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Convatec Technologies Inc. Taft Stettinius & Hollister LLP One Indiana Square Suite 3500 Indianapolis, IN 46204			CHOL, PETER Y	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PAUL JOHN FERGUSON

Appeal 2018-003435
Application 11/688,583
Technology Center 1700

Before CATHERINE Q. TIMM, JEFFREY R. SNAY, and
MICHAEL G. McMANUS, *Administrative Patent Judges*.

SNAY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant appeals from the Examiner's decision rejecting claims 1–6.¹ We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies ConvaTec Limited as the real party in interest. Appeal Br. 3.

BACKGROUND

The invention relates to a wound dressing. Spec. 1. The disclosed dressing comprises gel-forming fibers which are needle-punched through a reinforcing layer. *Id.* at 2. Claim 1 is the sole independent claim:

1. A wound dressing prepared by a single pass needling process comprising the step of needling a non-woven gel-forming fibre material using a single pass process into a reinforcing layer from only a first side of the reinforcing layer so as to penetrate through the reinforcing layer to form a layer of the same non-woven gel-forming material on a second side of the reinforcing layer, so that essentially all the fibres of the non-woven gel-forming fibre material on the second side of the reinforcing layer extend through the reinforcing layer to the layer of non-woven gel-forming fibre material on the first side of the reinforcing layer and-thereby forming a layer of the same non-woven gel-forming fibre material over both sides of the reinforcing layer, such that the reinforcing layer is buried within the structure of the dressing and the two apparent non-woven gel-forming fibre material layers have a single origin rather than being initially separate, wherein the needle punch density is from 40 to 200 ncm⁻², with a penetration of 4 to 15 mm.

Appeal Br. 18 (Claims Appendix).

REJECTIONS

- I. Claims 1–4 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Ferguson,² Dostal,³ and Scully.⁴
- II. Claims 5 and 6 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Ferguson, Dostal, Scully, and Klein.⁵

OPINION

- I. *Rejection I of claims 1–4 over Ferguson, Dostal, and Scully*

With regard to Rejection I, Appellant argues the claims as a group, addressing features recited in claim 1. Appeal Br. 10–15. We select claim 1 as representative. Each of claims 2–4 stands or falls with claim 1.

Relevant to Appellant’s arguments on appeal, the Examiner finds Ferguson discloses a wound dressing prepared by needling gel-forming fiber layers to opposing sides of a reinforcing layer, but fails to teach preparing the dressing by needling a single-origin fiber material through the reinforcing layer such that both gel layers appearing on either side of the reinforcing layer are from a single origin. Final Act. 2. The Examiner finds that Dostal discloses an absorbent article having fibrous material on opposing sides of a reinforcing layer, which article is formed by needling a single-origin fibrous material entirely through the reinforcing layer. *Id.* at 3. The Examiner finds Dostal identifies certain advantages, including the ability to produce a “relatively economical product.” *Id.* (citing Dostal 11:24–31). *See also* Dostal Fig. 2, reproduced below:

² WO 99/67456, published December 29, 1999.

³ US 3,811,445, issued May 21, 1974.

⁴ US 6,077,526, issued June 20, 2000.

⁵ US 2006/0240083 A1, published October 26, 2006.

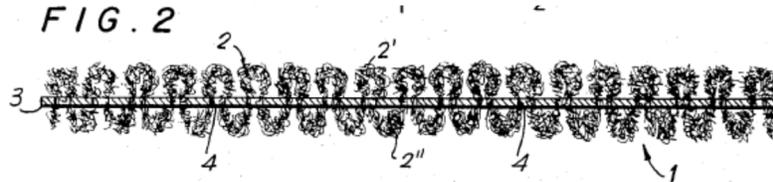


Figure 2 is a cross-sectional view of an absorbent article formed by a single-origin fibrous material 2 needle-punched through a layer 3 such that the same fibrous layer is present on opposing sides of the layer 3. Dostal 3:50–55.

Appellant argues that Dostal is concerned with transferring rayon filaments through cellulose crepe, rather than transferring the recited gel-forming fiber through a reinforcing layer. Appeal Br. 11; Reply Br. 7–8. Relatedly, Appellant argues that one of ordinary skill would not have applied Dostal’s disclosed technique to Ferguson’s material because rayon fibers are significantly stronger than gel-forming fibers. Appeal Br. 12. Appellant points to the Declaration of Stephen M. Bishop (“Decl.”), dated June 15, 2015, as evidence in support of the argument. *Id.* (citing Decl. ¶ 8). Mr. Bishop declares that a “skilled person would readily recognize that the high-intensity needling process of Dostal for rayon fibers would not translate as a process necessarily amenable to the much more fragile gel-forming fibers that are presently claimed.” Decl. ¶ 8. Appellant contends Dostal demonstrates that high intensity needle punching should not be used with relatively fragile materials. *Id.* (citing Dostal 9:6–15).

Having considered Appellant’s arguments and the evidence of record, we are not persuaded of reversible error. Ferguson already teaches needle-punching the recited gel-forming fibers to a reinforcing layer. The Examiner relies on Dostal merely as a teaching that an article having fibrous material on both sides of a layer may economically be formed by needle-punching a

single-origin fibrous layer entirely through a supporting layer. The fact that Dostal identifies a different fibrous material is inapposite to that general teaching. Nor are we persuaded that Dostal teaches against needle punching relatively fragile materials. To the contrary, at the passage relied upon by Appellant, Dostal teaches that articles formed by needle punching fibrous material to a cellulose crepe layer exhibited increased integrity relative to a needle-punched crepe layer alone. Dostal 9:6–15.

Appellant represents that it was surprising and unexpected that a non-woven mat of gel-forming fibers could withstand a single pass needling process. Appeal Br. 13. “It is well settled that unexpected results must be established by factual evidence. Mere argument or conclusory statements in the specification does not suffice.” *In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984) (*citing In re Lindner*, 457 F.2d 506, 508 (CCPA 1972)). Appellant points to no evidence in support of the assertion of an unexpected result. On the other hand, Ferguson teaches needle-punching gel-forming fibers to a supporting layer. Viewing the totality of the evidence before us, we are not persuaded of error in the Examiner’s obviousness determination.

Appellant also argues that none of the relied-upon references teaches the recited needling parameters—namely, needle punch density. Appeal Br. 13–14; Reply Br. 9–11. The Examiner finds that needle punch density would have been recognized as a result-effective variable, such that one skilled in the art would have known to adjust punch density up or down in order to achieve a desired balance of absorbance and degree of bonding in the final product. Final Act. 6; Ans. 17. Dostal and Scully support the Examiner’s finding. *See* Dostal 3:63–4:2 (comparing embodiments having different portions of fibrous filaments punched through a supporting matrix);

Scully 2:45–49 (“The strength of the adhesion between the layers 1,2 is highly dependent upon the number of tacks created by the needling operation and as such the strength of adhesion can be determined to a reasonable degree by design choice.”). Appellant’s argument that the prior art does not specifically identify the recited needle-punch density neither addresses nor identifies error in the Examiner’s obviousness rationale.

For the foregoing reasons and those expressed in the Final Office Action and the Answer, we sustain the Examiner’s rejection of claims 1–4.

II. *Rejection II of claims 5 and 6 over Ferguson, Dostal, Scully and Klein*

Appellant relies on the same arguments discussed above in connection with claim 1. Accordingly, we sustain the Examiner’s rejection of claims 5 and 6 for the same reasons given above regarding claim 1.

CONCLUSION

The Examiner’s decision rejecting claims 1–6 is affirmed.

DECISION SUMMARY

Claim(s) Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–4	103(a)	Ferguson, Dostal, Scully	1–4	
5, 6	103(a)	Ferguson, Dostal, Scully, Klein	5, 6	
Overall Outcome			1–6	

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED