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| WESTMAN CHAMPLIN & KOEHLER, P.A. SUITE 1100 121 South Eighth Street MINNEAPOLIS, MN 55402 | | | WITTENSCHLAEGER, THOMAS M | |
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TREVOR WINTZ and DAVID SCHILLER

Appeal 2019-002065
Application 14/776,061
Technology Center 3700

Before MICHAEL J. FITZPATRICK, WILLIAM A. CAPP, and
LISA M. GUIJT, *Administrative Patent Judges*.

FITZPATRICK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant, Bedford Industries, Inc.,¹ appeals under 35 U.S.C. § 134(a) from the Examiner's final decision rejecting claims 1–8, 10, 15, 17–19, 21, and 22. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

¹ Appellant is the applicant pursuant to 37 C.F.R. § 1.42(b) and identifies itself as the sole real party in interest. Appeal Br. 1.

STATEMENT OF THE CASE

The Specification

The Specification's disclosure relates to a bundling article for collectively attaching items together, such as bottled products. Spec. ¶¶1–2.

The Claims

Claims 1–8, 10, 15, 17–19, 21, and 22 are rejected. Final Act. 1. No other claims are pending. *Id.* Claims 1 and 15 are independent. Claim 1 is illustrative and reproduced below.

1. A bundling article including:
 - a panel of a flexible sheet material defining a first panel opening;
 - a first elastomer element including:
 - at least one bonded portion that is cohered to the panel;
 - and
 - a first inner portion extending inward from the at least one bonded portion, wherein the first inner portion is not bonded to the panel, and wherein the first inner portion overlays the first panel opening and defines a first aperture having dimensions that are smaller than respective dimensions of the first panel opening; and
 - a second elastomer element including:
 - at least one bonded portion that is cohered to the panel;
 - and a second aperture.

Appeal Br. 11.

The Examiner's Rejections

The rejections before us are:

1. claims 1–6, 10, 15, 21, and 22, under pre-AIA 35 U.S.C. § 102(b), as being anticipated by Guenther² (Final Act. 3);

² US 3,884,354, issued May 20, 1975 (“Guenther”).

2. claims 7, 17, and 18, under pre-AIA 35 U.S.C. § 103(a), as being unpatentable over Guenther and Weaver³ (*id.* at 6); and

3. claims 8 and 19, under pre-AIA 35 U.S.C. § 103(a), as being unpatentable over Guenther and Marco⁴ (*id.* at 8).

DISCUSSION

Rejection 1

Appellant argues the rejection of these claims together. Appeal Br. 6–8. We select claim 1 as representative, with claims 2–6, 10, 15, 21, and 22 standing or falling therewith. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Claim 1 recites “a first elastomer element” and “second elastomer element.” Appeal Br. 11. At the time of the Final Action, claim 1 recited that each of these elastomer elements includes “at least one bonded portion that is *bonded* to the panel.” *See* Claims filed April 13, 2018 (emphasis added). The Examiner found that Guenther’s retainers 5 (the asserted elastomer elements) are “in contact with” Guenther’s carrier 1 (the asserted panel) and that each retainer “is pressed down into the panel by the crown” of a bottle. Final Act. 3, 9 (both citing Guenther Fig. 2). The Examiner construed the term “bond” to mean “to join two materials together,” and found that the above-described Guenther arrangement met the claim language. Final Act. 9.

Appellant then amended claim 1 to recite that the elastomer elements each include “at least one bonded portion that is ~~bonded~~ cohered to the panel.” *See* Claims filed June 20, 2018. The Examiner entered the amendment but maintained the rejection, having determined that the

³ US 2006/0118432 A1, published June 8, 2006 (“Weaver”).

⁴ US 2003/0192788 A1, published Oct. 16, 2003 (“Marco”).

amendment did “not change the scope of the claims.” Advisory Action filed July 17, 2018.

The Specification as filed does not use the terms “cohere” or “cohered.” Appellant, however, cites two dictionary definitions:

According to the *Random House Unabridged Dictionary*, “cohere” means “to stick together; be united; hold fast, as parts of the same mass.” Accordingly to the *Merriam-Webster Dictionary*, “cohere” means “to hold together firmly as parts of the same mass; *broadly*: stick, adhere.”

Appeal Br. 8. Appellant argues that Guenther’s arrangement, which involves a third structure, namely the bottle crown, to hold the retainer against the carrier, does not meet the claim language requiring the elastomer elements to include “at least one bonded portion that is cohered to the panel,” as recited in claim 1. *Id.* at 6–8. We agree with Appellant. The Examiner’s construction of “cohered” is unreasonably broad.

Although the Specification does not use the term “cohered” (or “cohere”), it does shed some light on what it means to be bonded in the context of the claimed invention. For example, the Specification states that “face 26 may be surface treated in the intended regions of bonded portions 24 for the bundling articles 10, such as with a bond-promoting coating.” Spec. 10:26–28; *see also id.* at 13:28–29 (“Initially, panel web 38 may be surface treated at the intended locations of faces 26 for panels 16, such as with a bond-promoting coating.”). Thus, the Specification discloses, at least in some embodiments, that the bonding is the result of coating. *See also id.* at 8:12–14 (with reference to Figure 3, “Elastomer elements 18 and 20 may be bonded to panel 16 at their respective bonded portions 24 using any suitable bonding technique, such as heat sealing, adhesive application, and

the like.”). This is consistent with the dictionary definition of “cohered” on which Appellant relies.

For the forgoing reasons, we reverse the rejection of claim 1, as well as that of claims 2–6, 10, 15, 21, and 22, which stand therewith. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Rejections 2 and 3

In Rejections 2 and 3, the Examiner relies on an additional prior art reference, either Weaver or Marco, to meet additional limitations recited in dependent claims 7, 8, and 17–19. Final Act. 7–8. The Examiner relies exclusively on Guenther to disclose the limitations of independent claims 1 and 15. *See, e.g., id.* at 6 (“Regarding claims 7 and 18, Guenther discloses essentially all of the elements of the claimed invention in respective claims 1 and 15.”). Accordingly, for similar reasons as Rejection 1, we reverse Rejections 2 and 3.

SUMMARY

| Claims Rejected | 35 U.S.C. § | Basis | Affirmed | Reversed |
|------------------------|--------------------|------------------|-----------------|----------------------------|
| 1–6, 10, 15, 21, 22 | 102(b) | Guenther | | 1–6, 10, 15, 21, 22 |
| 7, 17, 18 | 103(a) | Guenther, Weaver | | 7, 17, 18 |
| 8, 19 | 103(a) | Guenther, Marco | | 8, 19 |
| Overall Outcome | | | | 1–8, 10, 15, 17–19, 21, 22 |

REVERSED