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EXAMINER

SCHATZ, CHRISTOPHER T

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HARALD HERMANN HUNDORF, PETER OSTLE,
SIEGFRIED LINK, and MARTIN DOHMEN

Appeal 2017-005701
Application 13/191,726
Technology Center 1700

Before RAE LYNN P. GUEST, CHRISTOPHER C. KENNEDY, and
MERRELL C. CASHION, JR., *Administrative Patent Judges*.

CASHION, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134 from a final rejection of
claims 1–7, 9, and 10. We have jurisdiction under 35 U.S.C. § 6.

We REVERSE.

Claim 1 is illustrative of the subject matter on appeal and is reproduced below:

1. An apparatus for making a structure that comprises a combination of a particulate material and a substrate material, including:

a) a first moving endless surface with a direction of movement (MD) and with one or more of reservoirs, said first moving endless surface and reservoirs thereof being for transferring particulate material to:

b) a second moving endless surface with a direction of movement (MD) carrying a substrate material for receiving said particulate material from said first moving endless surface in a receiving zone and for transferring said combination of said particulate material and said substrate material in a transferring zone, said second moving endless surface being in said receiving zone adjacent a first vacuum chamber and being in gas communication therewith, and said second moving endless surface being in said transferring zone adjacent a second vacuum chamber, and being in gas communication therewith, said receiving zone and said transferring zone being adjacent (in MD) one another,

c) an adhesive application unit for applying adhesive to said combination of said substrate and said particulate material, said adhesive application unit positioned downstream of said first moving endless surface opposite said second moving endless surface and said second vacuum chamber in said transferring zone; wherein the ratio of the said negative vacuum pressure in said first vacuum chamber to the negative vacuum pressure in said second vacuum chamber is at least 4:3; and

d) an anvil roll downstream of said transferring zone for receiving said combination of said particulate material and said substrate material and combining said combination with a further substrate material.

Appellant¹ (*see generally* Appeal Brief) requests review of the following rejections from the Examiner's Final Action:

I. Claims 1–7 and 10 are rejected under 35 U.S.C. § 103(a) as unpatentable over Blessing '695 (US 2006/0021695 A1, published February 2, 2006), Ando (US 6,706,129 B2, issued March 16, 2004), and Blessing '880 (US 2006/0048880 A1, published March 9, 2006).

II. Claim 9 is rejected under 35 U.S.C. § 103(a) as unpatentable over Blessing '695, Ando, Blessing '880, and Hinton (US 5,964,974, issued October 12, 1999).

For Rejection I, Appellant does not argue any claim separate from the other. *See generally* App. Br. For the separate Rejections II, Appellant relies on the arguments presented when discussing Rejection I and do not distinguish the additional features of the rejected claim based on the additionally cited reference. *Id.* Accordingly, we select claim 1 as representative of the subject matter before us for review on appeal and decide the appeal as to all grounds of rejection based on the arguments made by Appellant in support of patentability of claim 1.

¹ Marion Hundorf is the Applicant. The real party in interest is identified as The Procter & Gamble Company of Cincinnati, Ohio. App. Br. 1.

OPINION

The Prior Art Rejections²

After review of the respective positions provided by Appellant and the Examiner, we REVERSE the Examiner's prior art rejections of claims 1–7, 9, and 10 under 35 U.S.C. § 103(a) for the reasons presented by Appellant and add the following.

The invention is directed to an apparatus for making a structure comprising a combination of a particulate material and a substrate material. Spec. 1–3. The apparatus comprises first and second moving endless surfaces, where the second moving endless surface has first and second vacuum chambers respectively defining a receiving zone to receive a combined substrate/particulate material assembly and a transferring zone to eventually transfer the combined substrate/particulate material assembly onto another substrate fed by an anvil roll downstream of the transferring zone. *Id.* at 1–3, 12. The invention is said to deposit particulate material onto a substrate in an accurate and cost effective manner. *Id.* at 2.

The Examiner finds Blessing '695 discloses an apparatus having first and second moving endless belts, as well as an anvil roll associated with the second moving endless belt, where the apparatus differs from the claimed invention in that the second moving belt of Blessing '695 does not have a second vacuum chamber/transferring zone as claimed. Final Act. 2–3; Blessing '695 Figures 4A and 4B, ¶¶ 66–75. The Examiner finds Ando

² A discussion of the reference Blessing '880 cited in the rejection of claim 1 is unnecessary for disposition of this appeal because the reference was cited to address the placement of an adhesive application unit. Final Act. 4–5. Blessing '880 was not cited to address the claimed transfer zone/anvil roll arrangement.

discloses an apparatus comprising first and second moving endless belts for dispensing particulate material onto a substrate material, where the second moving endless belt comprises vacuum chambers defining the claimed receiving and transferring zones that ensures the arrangement and fixture of the particles to the inside of the substrate material (retaining sheet). Final Act. 3–4 (citing Ando col. 3, l. 1–col. 4, l. 27 and Figure 1). The Examiner determines it would have been obvious to one of ordinary skill in the art to modify the apparatus of Blessing '695 by providing the second moving endless belt of the apparatus of Blessing '695 with a second vacuum chamber/transferring zone, as claimed, in view of Ando's teaching that such a modification enables the receiving zone to more easily retain the substrate and the particles that are being transferred. Final Act. 3–4 (citing Ando col. 3, ll. 26–45).

Appellant contends that the cited references do not disclose an anvil roll downstream of a transferring zone, as claimed, and the Examiner has failed to explain why it would have been obvious to modify the cited references to include the claimed anvil roll. App. Br. 4.

We agree with Appellant that the Examiner has failed to establish a prima facie case of obviousness. The Examiner has not provided a sufficient reason to combine the references. While both Blessing '695 and Ando teach devices for producing absorbent core structures comprising particulate material (Blessing '695 ¶ 1; Ando col. 1, ll. 6–12), the Examiner does not adequately explain why one skilled in the art would have added a second vacuum chamber/transferring zone to the second endless moving belt of the apparatus of Blessing '695 solely for the purpose of transferring the substrate and particle materials between the receiving zone and the anvil roll when in

Blessing '695 the receiving zone and anvil roll are adjacent one another. Ando provides no particular rationale or advantage to having a second vacuum chamber/transferring zone (*see generally* Ando, col. 3, ll. 14-25), and the Examiner has articulated none.

Moreover, Figure 1 of Ando teaches the use of an anvil roll for receiving a combination of a particulate material and a substrate material and for combining this combination with a further substrate material at a point *upstream* of the transferring zone defined by vacuum chamber (c), the chamber identified by the Examiner as meeting the claimed second vacuum chamber/transferring zone. Final Act. 3. Given this teaching by Ando, the Examiner has not adequately explained how one skilled in the art would have modified the second endless moving belt of the apparatus of Blessing '695 to incorporate a second vacuum chamber/transferring zone and still arrive at the claimed arrangement of an anvil roll located *downstream* of the transferring zone without the benefit of hindsight of Appellant's invention.

Accordingly we reverse the Examiner's prior art rejections of claims 1-7, 9, and 10 under 35 U.S.C. § 103(a) for the reasons presented by Appellant and given above.

ORDER

The Examiner's prior art rejections of claims 1-7, 9, and 10 under 35 U.S.C. § 103(a) are reversed.

REVERSED