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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte NEIL BARTON and ASHLEY CARL TORR

Appeal 2015-002794
Application 12/663,633
Technology Center 1700

Before BEVERLY A. FRANKLIN, MARK NAGUMO, and
N. WHITNEY WILSON, *Administrative Patent Judges*.

WILSON, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ appeal under 35 U.S.C. § 134(a) from the Examiner's May 5, 2014 decision finally rejecting claims 1–5, 7–16, and 18–27 (“Final Act”). We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We affirm.

¹ Appellants identify the Real Party in Interest as Pilkington Group Limited (Appeal Br. 2).

CLAIMED SUBJECT MATTER

Appellants' invention is directed to a method of producing a bent, coated, laminated glazing, as well as a bent, coated, laminated glazing having certain characteristics (Abstract). The Specification indicates that such glazings may be used as automotive glass, for example (Spec. 1). The claimed method involves (1) coating two separate plies (e.g. pieces of glass) with coatings which are identical in composition and thickness, (2) heating each of the plies to the same temperature, (3) bending the plies to achieve complimentary shapes which may be paired to form a laminate, (4) cooling the bent plies to fix their shape, (5) pairing the plies around a ply of interlayer material to form a composite, and (6) subjecting the composite to heat and pressure to laminate the plies together. Details of the claimed method and glazing are set forth in independent claims 1 and 14, which are reproduced below from the Claims Appendix of the Appeal Brief (*emphasis in italics*):

1. A method of producing a bent, coated, laminated glazing comprising the steps of:

providing a coating on a surface of each of first and second plies of glazing material, *the coating on the first ply being identical to the coating on the second ply so that the coating on the first ply possesses the same composition and thickness as the coating on the second ply*;

heating each of the coated plies to the same temperature;
causing each of the coated plies to bend in one or more

directions such that complementary shapes are achieved to enable subsequent pairing of the plies to form a laminate;

cooling each of the bent, coated plies so as to fix their bent shapes;

pairing the bent, coated plies about a ply of interlayer material to form a composite such that the coated surface of the

first bent ply and the uncoated surface of the second bent ply are adjacent to the interlayer ply; and

subjecting the composite to heat and pressure to laminate the glazing plies together.

14. A bent, coated, laminated glazing comprising:

first and second bent plies of glazing material joined together by a ply of interlayer material between them, each of the first and second plies being a heat-treated ply which is heated to the same temperature prior to being joined together by the ply of interlayer material,

wherein each of the first and second plies has a coating on one of its surfaces, and the coated surface of the first ply and the uncoated surface of the second ply are adjacent to the ply of interlayer material, wherein the coating on the first ply is identical to the coating on the second ply so that the coating on the first ply possesses the same composition and thickness as the coating on the second ply.

DISCUSSION

Claims 1–5, 7–16, and 18–27 (which are all of the claims on appeal) are rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown² with Halberschmidt³ in view of Varanasi.⁴ Appellant’s separate arguments for each of independent claims 1, 14, and 27 are not substantively different (compare Appeal Br. 6–8 (claim 1), with Appeal Br. 8-10 (claim 14), and Appeal Br. 10–13 (Claim 27)). Therefore, we will focus our discussion on the rejection of claim 1, but the analysis is equally applicable to claims 14

² Brown et al., U.S. Patent No. 6,582,799 B1, issued June 24, 2003.

³ Halberschmidt et al., U.S. Patent No. 3,769,133, issued October 30, 1973.

⁴ Varanasi et al., U.S. Patent Pub. 2006/0188730 A1, published August 24, 2006.

and 27. We also address Appellants' separate arguments regarding dependent claims 11 and 24.

Claim 1. The Examiner finds that Brown⁵ discloses each of the elements of claim 1, except that "Brown et al specifically do not disclose that functional coating 16 provided on one or more surface[s] having the same composition and/or coating" (Final Act. 2–3). The Examiner further finds that Varanasi, which is directed to a similar laminated glass construction as Brown, teaches "two glass plies having [the] same identical functional coating bonded together with a polymeric interlayer to improve heat gain or loss through a glazing due to environmental differences between the outdoor air and indoor air" (Final Act. 3, citing Varanasi, ¶ 32). The Examiner cites the disclosure in Varanasi's Paragraph 30 as teaching that the two surfaces are coated in "the same manner" which, the Examiner finds, "would result in the same composition and thickness" (Ans. 4, citing Varanasi, ¶ 30). According to the Examiner, it would have been obvious to modify Brown so that the coatings on the plies are the same to improve heat gain or loss (Final Act. 4).

Appellants make several arguments seeking reversal of the rejection. First, Appellants contend that Brown is directed to a system in which only one of the plies is coated, which is different from the claims, which recite a coating on both plies (Appeal Br. 6). Appellants point to sections of Brown which recite that only one of the plies is coated, and to Brown's statement

⁵ Some of the findings from Brown are actually from Halberschmidt, which is incorporated by reference into Brown (Final Act. 2).

that preferably at least one ply is uncoated (Brown, 6:4–8). However, as found by the Examiner, Brown explicitly states that:

Although not limiting to the invention, the functional coating 16 is preferably provided on the inner major surface 14 to make the coating less susceptible to environmental and mechanical wear than if on an outer surface of the laminate. **However the functional coating 16 could also be provided on one or more of the surfaces 13, 22 or 23⁶.**

(Brown, 3:46–51, emphasis added). Thus, Brown is quite clear in stating that the functional coating can be provided on both plies. As this rejection is an obviousness rejection, and not an anticipation rejection, we determine that the Examiner’s findings support a conclusion that it would have been obvious in view of Brown to coat both plies. *Merck & Co. v. Biocraft Labs., Inc.*, 874 F.2d 804, 807 (Fed. Cir. 1989) (“the fact that a specific [embodiment] is taught to be preferred is not controlling, since all disclosures of the prior art, including unpreferred embodiments, must be considered”) (quoting *In re Lamberti*, 545 F.2d 747, 750 (CCPA 1976)).

Second, Appellants argue that Brown does not teach heating the coated plies to the same temperature (Appeal Br. 7). However, as found by the Examiner, Brown specifically states that a “conventional RPR process,” in which both plies are heated to the same temperature, can be used with its system, even though a modified process with different temperatures is preferred (Brown, 6:18–34). Thus, the preponderance of the evidence

⁶ Surfaces 22 and 23 are on a different ply than surfaces 16 and 13 (see, Brown, FIG. 1).

supports the Examiner's determination that it would have been obvious to heat the plies to the same temperature.

Third, Appellants argue that Varanasi does not teach that the coatings on the plies have the same composition and thickness (Appeal Br. 8).

Appellants' argument is not persuasive. Varanasi discloses that the surface of each glass sheet "is coated by sequentially depositing thereon, by any suitable method, an electrically conductive metal oxide layer and an inorganic dielectric oxide layer, of the type, thickness and materials previously described herein" (Varanasi, ¶ 30). Appellants contend that because an example in Varanasi involves lamination of flat plies rather than bent ones, it would not have been obvious to ensure that the coatings have the same composition and thickness when applied to bent plies as recited in the claimed invention (Appeal Br. 7). However, Appellants have not pointed to persuasive evidence or provided a persuasive explanation to support this contention and, therefore, have failed to show harmful error in the Examiner's obviousness conclusion.

In view of the foregoing, we determine that, based on the present record, Appellants have not demonstrated reversible error in the obviousness rejection of independent claims 1, 14, and 27.

Claim 11. Claim 11 recites that the plies of glazing material are gradually cooled so as to anneal them. Appellants argue that Brown recites that sidelight glass (which is what is disclosed in Brown) involves tempered glass, rather than annealed glass, and does not teach or suggest annealing the plies, as recited in the claim (Appeal Br. 13). However, as found by the Examiner, Brown only states that sidelight glass is usually tempered, not that it must be, and that Brown teaches that its cooling station can be for cooling,

tempering and/or heat strengthening (Brown, 7:6–11). Thus, Examiner finds that the teachings of Brown encompass cooled glass (annealed), tempered glass or heat strengthened glass. Appellants have not directly challenged these findings, and have not demonstrated reversible error in the obviousness rejection of claim 11.

Claim 24. Claim 24 recites that the first and second plies have the same thickness. Appellants argue that Brown does not disclose or suggest this limitation (Appeal Br. 13). However, as found by the Examiner (*see*, Ans. 6), Brown states that the second ply is “similar” to the first (Brown, 6:8–10), and provides an example in which both plies have the same thickness (Brown, 5:38–45). These findings are sufficient to support a conclusion that it would have been obvious to have two plies with the same thickness.

CONCLUSION

We AFFIRM the rejection of claims 1–5, 7–16, and 18–27 under 35 U.S.C. § 103(a) as being unpatentable over Brown with Halberschmidt in view of Varanasi.

AFFIRMED