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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KELLEY TERRELL

Appeal 2018-002149
Application 14/025,347¹
Technology Center 1700

Before KAREN M. HASTINGS, JAMES C. HOUSEL, and
JEFFREY R. SNAY, *Administrative Patent Judges*.

HOUSEL, *Administrative Patent Judge*.

DECISION ON APPEAL

A. STATEMENT OF THE CASE

Appellant filed an appeal under 35 U.S.C. § 134(a) from the Examiner's final decision rejecting claims 1, 2, 5–9, and 11.²

¹ Appellant identifies the real party in interest as the Applicant. Appeal Brief ("Appeal Br.") 2, filed July 25, 2017. The Application Data Sheet filed September 12, 2013 identifies the Applicant as the assignee. According to the assignment recorded on September 23, 2013 at reel 031261, frame 0012, the assignee is Encompass Group, LLC.

² Claims 12–16 have been withdrawn from consideration. Final Office Action ("Final Act.") Office Action Summary, dated February 3, 2017.

We have jurisdiction under 35 U.S.C. § 6(b).³

We AFFIRM.

The subject matter on appeal relates to metallized fabrics (*see, e.g.*, claims 1 and 8). According to the Inventor, blankets and clothing may be made of a metalized material to provide infrared heat reflecting capabilities to prevent heat loss from a person but such fabrics are usually stiff and not soft to the touch. Spec. 1:12–16. The Inventor states it would be desirable to have a metalized fabric material that is softer and less stiff so it provides better draping and loft characteristics. *Id.* 1:22–24. In view of this, the Inventor discloses a metalized fabric including a layered structure having a bond pattern that forms a series of large pillowed areas and smaller pillowed areas that, according to the Inventor’s belief, provide greater insulative qualities, a softer feel, better glare reduction, improved drapability, and improved loft. *Id.* 3:1–8, 21–22.

Independent claim 1 is illustrative and is reproduced below from the Claims Appendix of the Appeal Brief. Limitations at issue are italicized.

1. A metalized fabric comprising:
 - a first layer of a thermoplastic material;
 - a second layer of a vaporized metal material overlaying said first layer;
 - a third layer of a thermoplastic material overlaying said second layer opposite said first layer, and
 - a fourth layer of a lofted spunbond thermoplastic material overlaying said third layer opposite said second layer,
wherein said fourth layer is bonded to said third layer along fragmented seals to form a series of large pillowed areas having a first size and a series of small pillowed areas

³ Our Decision additionally refers to the Specification (“Spec.”) filed September 12, 2013, the Examiner’s Answer (“Ans.”) dated October 20, 2017, and the Reply Brief (“Reply Br.”) filed December 19, 2017.

surrounding each said large pillowed area having a second size smaller than said first size.

REJECTIONS ON APPEAL⁴

- I. Claim 11 under 35 U.S.C. § 112(b) as being indefinite.
- II. Claims 1, 2, 5–9, and 11 under 35 U.S.C. § 103 as being unpatentable over Applicant’s Admitted Prior Art (AAPA) in view of Van Gompel⁵ and Kauschke;⁶ and
- III. Claims 1, 2, 5–9, and 11 as being unpatentable under 35 U.S.C. § 103 over AAPA in view of Squires⁷ and Kauschke.

B. DISCUSSION

Rejection I

Claim 11 is rejected under 35 U.S.C. § 112(b) as being indefinite. As stated by the Examiner (Ans. 7), Appellant has not argued the rejection of claim 11 under § 112(b). We, therefore, summarily affirm the Examiner’s § 112(b) rejection of claim 11.

Rejections II and III

Claims 1, 2, 5–9, and 11 are rejected under 35 U.S.C. § 103 as being unpatentable over AAPA in view of Van Gompel and Kauschke.

⁴ The rejections of claims 1, 2, and 5–9 under 35 U.S.C. § 112(b) have been withdrawn by the Examiner. Ans. 2.

⁵ Van Gompel et al., US 4,725,473, issued Feb. 16, 1988 (“Van Gompel”).

⁶ Kauschke et al., US 6,610,390 B1, issued Aug. 26, 2003 (“Kauschke”).

⁷ Squires et al., US 6,986,825 B1, issued Jan. 17, 2006 (“Squires”).

Claims 1, 2, 5–9, and 11 are rejected as being unpatentable under 35 U.S.C. § 103 over AAPA in view of Squires and Kauschke.

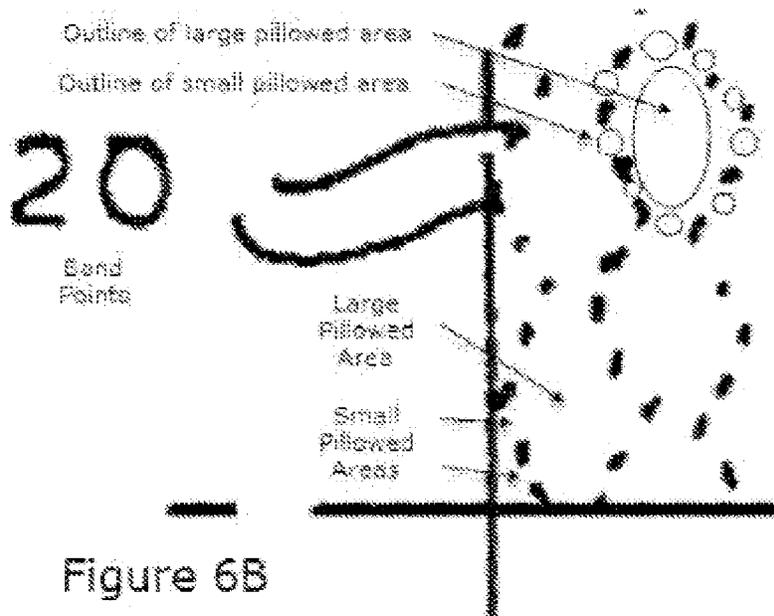
For the rejection over AAPA, Van Gompel, and Kauschke, the Examiner finds AAPA discloses a metallized fabric including the four layers recited in claim 1. *Id.* at 3. The Examiner finds Van Gompel discloses point bonding nonwoven fabrics in the garment art to provide lofted areas that improve loft, softness and flexibility. The Examiner concludes it would have been obvious to modify AAPA to include Van Gompel's point bonding in view of these advantages. *Id.* at 3–4. The Examiner finds Van Gompel does not disclose the large and small pillowed areas of claim 1 but finds Kauschke discloses varying a point bond pattern to include large areas surrounded by small areas to make a fabric with desired stretch characteristics. *Id.* at 4. The Examiner concludes it would have been obvious to include the point bond pattern of Kauschke to vary stretch characteristics of the metallized fabric of AAPA, as modified in view of Van Gompel. *Id.*

For the rejection over AAPA, Squires, and Kauschke, the Examiner makes similar findings and conclusions with regard to AAPA and Kauschke to those discussed above. *Id.* at 5–6. Similar to Van Gompel, the Examiner finds Squires discloses point bonding a nonwoven fabric to provide lofted areas and concludes it would have been obvious to modify the metallized fabric of AAPA to include such point bonding to improve its flexibility and textile character, as taught by Squires. *Id.* at 5.

Appellant contends AAPA, Van Gompel, and Squires do not disclose or suggest the pillowed areas of claim 1. Appeal Br. 5, 12; Reply Br. 3–4. Appellant asserts Kauschke also does not disclose the pillowed areas

because Kauschke’s drawings depict “pillowed areas of generally the exact same size.” Appeal Br. 5–12.

Citing Figure 6B of Kauschke, the Examiner explains that gaps between adjacent bond points form small pillowed areas and large pillowed areas are formed by the pattern of bond points. Ans. 8. The Examiner’s annotated portion of Figure 6B is reproduced below.



Portion of Kauschke’s Figure 6B, as annotated by the Examiner.

Kauschke discloses a nonwoven fabric including bonding points **20**.⁸ Kauschke 1:56–59, 3:54–56. Although the overall pattern depicted in Kauschke’s Figure 6B appears to provide diamond shapes of approximately equal size (i.e., the large unbonded area between bond points **20** identified by the Examiner as the large pillow area), Kauschke demonstrates it was

⁸ Throughout this Decision, for clarity, we present labels to elements in figures in bold font, regardless of their presentation in the original document.

known in the art to use point bonding patterns to provide large unbonded areas and small unbonded areas surrounding the large unbonded areas. Specifically, Figure 6B suggests gaps between the bond points **20**, as shown in the annotated copy above, with the gaps surrounding the large unbonded areas. As stated by the Examiner (Ans. 8), this configuration is similar to the embodiment depicted in Appellant's Figure 3, which includes large pillows **20** formed by a pattern of individual seals **23** and small pillows formed between pairs of seals **23**. As discussed by the Examiner (Ans. 10), claim 1 does not recite a particular structure for fragmented seals, the large pillowed areas, or the small pillowed areas that distinguishes the claimed pillowed areas from the structure disclosed by Kauschke.

Moreover, the Examiner explains Kauschke discloses an embodiment in which bond points **20'** have an oval shape with a raised center portion **24a'**, with a pattern of the bond points **20'** forming large pillowed areas surrounded by small pillow areas provided by each bond point **20'**, as shown in Figure 6A. Ans. 9. A copy of Kauschke's Figure 6A is reproduced below.

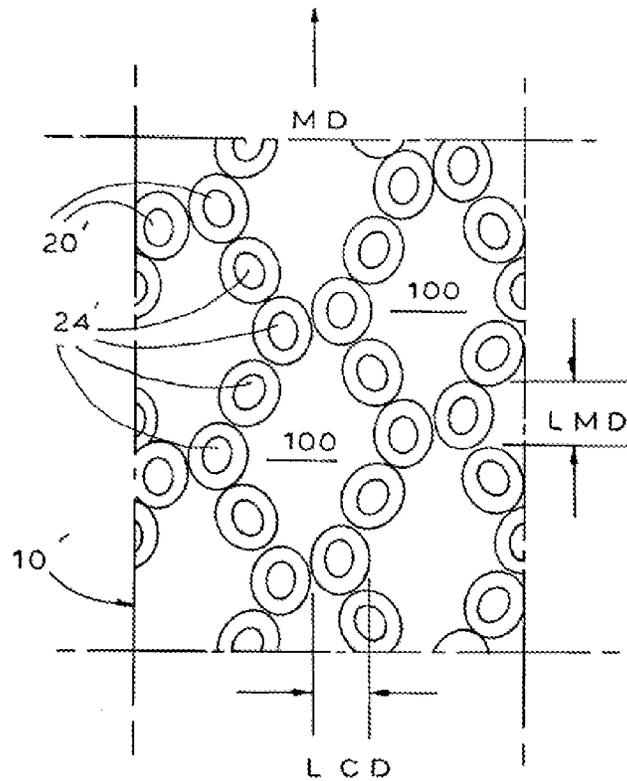


FIG. 6A

Figure 6A is a top view of an oval bond point pattern.

Kauschke discloses that bond points can be substantially circular or substantially oval and that oval bond points define a bonded oval having an annulus with a raised center portion **24a'**. Kauschke 4:13–16, 4:66–67, 5:1–2, 5:52–56. Thus, Kauschke discloses bond point patterns that form small pillowed areas surrounding large pillowed areas, as recited in claim 1. Further, Kauschke discloses its bond pattern permits the elongation ratio between a cross direction (CD) and a machine direction (MD) of a nonwoven fabric to be varied. *Id.* 7:67, 8:1–5. As a result, Kauschke's disclosure supports the Examiner's findings and rationale to modify AAPA,

as modified in view of Van Gompel or Squires, and further in view of Kauschke.

In response to the Examiner's Answer, Appellant argues Kauschke's bond points "must be extremely small and close together" with a small separation between their centers and therefore "it is not possible for the material to separate or bellow to form any kind of 'pillowed areas.'" Reply Br. 2–3. However, Appellant does not present any evidence or persuasive technical reasoning to support their assertion that Kauschke's bond point patterns would not produce small pillow areas, other than the distance between the bond points, which in of itself is insufficient to persuade us that Kauschke's bond point pattern would not result in small pillow areas or would produce small pillow areas that are structurally different than Appellant's claimed structure.

In response to the Examiner's explanation regarding the oval bond points depicted in Kauschke's Figure 6A, Appellant contends the oval bond points **20'** do not define a pillow area because their raised center portions **24a'** are part of a bond point where fibers are melted together to form a unified area. Reply Br. 2. This argument is also unpersuasive because, as discussed above, Kauschke discloses the oval bond points are bonded ovals having an annulus with a raised center portion **24a'**. Kauschke 4:13–16, 4:66–67, 5:1–2, 5:52–56. This suggests the bond is limited to the bonded oval (see annulus for bond points **20'** in Figure 6A) and the raised center portion **24a'** is unbonded and raised, per its description, thus forming a pillowed area within the annulus of the bonded oval.

As a result, Appellant's arguments do not identify a reversible error in the Examiner's rejection of claim 1.

The arguments presented for claim 8 are similar to those for claim 1. *Compare* Appeal Br. 4–19 *with id.* at 19–33. Appellant does not argue claims 2, 5–7, 9, and 11 separately from claims 1 and 8. *Id.* at 4–33.

For these reasons and those set forth in the Examiner’s Answer, we sustain the Examiner’s § 103 rejections of claims 1, 2, 5–9, and 11.

C. DECISION

The decision of the Examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED