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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* ROBERT A. HANSEN and BJORN RYDIN

Appeal 2017-005508  
Application 12/479,258  
Technology Center 1700

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Before: LINDA M. GAUDETTE, WESLEY B. DERRICK, and  
MONTÉ T. SQUIRE, *Administrative Patent Judges*.

SQUIRE, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

Appellants<sup>2</sup> appeal under 35 U.S.C. § 134(a) from the Examiner’s final decision rejecting claims 1, 4, 5, 9–14, and 23–25. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

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<sup>1</sup> In our Decision, we refer to the Specification filed June 5, 2009 (“Spec.”); Final Office Action docketed July 27, 2016 (“Final Act.”); Appeal Brief filed September 29, 2016 (“App. Br.”); Examiner’s Answer docketed December 16, 2016 (“Ans.”); and Reply Brief filed February 15, 2017 (“Reply Br.”).

<sup>2</sup> Appellants identify “Albany International Corp.” as the real party in interest. App. Br. 3.

*The Claimed Invention*

Appellants' disclosure relates to an "ultra-compressible/resilient structure" for various uses such as, for example, athletic shoes, regular shoes, boots, floor carpets, carpet pads, sports floors, etc. Spec. 1. According to Appellants, the claimed invention is a "shock-absorbing pad" that provides extremely elastic behavior under load with high through thickness recovery. *Id.* at 3. The structure includes axially and radially elastic hollow members and relatively inelastic yarns in various patterns. Abstract; Spec. 3.

Claim 1 is illustrative of the claimed subject matter on appeal and is reproduced below from the Claims Appendix of the Appeal Brief (App. Br. 17) (key disputed claim language italicized and bolded):

1. A compressible resilient pad, wherein the pad includes a structure having an original thickness, the structure comprising:
  - a plurality of parallel longitudinal yarns;
  - a plurality of parallel cross-direction yarns;
  - a plurality of parallel hollow elastic members;
  - wherein the structure is a laminated structure of independent layers not interwoven*** comprising:
    - a first layer of the parallel yarns running in either the longitudinal or the cross-direction;
    - a second layer of the parallel hollow elastic members on one side of the first layer, the second layer's hollow elastic members running in the longitudinal or cross-direction different from that of the first layer; and
    - a third layer of the parallel yarns on the opposite side of the second layer as the first layer and running in the same direction as those of the first layer, wherein the parallel yarns of the third layer are aligned such that the parallel yarns of the third layer nest between the parallel yarns of the first layer without

interfering with one another to allow the structure to compact to form a planar structure in a through thickness direction when the pad is under a pressure load;

wherein the hollow elastic members are elastic in their thickness or radial direction and length or axial direction such that under the pressure load the hollow elastic members stretch and compress to conform to the nesting and, the structure springs back to substantially the original thickness after removal of the pressure load.

### *The References*

The Examiner relies on the following references as evidence in rejecting the claims on appeal:

Fontana (hereinafter “Fontana ’840”)	US 4,328,840	May 11, 1982
Fontana (hereinafter “Fontana ’841”)	US 4,328,841	May 11, 1982
Crook	US 4,555,440	Nov. 26, 1985
Kuznetz	US 4,569,874	Feb. 11, 1986
Renjilian	US 4,569,883	Feb. 11, 1986
Westhead	US 4,870,998	Oct. 3, 1989
Cederblad et al., (hereinafter “Cederblad”)	US 6,391,420 B1	May 21, 2002
Hansen	US 6,630,223 B2	Oct. 7, 2003

### *The Rejections*

On appeal, the Examiner maintains the following rejections:

1. Claims 1, 4, 5, 9–14, and 23–25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fontana ’840 in view of Kuznetz (“Rejection 1”). Ans. 2.

2. Claims 1, 4, 5, 9–14, and 23–25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fontana '840 in view of Kuznetz as applied to claims 1, 4, 5, 9–14 and 23–25 above, and further in view of Cederblad (“Rejection 2”). Ans. 5.

3. Claims 1, 4, 5, 9–14, and 23–25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fontana '841 in view of Kuznetz (“Rejection 3”). Ans. 5.

4. Claims 1, 4, 5, 9–14, and 23–25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fontana '841 in view of Kuznetz as applied to claims 1, 4, 5, 9–14 and 23–25 above, and further in view of Cederblad (“Rejection 4”). Ans. 7.

5. Claims 1, 4, 5, 9–14, and 23–25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Crook in view of Westhead, and further in view of Renjilian or Hansen (“Rejection 5”). Ans. 8.

## OPINION

### Rejection 1

The Examiner determines that the combination of Fontana '840 and Kuznetz teaches or suggests all of the limitations of claim 1 and thus, concludes that the combination would have rendered claim 1 obvious. Ans. 2–4.

The Examiner relies on the Fontana '840 reference for disclosing the “laminated structure” element of claim 1. Ans. 2. In particular, the Examiner finds that the fabric structure Fontana '840 discloses is a “laminate comprising first, second, and third independent layers not interwoven.” *Id.* at 2 (citing Fontana '840, Fig. 1, col. 2, ll. 14–32, col. 4, ll. 4–19).

Appellants argue that the Examiner's rejection of claim 1 should be reversed because Fontana '840 does not teach or suggest a "laminated structure," as recited in the claim. App. Br. 5; *see also* Reply Br. 3.

Appellants' argument is persuasive because the Examiner has not established by a preponderance of the evidence that the cited art teaches or suggests a "laminated structure," as required by claim 1. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992) (holding that the examiner bears the initial burden of establishing a prima facie case of obviousness.).

Claim 1 recites that "the structure is a laminated structure of independent layers not interwoven." App. Br. 17 (Claims App'x). The Specification discloses that the laminated structure includes "two independently woven fabric layers with the hollow elastic member layer there between." Spec. 6, ll. 12–14. Figure 10A of the Specification also shows the claimed laminated structure having the hollow elastic member **40** and functional yarns **20**, **30** laminated between two fabrics, as described at page 6 of the Specification. *See* Spec. 12, ll. 19–21, Fig. 10A.

The Examiner, however, does not provide an adequate technical explanation or direct us to sufficient evidence that Fontana '840 teaches or suggest a "laminated structure," as required by the claim. The portions of Fontana '840 upon which the Examiner relies do not teach or suggest a laminated structure. *See* Fontana '840 col. 2, ll. 14–32 (disclosing the "fabric weave" of Figure 1 with warp comprising rubber threads and weft comprising wool threads), col. 4, ll. 4–19 (disclosing that "instead of rubber threads, threads of other elastomeric material may be used" and the fabric provides the user "the advantage of using either side of the fabric in contact with the skin"), Fig. 1 (depicting a "double side fabric" structure).

Rather, as Appellants note, the cited portions of Fontana '840 upon which the Examiner relies are directed to and merely describe a woven structure resulting from interlacing warp fibers and weft fibers in a weave pattern where the interlocking fibers hold the fabric together. App. Br. 4, 5. Indeed, the Fontana '840 reference itself describes the structure it discloses as a “double side fabric” (Fontana '840, Abstract, col. 1, ll. 1–9) and teaches that the fabric “can be easily manufactured on looms of known type.” *Id.* at col. 1, ll. 29–31. There is no teaching, suggestion, or even mention in Fontana '840 of the double side fabric being a laminated structure of independent layers not interwoven, as claimed.

Moreover, for the reasons provided by Appellants at pages 4–9 of the Appeal Brief and pages 3–7 of the Reply Brief and in light of the claim language and the Specification’s disclosure regarding the claimed “laminated structure” having two independently woven fabric layers with the hollow elastic member layer there between, we are not persuaded by a preponderance of the evidence that a person of ordinary skill in the art would have understood the prior art’s woven structure as corresponding to Appellants’ claimed laminated structure. The Examiner’s discussion at pages 11–19 of the Answer, without more, does not sufficiently address Appellants’ principal argument that Fontana '840 merely discloses a woven structure — and does not teach or suggest a laminated structure, as claimed.

We, therefore, cannot sustain the Examiner’s rejection because Fontana '840 in view of Kuznetz does not disclose or suggest all of the limitations of claim 1.

Because claims 4, 5, 9–14, and 23–25 each depends from claim 1, we also cannot sustain the Examiner’s rejection of these claims.

Accordingly, we reverse the Examiner's rejection of claims 1, 4, 5, 9–14, and 23–25 under 35 U.S.C. § 103(a) as obvious over the combination of Fontana '840 and Kuznetz.

Rejection 3

Because the Examiner's Rejection 3 is based on the Fontana '841 reference, the Fontana '841 reference's disclosure is similar to the disclosure of the Fontana '840 reference (*compare* Fontana '841, Fig. 1, col. 1, l. 66–col. 2, l. 12 *to* Fontana '840, Fig. 1, col. 2, ll. 14–32), and the Examiner's analysis for Rejection 3 rests on principally the same flawed findings and conclusions as Rejection 1, we also reverse the Examiner's rejection of claims 1, 4, 5, 9–14, and 23–25 under 35 U.S.C. § 103(a) as obvious over the combination of Fontana '841 and Kuznetz (Rejection 3, stated above).

Rejections 2 and 4

The foregoing deficiencies in the Examiner's findings and conclusions regarding the Fontana '840 (Rejection 1, stated above) and Fontana '841 (Rejection 3, stated above) references, respectively, are not remedied by the Examiner's findings regarding the additional references or combination of references cited in support of the second and fourth grounds of rejection.

Accordingly, we also reverse the Examiner's rejections of claims 1, 4, 5, 9–14, and 23–25 under 35 U.S.C. § 103(a) as obvious over the combination of Fontana '840, Kuznetz, and Cederblad (Rejection 2, stated above) and the combination of Fontana '841, Kuznetz, and Cederblad (Rejection 4, stated above), respectively.

Rejection 5

The Examiner determines that the combination of Crook, Westhead, and Renjilian or Hansen suggests a pad satisfying all of the limitations of claim 1 and thus, concludes that the combination would have rendered the claim obvious. Ans. 8–9.

Appellants argue that the Examiner’s rejection should be reversed because one of ordinary skill in the art would not have had reason to combine the teachings of Crook and Westhead to arrive at the claimed invention. App. Br. 13–14; *see also* Reply Br. 12–13. In particular, Appellants argue that because Crook is concerned with compaction resistance and Westhead is directed to a woven structure to prevent fabric shrinkage, absent impermissible hindsight, one of ordinary skill in the art would not have been motivated to combine Crook’s and Westhead’s teachings. App. Br. 14–16.

We agree with Appellants’ argument in this regard. On the record before us, we are not persuaded that the Examiner identifies evidence and provides reasoning sufficient to support a finding that one of ordinary skill would have had reason to combine the teachings regarding Crook’s compaction-resistant structure with the teachings regarding Westhead’s woven structure to arrive at the claimed invention. *Oetiker*, 977 F.2d at 1445.

In particular, principally for the reasons provided by Appellants at pages 13–16 of the Appeal Brief and pages 12–13 of the Reply Brief, we concur with Appellants that because Crook discloses a structure that is intended to resist compaction (Crook, col. 1, ll. 18–21, 30–31, 42–45, col. 2, ll. 40–46), the reference actually teaches away from the claimed invention,

which is directed to a structure that is “compressible” and “springs back to substantially the original thickness after removal of the pressure load,” as claimed. A reference teaches away when a person of ordinary skill, upon reading the reference, would have been led in a direction divergent from that chosen by Appellants. *In re Haruna*, 249 F.3d 1327, 1355 (Fed. Cir. 2001).

The Examiner’s comments regarding Crook’s structure acting as a “shock absorber” at pages 21–22 of the Answer, without more, do not adequately address Appellants’ argument in this regard. Rather, we find that Crook’s disclosure regarding a “shock absorber,” particularly, that the plied monofilament “layer acts as a shock absorber to dampen the effects of sudden compressive forces on the felt” (i.e., to resist compaction), actually supports Appellants’ teaching away argument. Crook, col. 2, ll. 44–46; *see also id.* at col. 2, ll. 40–41.

We, therefore, do not agree with the Examiner’s determination that the combination of Crook and Westhead suggests a pad satisfying all of the limitations of claim 1 and that the combination of Crook, Westhead, and Renjilian or Hansen would have rendered claim 1 obvious. Thus, we do not sustain the rejection of claim 1.

Because claims 4, 5, 9–14, and 23–25 each depends from claim 1, we also do not sustain the Examiner’s rejection of these claims.

Accordingly, we reverse the Examiner’s rejection of claims 1, 4, 5, 9–14, and 23–25 under 35 U.S.C. § 103(a) as being obvious over the combination of Crook, Westhead, and Renjilian or Hansen.

Appeal 2017-005508  
Application 12/479,258

DECISION

The Examiner's rejections of claims 1, 4, 5, 9–14, and 23–25 are reversed.

It is ordered that the Examiner's decision is reversed.

REVERSED