzier and Sheu discussed in Rejection (I), *supra*. For the same reasons, we do not sustain the rejection under 35 U.S.C. § 103(a) of dependent claim 7 based on Eschauzier, Sheu, and Leroux.

DECISION

The Examiner's rejection of claims 1–9 under 35 U.S.C. § 103(a) is reversed.

REVERSED