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3624	7590	02/25/2020	EXAMINER	
VOLPE AND KOENIG, P.C. 30 SOUTH 17TH STREET, 18th Floor PHILADELPHIA, PA 19103			KOSANOVIC, HELENA	
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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* MARTIN J. ROTTER

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Appeal 2018-006578  
Application 15/191,784  
Technology Center 3700

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Before NINA L. MEDLOCK, KENNETH G. SCHOPFER, and  
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

SILVERMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision rejecting claims 1–5 and 7–12. We have jurisdiction under 35 U.S.C. § 6(b). An oral hearing was held on February 11, 2020.

We REVERSE.

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<sup>1</sup> We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. The Appellant identifies the named inventor, Martin J. Rotter, as the real party in interest. Appeal Br. 3.

### ILLUSTRATIVE CLAIM

1. A roof ventilation system for asphalt shingle or composition roofs that include a vent slot located through the roof structure along a roof ridge comprising an unrollable vent assembly installable in one piece and having a vent assembly length, the vent assembly comprising an upper water barrier having first and second vent arrangements connected thereto, each of the first and second vent arrangements having a length equal to the vent assembly length and comprising:

at least two continuous longitudinal strips of a non-woven mesh vent material with a continuous longitudinally extending space therebetween, the strips positionable on the roof parallel to the ridge, having a length equal to the length of the vent arrangements, and a downslope side, each downslope side of the strips of each of the vent arrangements fills a respective space between the upper water barrier and the roof in the installed position, the first and second vent arrangements locatable on each side of the ridge vent slot, respectively, to prevent ingress of moisture and debris, wherein the upper water barrier is above the first and second vent arrangements, extending between the first and second vent arrangements and over the vent slot in the installed position.

### REFERENCES

The Examiner relies upon the following references.

<b>Name</b>	<b>References</b>	<b>Date</b>
Watkins	US 4,450,663	May 29, 1984
Hoffmann et al. (hereinafter "Hoffmann")	US 5,002,816	Mar. 26, 1991
Sells (hereinafter "Sells '571")	US 5,427,571	June 27, 1995
Garrison	US 5,826,383	Oct. 27, 1998
Sells (hereinafter "Sells '059")	US 5,830,059	Nov. 3, 1998

## REJECTIONS

- I. Claims 1–3, 5, 7, 11, and 12 are rejected under 35 U.S.C. § 103(a) as unpatentable over Sells '059 and Garrison.<sup>2</sup>
- II. Claims 1–3, and 5 are rejected under 35 U.S.C. § 103(a) as unpatentable over Sells '059.
- III. Claim 4 is rejected under 35 U.S.C. § 103(a) as unpatentable over Sells '059, Garrison, and Sells '571.
- IV. Claims 8 and 9 are rejected under 35 U.S.C. § 103(a) as unpatentable over Sells '059, Garrison, and Hoffmann.
- V. Claim 10 is rejected under 35 U.S.C. § 103(a) as unpatentable over Sells '059, Garrison, and Watkins.

## FINDINGS OF FACT

The findings of fact relied upon, which are supported by a preponderance of the evidence, appear in the following Analysis.

## ANALYSIS

Independent claim 1 — the only independent claim in this Appeal — recites, among other limitations, “at least two continuous longitudinal strips of a non-woven mesh vent material with *a continuous longitudinally extending space* therebetween.” (Emphasis added).

According to the Examiner, the “longitudinally extending space” feature is met by the region between elements 54 and 56 in Figure 5A<sup>3</sup> of

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<sup>2</sup> We regard, as inadvertent, the Examiner’s inclusion of canceled claim 6 in the description of Rejection I. *See* Final Action 2.

<sup>3</sup> The Examiner explains that references to Figure 1A of Sells '059, in the Final Office Action, are “typographical error[s],” noting that “the figure 5A [embodiment] is the figure 1A [embodiment] with the non-woven strip.” Answer 9.

Sells '059. Final Action 2–3, 4–5. *See also* Answer 10 (“Longitudinal space is **between 54 and 56**”).

The Appellant contends that Sells '059 does not disclose the claimed “at least two continuous longitudinal strips of a non-woven mesh vent material with a continuous longitudinally extending space therebetween.” Appeal Br. 7, 10–11, 16–18.

We agree with the Appellant. Elements 54 and 56, of Sells '059, are “edge portions” of “a nonwoven batt indicated by the numeral 52.” Sells '059 col. 3, ll. 6–7. “Portion 54 is clamped between the springs 26, 28, and edge portion 56 is clamped between springs 30, 32.” *Id.* at col. 3, ll. 8–9. Sells discloses that the “batt 52 extends under the springs 28 and 32,” and thus, further explains that batt 52 is one continuous element extending from element 54 to element 56. *Id.* at col. 3, ll. 13–14. This arrangement of features is shown in Figure 5A of the reference, which is reproduced below (with tinting added to batt 52, including its edge portions 54 and 56):

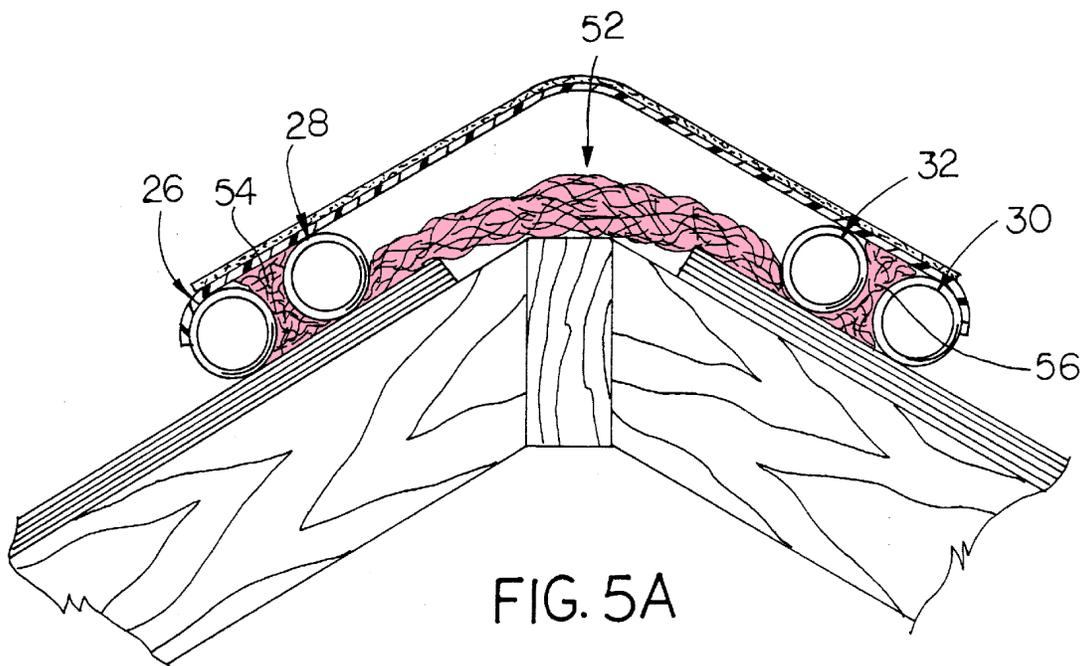


Figure 5A is a cross-sectional view showing the arrangement of batt 52, astride the ridge of a pitched roof, with end portions 54 and 56 between respective pairs of springs 26, 28 and 30, 32.

Contrary to the arrangement shown in Figure 5A of Sells '059 — in which an expanse of batt 52 resides between the batt edge portions 54, 56 — the recited “continuous longitudinally extending space” between “at least two continuous longitudinal strips of a non-woven mesh vent material” cannot be filled with additional “non-woven mesh” material. *See* Appeal Br. 17. Indeed, the Specification supports the understanding that the claimed “longitudinally extending space” be devoid of mesh materials, explaining that the purpose of the “space” is to “create[ ] a dead zone to interrupt capillary flow of moisture along the fibers and filaments used to form the strips of vent material.” Spec. ¶ 24. *See* Appeal Br. 17 (citing Spec. ¶ 24). The structure shown in Figure 5A of Sells '059 defeats such a purpose, by creating a continuous path for such a flow of moisture through batt 52.

We note that the Examiner provides two alternative analyses for the rejection of claim 1 (identified above as Rejection I and Rejection II). *See* Final Action 2–5. Rejection I is based upon the combination of Sells '059 and Garrison, whereas Rejection II is based upon Sells '059 alone. *Id.* However, in both analyses, the Examiner relies upon the above-identified features of Figure 5A of Sells '059, for the disclosure of the recited “continuous longitudinally extending space” of claim 1. *Id.* at 2–3, 4–5.

The Examiner does not rely upon any of the other cited references (or any other analysis) to cure the deficiency of Sells '059 discussed herein.

Therefore, in view of the foregoing, we are persuaded of error in the rejection of independent claim 1. Accordingly, we do not sustain the rejection of independent claim 1, and dependent claims 2–5 and 7–12, under 35 U.S.C. § 103(a).

### CONCLUSION

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1–3, 5, 7, 11, 12	103(a)	Sells '059, Garrison		1–3, 5, 7, 11, 12
1–3, 5	103(a)	Sells '059		1–3, 5
4	103(a)	Sells '059, Garrison, Sells '571		4
8, 9	103(a)	Sells '059, Garrison, Hoffmann		8, 9
10	103(a)	Sells '059, Garrison, Watkins		10
<b>Overall Outcome</b>				1–5, 7–12

### TIME PERIOD FOR RESPONSE

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

REVERSED