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EXAMINER
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CASTRIOTTA, JENNIFER

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PAPER

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* NEAL KEEFER and  
BRUCE BOSCH

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Appeal 2017-003926  
Application 13/753,518  
Technology Center 3700

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Before MICHAEL L. HOELTER, JILL D. HILL, and  
THOMAS F. SMEGAL, *Administrative Patent Judges*.

HOELTER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–5 and 20–31. Br. 5. Claims 6–19 have been cancelled. Br. 5. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

THE CLAIMED SUBJECT MATTER

The disclosed subject matter relates to “a molded fuel tank [that] includes a fuel tank molded from synthetic material, such as a composite polymer.” Spec. 2:8–9. Claims 1, 23, and 25 are independent. Claim 25 is illustrative of the claimed subject matter and is reproduced below.

25. A fuel tank, comprising:  
a tank wall manufactured of a moldable material;  
a component fastening structure secured within said tank wall, said fastening structure manufactured as a single, integral structure from a single piece of material, said component fastening structure defining an outermost exterior surface including a first region, a second region, and a central region positioned there between, said component fastening structure defining an elongate axis extending through said first, second and central regions, said first, second and central regions each arranged along said elongate axis in a non-overlapping sequence and defining an outermost perimeter measured perpendicular to said elongate axis and positioned within said outermost exterior surface of said component fastening structure wherein said central region outermost perimeter is smaller than said outermost perimeter of said first and said second regions; and  
said tank wall defining a tank wall thickness measured adjacent to said component fastening structure and parallel to said elongate axis, said thickness extending along said elongate axis completely along said central region of said fastening structure and along at least part of each of said first and second regions.

REFERENCES

Schwartz '764	US 1,554,764	Sept. 22, 1925
Schwartz '241	US 1,656,241	Jan. 17, 1928
Shimoda	US 8,033,415 B2	Oct. 11, 2011

## REJECTIONS ON APPEAL<sup>1</sup>

Claims 25–27 and 30 are rejected under 35 U.S.C. § 102(b) as anticipated by Schwartz '764.

Claims 25, 26, and 30 are rejected under 35 U.S.C. § 102(b) as anticipated by Schwartz '241.

Claims 1, 2, 4, 5, 20–24, 28, 29, and 31 are rejected under 35 U.S.C. § 103(a) as unpatentable over Schwartz '764 and Shimoda.

Claims 1–5, 20–24, 28, 29, and 31 are rejected under 35 U.S.C. § 103(a) as unpatentable over Schwartz '241 and Shimoda.

## ANALYSIS

### *The rejection of claims 25–27 and 30 as anticipated by Schwartz '764*

Independent claim 25 (and hence dependent claims 26, 27, and 30) includes the following four limitations: (a) a “component fastening structure defining an outermost exterior surface” that includes a first region, a second region, and a central region there between; (b) first, second, and central regions “each arranged along said elongate axis in a non-overlapping sequence;” (c) the outermost perimeter of the central region is “smaller than said outermost perimeter of said first and said second regions;” and, (d) a “tank wall thickness measured adjacent to said component fastening

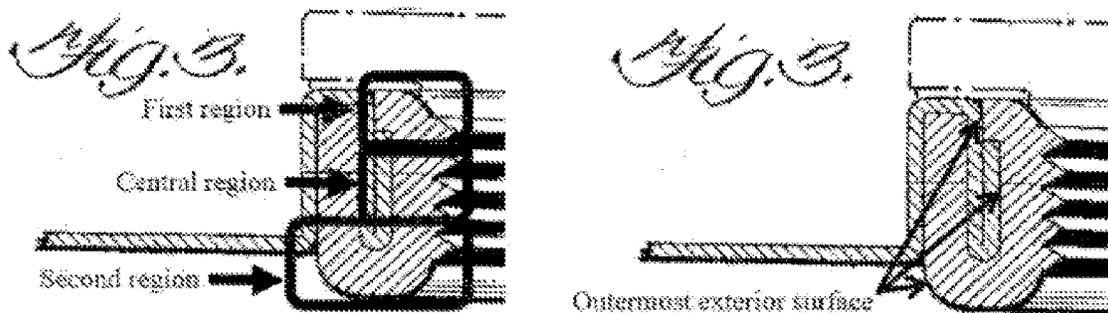
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<sup>1</sup> Claim 21 is objected to because of duplicative listings of “nylons, polypropylene, . . . Polypropylene, . . . Nylon, . . . .” Final Act. 3 (emphasis omitted). The Examiner acknowledges an amendment that “*eliminated claim limitations that were repeated within*” claim 21. Advisory Action dated August 22, 2016. As understood, the Examiner no longer objects to claim 21, but the rejections of claim 21 under 35 U.S.C. § 103(a) are maintained.

structure” extends “along said elongate axis completely along said central region.” Appellants dispute that Schwartz ’764 discloses such limitations. Br. 19–29. We address each limitation as follows:

“an outermost exterior surface”

The Examiner identifies the three corresponding regions in Schwartz ’764 by providing two annotations of Figure 3 of Schwartz ’764. Final Act. 5; Ans. 3. Such annotations are replicated below:



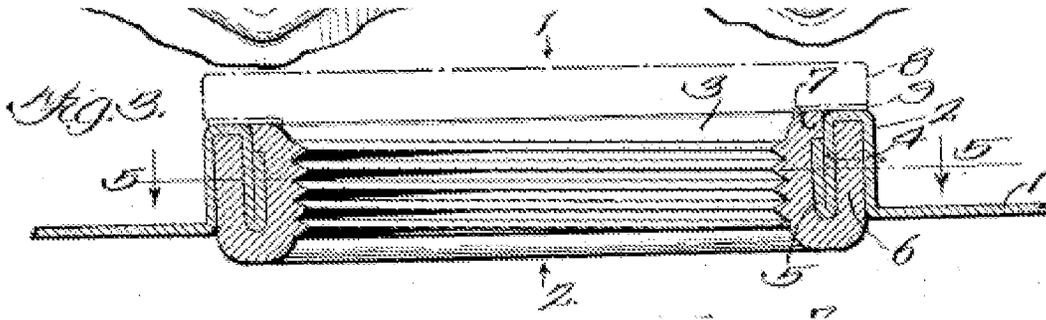
In the above annotations of a portion of Figure 3 of Schwartz ’764, the Examiner identifies corresponding first, central, and second regions, as well as their respective outermost exterior surface.

Appellants submit, “the three regions circled by the Examiner on page 5 of the Office Action are not included within an ‘outermost exterior surface’ of the Schwartz [’764] bushing structure, as is required by [Appellants’] claim 25.” Br. 20. “These three regions circled by the Examiner on page 5 are on the interior portion of the U-shaped bushing, adjacent to the interior threads of the bushing.” Br. 21. Instead, as per Appellants, “the outermost exterior surface of the bushing[ is] namely the left-most surface of the bushing from which the body 1 extends.” Br. 21. In short, “these regions circled by the Examiner cannot disclose Applicant[s] ‘outermost exterior surface’” and that by doing so, the Examiner “twists and

contorts the plain meaning of the terms ‘outermost exterior surface’ in a way that defies common sense” and “would not be recognized as an ‘outermost exterior surface’ by one skilled in the art.”<sup>2</sup> Br. 21, 26.

The description provided by Schwartz ’764 with respect to “bushing 3 assembled with the body 1” supports Appellants’ arguments. Schwartz ’764, 1:72–73. Schwartz ’764 describes the Examiner’s encircled portions above as that part of the U-shaped bushing 3 which “is inwardly returned upon itself.” Schwartz ’764, 1:74–75. Schwartz ’764 also discloses “the bushing being interiorly threaded” and that there is an “outer side 6 of the bushing” and an inner side that contains flange 7. Schwartz ’764, 1:78–96, 2:24–25.

A full depiction of Figure 3 of Schwartz ’764 is provided below.



Above Figure 3 of Schwartz ’764 is a sectional view of the interconnection between bushing 3 and body 1

In view of the above, the Examiner does not explain how the encircled portions in the Examiner’s annotated figure (which includes interior threading but excludes “outer side 6”) can reasonably be said to

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<sup>2</sup> Appellants further state, “[t]o call this interior surface an ‘outermost exterior surface’ completely ignores the meaning of the term ‘outermost.’” Br. 26.

disclose the recited “outermost exterior surface” of the component fastening structure.

We are instructed that “[a]n examiner’s belief, however, must be tethered to or grounded in some rationale so as to establish a prima facie case of anticipation.” *In re Chudik*, 674 Fed. App’x 1011, 1015 (Fed. Cir. 2017) (referencing *In re Schreiber*, 128 F.3d 1473, 1478 (Fed. Cir. 1997)). Accordingly, and based on the record presented, the Examiner has not reasonably established by a preponderance of the evidence that Schwartz ’764 anticipates this limitation.

“non-overlapping sequence”

The Examiner again relies on an annotation of Figure 3 of Schwartz ’764 for disclosing the limitation of first, second, and central regions each “arranged along an elongate axis in a non-overlapping sequence.” Ans. 4. Appellants disagree stating, “[t]he lowest, ‘second region’ circled by the Examiner on page 5 of the [Final] Office Action, turns upwardly along the left side of the bushing and overlaps with the ‘first’ and ‘central’ regions circled by the Examiner.” Br. 28. Here, Appellants are focusing on the un-circled portion of the bushing (identified by Schwartz ’764 as “outer side 6”). This un-circled portion is located above the identified “Second region” and to the left of the identified “First region” and “Central region.” *See also* Schwartz ’764, Fig. 3. The Examiner states that this un-circled region “is not part of the outlined first, second, or central regions. As such, it does not contradict the claim limitation.” Ans. 4.

The Examiner has masterfully drawn the three encirclements so as to avoid any overlapping (see above), but the Examiner, in doing so, has failed to take into account the entirety of what Schwartz ’764 would have taught to

one skilled in the art. The Examiner does not explain how one skilled in the art, upon a reading of Schwartz '764, would not be aware that the correlated second region continues upwardly as Appellants state. It is further noted that any elimination of this non-circled “outer side 6” would deprive tank wall 1 of the ability to engage and be secured to bushing 3. *See* Schwartz '764, 1:69–83. We are instructed that “rejections under 35 U.S.C. § 102 are proper only when the claimed subject matter *is* identically disclosed or described in ‘the prior art’” and that “picking and choosing may be entirely proper in the making of a 103, obviousness rejection, . . . but it has no place in the making of a 102, anticipation rejection.” *In re Arkley*, 455 F.2d 586, 587–88 (CCPA 1972). Accordingly, and based on the record presented, the Examiner has not established by a preponderance of the evidence that Schwartz '764 anticipates this limitation.

*central perimeter “smaller than” first and said second perimeters*

The claim limitation in dispute reads: “said central region outermost perimeter is smaller than said outermost perimeter of said first and said second regions.” As above, an investigation into an “outermost perimeter” region is necessary. *See also* Ans. 5.

Appellants repeat their contention that the “outermost exterior surface” is, in reality, “the leftmost surface.” Br. 29. This region encompasses that which was not encircled by the Examiner in the above annotation (i.e., “outer side 6”). Under this premise, and as per Appellants, “[t]he outermost exterior surface of Schwartz '764 does not include a central region having a smaller outermost perimeter tha[n] the first and second regions.” Br. 29. The Examiner, on the other hand, contends that the encircled and identified “central region clearly has an outermost perimeter

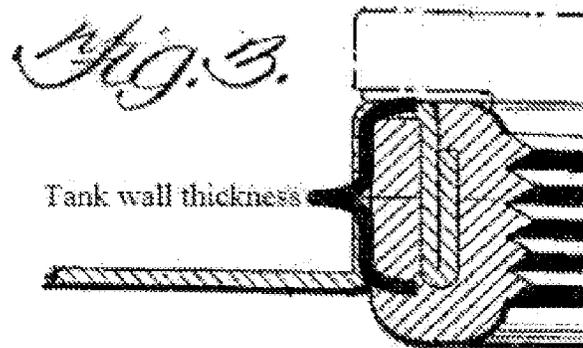
that is smaller than the outermost perimeter of the first and second regions.”

Ans. 5. Regarding the non-encircled region referenced by Appellants, the Examiner repeats, “that is not part of the outlined first, second, or central regions. As such, it does not contradict the claim limitation.” Ans. 5.

As above, the Examiner has masterfully drawn the three encirclements with the first and central encirclements excluding any “outer side 6 of the bushing” as described by Schwartz ’764. Schwartz ’764, 1:78–79. For similar reasons already expressed, we agree with Appellants that the Examiner’s description of the identified first and central regions being an “outermost” region is in error. Accordingly, and based on the record presented, we are not persuaded the Examiner has established that Schwartz ’764 anticipates this limitation.

“tank wall thickness”

The limitation in question defines “a tank wall thickness” as being “measured adjacent to said component fastening structure” in an axial direction, and further, “said thickness extending along said elongate axis completely along said central region.” The Examiner provides yet another annotation of a portion of Figure 3 of Schwartz ’764 depicting what the Examiner identifies as “[t]ank wall thickness.” Ans. 4. This additional annotation is replicated below.



The above Figure 3 of Schwartz '764 has been annotated by the Examiner to identify “[t]ank wall thickness.”

Based on the Examiner’s identification of a tank wall thickness, the Examiner concludes that this limitation is taught by Schwartz '764 since such thickness extends “completely along said central region of said fastening structure.” Ans. 3–4; *see also* Final Act. 4.

Appellants dispute the Examiner’s identification above as being a “tank wall thickness.” Instead, as per Appellants, Schwartz '764 “discloses a body wall 1 that is very thin when compared to a height of its bushing 3.” Br. 27 (referencing Schwartz '764, Figs. 3, 6). Appellants acknowledge that this tank wall thickness has been “bent into a U-shape that meshes with the U-shape of the bushing” but that the tank wall being folded back on itself as illustrated above “cannot be considered a thickness of the body wall.” Br. 27.

There is merit to Appellants’ contentions. Claim 25 recites that the measurement is taken “adjacent to said component fastening structure” whereas the Examiner identifies this measurement being taken within such structure. Even presuming the Examiner identifies “tank wall thickness” as the vertical run abutting the outer region of bushing 3 (i.e., exterior of “outer side 6 of the bushing”), the Examiner does not explain how one skilled in the

art would understand the vertical extent of this run as being a tank wall thickness. Further, because claim 25 recites that this measurement is taken “adjacent to” the bushing, the understanding of one skilled in the art that the tank wall thickness of Schwartz ’764 is actually a material thickness (as compared to a vertical extent) finds support in the claim language itself.

Furthermore, and as is well-known, “[a] claim is anticipated only if *each and every element as set forth in the claim* is found, either expressly or inherently described, in a single prior art reference” (emphasis added). *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987). Accordingly, and based on the record presented, we are not persuaded the Examiner has established that Schwartz ’764 anticipates this limitation.

In summation, we are not persuaded that Schwartz ’764 anticipates claim 25. We reverse the Examiner’s anticipation rejection of claims 25–27 and 30.

*The rejection of claims 25, 26, and 30  
as anticipated by Schwartz ’241*

Appellants state, “[t]he bushing disclosed by Schwartz ’241 is identical to the bushing disclosed by Schwartz ’764, discussed above” and that the difference between the two “is the shape of the body 1 secured within the cavity of the U-shaped bushing.” Br. 30. Accordingly, “Applicant[s] hereby incorporates into Applicant[s]’ arguments under the Schwartz ’241 rejection, each and every one of the arguments discussed above with respect to the rejection of independent claim 25 under Schwartz ’764.” Br. 30.

The Examiner does not dispute such similarity in structure between the two references. The Examiner likewise replicates the same arguments as above and relies on annotated figures of Schwartz '241 that highlight similarly located structure disclosed in Schwartz '241. Final Act. 6–8; Ans. 5–7. For reasons analogous to those expressed above, we are not persuaded that Schwartz '241 anticipates claim 25. We reverse the Examiner's anticipation rejection of claims 25, 26, and 30.

*The rejection of claims 1, 2, 4, 5, 20–24, 28, 29, and 31  
as unpatentable over Schwartz '764 and Shimoda*

Regarding independent claims 1 and 23, the Examiner relies on the additional reference to Shimoda for teaching “a fuel tank made of a synthetic material.” Final Act. 10, 14. The Examiner relies on Schwartz '764 for their remaining limitations. Final Act. 9–10, 13–14. Appellants dispute the rejection of these independent claims by employing the arguments addressed above with respect to Schwartz '764. Br. 31–45. The Examiner also repeats the reasoning expressed above regarding Schwartz '764 while employing like annotations. Ans. 7–9. For similar reasons, we are not persuaded that independent claims 1 and 23 (and their dependent claims 2, 4, 5, 20–22, 24, 28, 29, and 31) are unpatentable over Schwartz '764 and Shimoda.

*The rejection of claims 1–5, 20–24, 28, 29, and 31  
as unpatentable over Schwartz '241 and Shimoda*

Similar to the above, the Examiner relies on the additional reference to Shimoda for teaching “a fuel tank made of a synthetic material” with respect to independent claims 1 and 23. Final Act. 16, 20. The Examiner relies on Schwartz '241 for their remaining limitations. Final Act. 15–16, 19–20. Appellants dispute the rejection of these independent claims by

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employing the arguments addressed above with respect to Schwartz '241 (i.e., which rely on arguments presented with respect to Schwartz '764 due to similar structure). Br. 45–47. The Examiner also repeats the reasoning expressed above regarding Schwartz '241 while employing like annotations. Ans. 10–12. For similar reasons, we are not persuaded that independent claims 1 and 23 (and their dependent claims 2–5, 20–22, 24, 28, 29, and 31) are unpatentable over Schwartz '241 and Shimoda.

#### DECISION

The Examiner's rejections of claims 1–5 and 20–31 are reversed.

REVERSED