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Philip H. Burrus, IV Burrus Intellectual Property Law Group LLC 222 12th Street NE Suite 1803 Atlanta, GA 30309			JACKSON, BRANDON LEE	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ANDREW JAMES GILES, FRANCIS ANTHONY CZAJKA,
TIM FINNIGAN, JOHN HENRY KUTSCH, and VINCE R. LACKOWSKI

Appeal 2015-003754¹
Application 13/116,749²
Technology Center 3700

Before MICHAEL C. ASTORINO, JAMES A. WORTH, and
KENNETH G. SCHOPFER, *Administrative Patent Judges*.

ASTORINO, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellants appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1–26. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

¹ According to the Appellants, “[t]he real party in interest is Medline Industries, Inc.” Appeal Br. 2.

² The Appellants note that a Notice of Appeal was filed in a related case (Application 13/585,435) and that Kuznetz (US 4,569,874, iss. Feb. 11, 1986) is applied as prior art for rejections for both the present and related application. *See* Appeal Br. 2.

STATEMENT OF THE CASE

Claimed Subject Matter

Claims 1, 11, and 21 are the independent claims on appeal. Claims 1 and 11, reproduced below, are illustrative of the subject matter on appeal.

1. A patient warming blanket, comprising:
 - a film layer having a thermally reflective layer;
 - a thermally absorptive coating disposed along a side opposite the thermally reflective side; and
 - non-woven fibers needle-punched through the film layer; the thermally absorptive coating selectively disposed on only portions of the film layer.

11. A patient warming drape, comprising:
 - a layer of non-woven fabric;
 - a film layer having a thermally reflective side, the film layer being adhesively laminated to the layer of non-woven fabric; and
 - a thermally absorptive coating disposed on the film layer opposite the thermally reflective side.

Rejections³

Claims 1, 2, 4–10, 21, 23, and 26 are rejected under 35 U.S.C. § 102(b) as anticipated by Kuznetz (US 4,569,874, iss. Feb. 11, 1986).⁴

Claims 3, 22, 24, and 25 are rejected under 35 U.S.C. § 103(a) as unpatentable over Kuznetz.

³ The Examiner has withdrawn the rejection of claim 1 under 35 U.S.C. § 112 (pre-AIA), first paragraph, as failing to comply with the written description requirement. Ans. 2–3, 9; *see also* Reply Br. 7.

⁴ Although not listed in the statement identifying the ground of rejection, claim 2 is rejected under 35 U.S.C. § 102(b) as anticipated by Kuznetz. Final Act. 5.

Claims 11–20 are rejected under 35 U.S.C. § 103(a) as unpatentable over Kuznetz and Mickle (US 8,453,264 B2, iss. June 4, 2013).

ANALYSIS

Independent claims 1 and 21, and dependent claims 2–10 and 22–26

Independent claim 1 is directed to “[a] patient warming blanket” including “a film layer having a thermally reflective layer” and “a thermally absorptive coating disposed along a side opposite the thermally reflective side” and “selectively disposed on only portions of the film layer.” Appeal Br., Claims App. Independent claim 21 includes substantially similar limitations as independent claim 1. *Id.*

The Examiner finds Kuznetz discloses an outer skin 19 having a reflective side and, on an opposite side, a thermally absorptive coating. Final Act. 5. Indeed, outer skin 19 includes a reflective material on an inside face and a flat-black coating on an outside face, which is highly absorbent to solar energy. Kuznetz, col. 4, ll. 10–20; *see id.* at Fig. 3 (arrows directed to opposing surfaces of outer skin 19 identify a “Shiny Side” facing a body of the wearer and a “Black Side” facing the sun).

The Appellants contend Kuznetz fails to disclose a “thermally absorptive coating,” as required by independent claims 1 and 21, because the flat-black coating applied on outer skin 19 is not “selectively disposed on only portions of the film layer,” as recited in claim 1, rather the flat-black coating is applied on the entirety of outer skin 19. Appeal Br. 13–14. In response, the Examiner finds that the “Black Side” of outer skin 19 includes two halves where each half is a portion. *See* Ans. 10–11. However, the Examiner fails to explain, and we fail to understand, how the flat-black

coating, which is applied on both halves of the “Black Side” of outer skin 19 (i.e., an entire side of outer skin 19) is *selectively disposed* on only portions of the film layer, as required by claims 1 and 21. As such, we determine that the Appellants’ contention is persuasive.

Thus, we do not sustain the Examiner’s rejection of independent claims 1 and 21 as anticipated by Kuznetz. Additionally, the Examiner’s findings and reasoning with respect to the dependent claims do not compensate for the shortcoming discussed above, so we do not sustain the Examiner’s rejections of dependent claims 2, 4–10, 23, and 26 as anticipated by Kuznetz and dependent claims 3, 22, 24, and 25 as unpatentable over Kuznetz.

Independent claim 11 and dependent claims 12–20

The Appellants argue that the combined teachings of Kuznetz and Mickle would change the principle of operation of Kuznetz’s invention. Appeal Br. 16. The Appellants assert that Kuznetz’s stated principle of operation is directed to the use of a “‘bi-directional heat transfer trap’ that permits water vapor to pass through his [(i.e., Kuznetz’s)] skin layers.” *Id.* Moreover, the Appellants point out that the principle of operation is achieved through the use of needle-punching, which creates a vapor-permeable laminate structure. *See id.*; *see also* Kuznetz, col. 4, ll. 6–12. Based on the foregoing, the Appellants contend that the addition of an adhesive, as taught by Mickle, to Kuznetz’s invention “preclude[s] the vapor passage required by Kuznetz” and “disrupt[s] the desired ‘bi-directional heat transfer.’” Appeal Br. 16 (emphasis omitted). The Appellants’ argument is not persuasive because, as explained by the Examiner, a skilled artisan

would understand that adhesively bonding a non-woven fabric (i.e., Kuznetz's core layer 20) and a film layer (i.e., Kuznetz's outer skin 19) together and then needle-punching through the bonded layers maintains the vapor permeability of Kuznetz's invention. *See* Ans. 11–12.

Thus, we sustain the Examiner's rejection of independent claim 11 as unpatentable over Kuznetz and Mickle. We also sustain the rejection of claims 12–20, which depend from claim 11, and is not argued separately by Appellants.

DECISION

We REVERSE the Examiner's decision rejecting claims 1–10 and 21–26.

We AFFIRM the Examiner's decision rejecting claims 11–20.

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-IN-PART