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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/881,967	09/14/2010	Reinhold EYDNER	7863-98209	2028

42798                      7590                      12/12/2016  
FITCH, EVEN, TABIN & FLANNERY, LLP  
120 South LaSalle Street, Suite 1600  
Chicago, IL 60603-3406

EXAMINER
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KIM, CHRISTOPHER S

ART UNIT	PAPER NUMBER
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3752

MAIL DATE	DELIVERY MODE
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12/12/2016

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* REINHOLD EYDNER

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Appeal 2015-000756  
Application 12/881,967  
Technology Center 3700

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Before LYNNE H. BROWNE, JILL D. HILL, and BRENT M. DOUGAL,  
*Administrative Patent Judges.*

BROWNE, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Reinhold Eydner (Appellant) appeals under 35 U.S.C. § 134 from the rejection of claims 1–10 and 15. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

### CLAIMED SUBJECT MATTER

Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. Nozzle foil for a nozzle bar (10) of a textile processing machine, the nozzle foil comprising:  
an elongate foil body defining a plurality of nozzle openings (16), the elongate foil body configured to be secured between an inlet channel (13) and an outlet channel (18) of a carrier element (11) of the nozzle bar (10) to allow pressurized fluid introduced into the inlet channel (13) to form fluid jets (19) extending out of the nozzle openings (16) and into the outlet channel (18) of the carrier element (11), wherein the elongate foil body comprises at least two foil segments (25) configured to connect with each other, wherein the elongate foil body has a thickness between 0.1 to 1.5 millimeters.

### REFERENCES

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

Casebolt	US 1,020,024	Mar. 12, 1912
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### REJECTIONS

- I. Claims 5–10 and 15 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.
- II. Claim 15 stands rejected under 35 U.S.C. § 102(b) as anticipated by Casebolt.
- III. Claims 1–4 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Casebolt.

## DISCUSSION

### *Rejection I*

Appellant does not contest the rejection of claims 5–10 and 15 under 35 U.S.C. § 112, second paragraph. *See, generally*, Appeal Br. In the Reply Brief, Appellant requests “that these minor, non-substantive issues be held in abeyance pending the resolution of the disputes addressed with this appeal brief.” Reply Br. 3.

Our rules do not provide for the holding of a rejection in abeyance. Rather, 37 C.F.R. 41.31(c) states “[a]n appeal, when taken, is presumed to be taken from the rejection of all claims under rejection unless cancelled by an amendment filed by the applicant and entered by the Office.” Accordingly, as arguments pertaining to the rejection of claims 5–10 and 15 under 35 U.S.C. § 112, second paragraph have been filed, we summarily sustain this rejection.

### *Rejection II*

The Examiner finds that Casebolt discloses each and every limitation of independent claim 15. Final Act. 5. In particular, the Examiner finds that Casebolt discloses “an elongate foil body 10, 15 defining a plurality of nozzle openings 12.” *Id.*

Appellant contends that “[n]othing in Casebolt discloses an ‘elongate foil body’ as that phrase would be understood by one of skill in the art in view of the specif[i]cation of the pending application.” Appeal Br. 9. In support of this contention, Appellant notes that “[t]he Merriam-Webster online dictionary defines the adjective ‘elongate’ as ‘stretched out’ or ‘slender’” and “‘foil’ as ‘very thin sheet metal.” *Id.* (citations omitted). Based on these definitions, Appellant argues that “the phrase ‘elongate foil

body’ would mean . . . a ‘stretched out or slender very thin sheet metal body.’” *Id.* Appellant further explains that the Specification supports this definition. *See id.* Then, applying this definition, Appellant argues that:

Casebolt only discloses his head or burner tip 10 and steam nozzle 15 as bulky chamber defining elements. There is no suggestion that these elements are or could be a “stretched out or slender very thin sheet metal body,” which is how the claim language “elongate foil body” would be understood when read by one of skill in the art.

*Id.* at 10.

Appellant is correct. Casebolt’s burner tip 10 and steam nozzle 15 do not constitute an “elongate foil body” as required by claim 15. Accordingly, we do not sustain the Examiner’s decision rejecting claim 15 as anticipated by Casebolt.

### *Rejection III*

The Examiner finds that Casebolt discloses all of the limitations of independent claim 1 except for “the elongate foil body 10, 15 having a thickness between 0.1 to 1.5 mm.” Final Act. 6. The Examiner determines that it would have been obvious to use such a thickness based on optimization reasoning. *See id.* Thus, the Examiner’s rejection of claim 1 relies upon the same erroneous finding — that Casebolt discloses an elongate foil body — as the rejection of claim 15.

Accordingly, we do not sustain the Examiner’s decision rejecting claim 1, and claims 2–4 which depend therefrom, for the reason discussed *supra* with respect to the rejection of claim 15.

DECISION

The Examiner's rejection of claims 5–10 and 15 under 35 U.S.C. § 112, second paragraph is AFFIRMED.

The Examiner's rejection of claim 15 under 35 U.S.C § 102(b) is REVERSED.

The Examiner's rejection of claims 1–4 under 35 U.S.C. § 103(a) is REVERSED.

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