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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/261,429	09/11/2012	Harald Mees	2015-59704	7016
513	7590	10/29/2019	EXAMINER	
WENDEROTH, LIND & PONACK, L.L.P. 1025 Connecticut Avenue, NW Suite 500 Washington, DC 20036			DULKO, MARTA S	
			ART UNIT	PAPER NUMBER
			1746	
			NOTIFICATION DATE	DELIVERY MODE
			10/29/2019	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HARALD MEES

Appeal 2019-002578
Application 13/261,429
Technology Center 1700

Before JEFFREY T. SMITH, JEFFREY B. ROBERTSON, and
N. WHITNEY WILSON, *Administrative Patent Judges*.

ROBERTSON, *Administrative Patent Judge*.

DECISION ON APPEAL¹

STATEMENT OF THE CASE

Appellant² appeals under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 15–17, 19, 22–26, 28, 31–34 (*see* Appeal Br. 1). We have jurisdiction pursuant to 35 U.S.C. § 6(b).

¹ This Decision includes citations to the following documents: Specification filed September 11, 2012, as amended January 23, 2015 (“Spec.”); Final Office Action mailed May 29, 2018 (“Final Act.”); Appeal Brief filed December 7, 2018 (“Appeal Br.”); Examiner’s Answer mailed February 7, 2019 (“Ans.”); and Reply Brief filed February 12, 2019 (“Reply Br.”).

² We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as Hydac Filtertechnik GmbH. Appeal Br. 1.

We AFFIRM-IN-PART. We designate a portion of our decision as a new ground of rejection under 37 C.F.R. § 41.50(b) as further discussed below.

THE INVENTION

Appellant states the invention relates to a method for producing a filter element for filtering fluids. Spec. 1.

Claim 15 is representative and reproduced below from the Claims Appendix to the Appeal Brief:

15. A method for producing a filter element for filtering fluids, comprising the steps of:

providing at least one section of a filter mat web made of at least one layer of at least one filter medium;

connecting ends of the at least one section forming an annular body;

placing the annular body onto a support tube;

wrapping an exterior of the annular body, after being placed on the support body, with at least one blank of a film web;

placing a first end area of the at least one blank of the film web on top of a second end area of the at least one blank of the film web to provide overlapping end areas;

clamping the at least one blank of the film web around the annular body while the overlapping end areas are unconnected and producing a tensile stress in the film web in a circumferential direction with a tensioner acting by applying forces on ends of the film web in a direction of the overlapping of the ends of the film web; and

connecting the overlapping end areas after the clamping of the at least one blank of the film web around the annular body and after producing the tensile stress.

Appeal Br. (Claims Appendix) i.

Claim 24 is also independent and recites a method for producing a filter element for filtering fluids. *Id.* at ii–iii.

REJECTIONS

1. The Examiner rejected claims 15–17, 22, 23, and 34³ under 35 U.S.C. § 103(a) as obvious over Altmeyer et al. (US 6,863,758 B1, issued March 8, 2005, hereinafter “Altmeyer”), Friedmann et al. (US 5,814,219, issued September 29, 1998, hereinafter “Friedmann”), and Schlosser et al. (US 3,899,913, issued August 19, 1975, hereinafter “Schlosser”).
2. The Examiner rejected claim 19 under 35 U.S.C. § 103(a) as obvious over Altmeyer, Friedmann, Schlosser, and Driesen (US 2008/0276584 A1, published November 13, 2008).
3. The Examiner rejected claims 24–26, 28, and 31–33 under 35 U.S.C. § 103(a) as obvious over Friedmann and Schlosser.

We review the rejections of claims 15, 16, 17, 19, 22–26, 28, and 31–34 for disposition of this appeal as discussed below. 37 C.F.R. § 41.37(c)(1)(iv).

³ Although the Examiner does not list claim 34 in the statement of rejection, claim 34 is rejected in the body of the rejection. Final Act. 2. The Examiner’s error is harmless as Appellant appears to have understood claim 34 to have been rejected. Appeal Br. 11–12.

Rejection 1

ISSUE

The Examiner found Altmeyer discloses a method for producing a filter element for filtering fluids including all of the limitations recited in claim 15, except for connecting the ends of the film web after placing it on the tubular filter body and a “tensioner.” Final Act. 2–3. As to the order of steps, the Examiner found placing a casing around a tubular body and joining overlapping ends of the casing material is well known in the art of making tubular filters as evidenced by Friedmann. *Id.* at 4. As a result, the Examiner determined it would have been obvious to have substituted the method of placing flat casing material around a tubular filter body and then connecting the ends of the casing as disclosed in Friedmann, for the method in Altmeyer of making the tubular casing first and then placing it around the tubular body because the method of Friedmann is well known and the results of the substitution would have been predictable. *Id.* Regarding the presence of a “tensioner,” the Examiner found Schlosser discloses a method for wrapping and laminating a sheet (film web) around a tubular body including rocker arms (“tensioner”) that act on the ends of a web to move the ends around the tubular body to produce a tensile stress in the film web in a circumferential direction. *Id.* at 4–5. The Examiner determined one of ordinary skill in the art would have applied the technique of Schlosser to a method of making a tubular filler with outer casing sheet as disclosed in Friedmann because the results would have been predictable to one of ordinary skill in the art in achieving high accuracy in properly placing the outer sheet about a tubular object. *Id.* at 5.

Appellant argues the Examiner erred in finding Schlosser discloses providing circumferential tension to a sheet and the order of method steps does not distinguish the claim. Appeal Br. 4–7.

Accordingly, the dispositive issue with respect to this rejection is:

Has Appellant identified a reversible error in the Examiner’s determinations that Schlosser discloses rocker arms produce tensile stress in a circumferential direction and that the method recited in the claims would have been obvious?

DISCUSSION

Claim 15

Claim 15 recites in part:

clamping the at least one blank of the film web around the annular body while the overlapping end areas are unconnected and producing a tensile stress in the film web in a circumferential direction with a tensioner acting by applying forces on ends of the film web in a direction of the overlapping of the ends of the film web.

Appellant identifies the “tensioner” in its method as corresponding to upper molded bodies 28 and 30 (*see* Appeal Br. 2; Spec., Fig. 5), whereas the Specification, in describing Figure 5 expressly states that a “tensioner” is not illustrated. Spec. 5; Fig. 5. The Specification does not provide any further details as to the structure of a “tensioner.” *See* Spec. 1–6. As the Examiner points out in the Answer, the claims do not recite any particular structure for the tensioner, nor do the claims quantify a level of tension. Ans. 3. Thus, we interpret a “tensioner” to be any device that applies tension in any amount on the ends of the film web.

We are not persuaded by Appellant's argument that Schlosser's rocker arms 22 and 24 do not apply tension to the sheet 12 as it is wrapped around pipe 14. According to Appellant, if tension were applied, the sliding shoe mechanisms 32 and idler rollers 31 disclosed in Schlosser could not move relative to the sheet 12 in a manner that would wind sheet 12 about pipe section 14. Appeal Br. 5. Figures 1 and 3 of Schlosser are reproduced below.

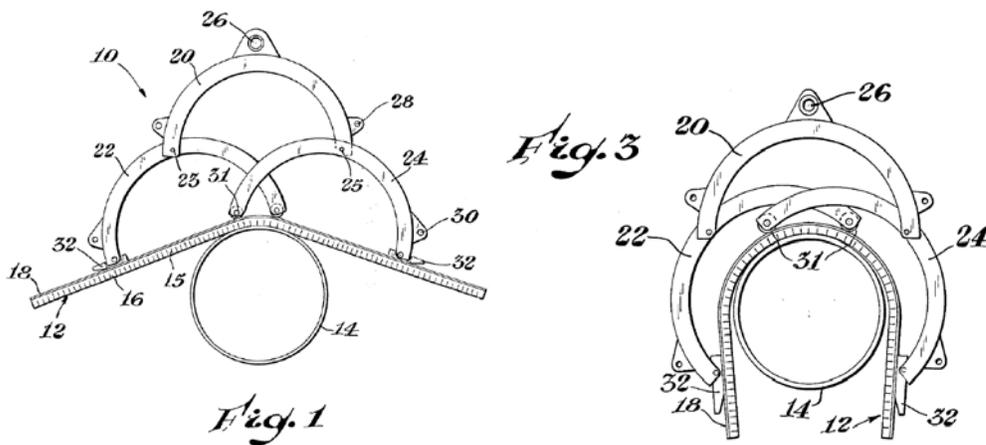


Figure 1, reproduced above, is a front elevational view of a yoke assembly of a sheet wrapper 10 prior to closing a sheet 12 about a pipe section 14 and Figure 3, reproduced above, is a front elevational view of a yoke assembly in an intermediate closing position. Schlosser, col. 1, ll. 50–57. The sheet wrapper 10 includes a plurality of in-line yoke assemblies including center yoke arms 20, yoke-shaped end rocker arms 22 and 24 and slider shoe mechanisms 32. *Id.* at col. 2, ll. 24–61. Schlosser discloses the sheet wrapper, either by its own weight, or through a driving mechanism, will cause the rocker arms 22 and 24 to cam the sheet about the pipe circumference. Schlosser, col. 2, l. 64 – col. 3, l. 5. As can be seen in Figures 1 and 3, the rocker arms 22 and 24 apply force on the ends of the sheet through contact with slider shoe mechanism 32. In this regard, we

agree with the Examiner (Ans. 3) that Appellant's argument that sliding precludes any tension is not supported by the evidence of record, because some level of tension/force needs to be applied along the ends of the film to facilitate wrapping, as evidenced by the express disclosure in Schlosser that the rocker arms cam the sheet about the pipe circumference. Schlosser, col. 2, l. 64 – col. 3, l. 5.

In addition, we are not persuaded Schlosser's rocker arms do not apply force in a circumferential direction, but only apply a downward force by gravity and would apply a force that would move the sheet ends away from each other. Appeal Br. 6. As depicted in Figures 1 and 3 above, the rocker arms 22 and 24 cause the sheet to cam around the pipe section 14, the ends of the sheet 12 are forced around the pipe section circumferentially and in the direction of overlapping ends. *See also*, Schlosser, Fig. 4. Thus, contrary to Appellant's arguments the rocker arms as tensioners would apply forces on the ends of the film web in a direction of the overlapping ends of the film web when applied to the modified method of Altmeyer and Friedmann as recited in claim 15.

Appellant's arguments with respect to the rigidity of the panels in Schlosser (Reply Br. 2) fail to consider the rejection as a whole, which is to use the tensioners of Schlosser in a method of placing flat casing material around a tubular filter body and then connecting the ends of the casing as disclosed in Altmeyer and Friedmann.

As to Appellant's arguments pertaining to the order of method steps (Appeal Br. 6–7), Appellant does not address the Examiner's rationale itself, which is based on the combination of Altmeyer and Friedmann for the order of connecting the ends of the casing material. Appellant makes a passing

reference to an alleged “new and unexpected result of the annular body being compressed by the film web” (*id.* at 6), however Appellant does not sufficiently explain why, in view of the prior art of record, such a result would have been unexpected. Similarly, Appellant has not sufficiently explained how or why the Examiner’s alleged position that the recited step of “connecting the overlapping end areas after the clamping of the at least one blank of the film web around the annular body and after producing the tensile stress” are “multiple steps” (*id.* at 6–7) constitutes reversible error.

Claims 16 and 17

Regarding claims 16 and 17, although Appellant lists those claims separately, Appellant does no more than make general allegations that the claims would not have been obvious (Appeal Br. 10), which are not persuasive of reversible error.

Claim 22

Regarding claim 22, which depends from claim 15 and further recites “the wrapping of [the] annular body with the at least one blank of the film web is performed by infeed movements of molded bodies acting on the at least one blank of the film web that is initially flat,” the Examiner found Altmeyer discloses an auxiliary tool that meets this limitation. Final Act. 5, citing Altmeyer, col. 4, ll. 64–67. Appellant contends Altmeyer does not disclose the structure of this tool and there is no disclosure of moving mold bodies for wrapping the casing about pleats prior to joining the casing ends. Appeal Br. 10–11. We are persuaded by Appellant’s argument.

That is, the general disclosure of a “cylindrical auxiliary tool” in Altmeyer (col. 4, ll. 64–67) is insufficient to provide support for the Examiner’s position that such corresponds to “molded bodies” acting on the blank of a film web to wrap it around the annular body.

However, the Examiner relied on Schlosser for disclosing a method for wrapping and laminating a flat sheet around a tubular body as discussed above. Indeed, in rejecting claim 31, which includes similar limitations, the Examiner found that the rocker arms 22 and 24 meet these limitations. Final Act. 9, citing Schlosser, col. 3, ll. 35–60, Figs. 1 and 3. Appellant does not challenge the Examiner’s findings in this regard. Appeal Br. 10–11.

Accordingly, we affirm the Examiner’s rejection of claim 21, with the modification that Schlosser discloses the limitations of claim 21, and that it would have been obvious when incorporating the technique of Schlosser into the combination of Altmeyer and Friedmann to have accomplished the wrapping of the annular body as recited in claim 21. Because our rationale differs from the Examiner’s rationale, we designate our affirmance as new ground of rejection.

Claim 23

Regarding claim 23, which depends from claim 15, and recites “the overlapping areas are connected by welding while the overlapping end areas are pressed against one another by feeding in pressure-applying pieces during the welding,” the Examiner found Altmeyer discloses this limitation stating that “any welding requires some pressure applied to a joining ends, even if it is a weight of the webs itself; the end of the web that overlays the

other end is viewed as a pressure applying piece.” Final Act. 5–6, citing Altmeyer, col. 4, ll. 64–67.

Appellant contends Altmeyer does not mention the welding of the ends of the casing in the cited section and Altmeyer does not disclose pressing the casing ends against one another as being wrapped around the pleats as required by the claim in view of its dependency from claim 15. Appeal Br. 11.

We are persuaded because Altmeyer only discloses the sealing seam is processed and produced by an “ultrasonic welding tool.” Altmeyer, col. 4, ll. 64–67. Claim 23 recites pressure-applying pieces, which are separate components from the ends of the casing itself. Thus, the Examiner’s reasoning is not sufficiently supported by the record.

Accordingly, we reverse the Examiner’s rejection of claim 23.

Claim 34

Regarding claim 34, which depends from claim 15, and recites the “film web is perforated,” despite Appellant’s general allegations to the contrary (Appeal Br. 11–12), the Examiner expressly found Altmeyer discloses perforated film webs. Final Act. 2, citing Altmeyer, col. 5, ll. 5–8. Appellant does not provide any discussion as to why the Examiner’s finding is in error. Accordingly, we are not persuaded the Examiner erred in rejecting claim 34.

Rejection 2

Regarding claim 19, which depends indirectly from claim 15, and recites “the welding is carried out without a welding filler,” Appellant

contends Driesen, relied upon by the Examiner for disclosing a laser welding procedure without a welding filler (Final Act. 6, citing Driesen, ¶ 52), does not disclose whether the casing is welded with or without a filler. Appeal Br. 10.

We are not persuaded by Appellant's argument because Driesen expressly discloses that the contact points are free of adhesive. Driesen, ¶¶ 7–10, 51, 52. Thus, by expressly specifying materials that are not present, we are of the view that if welding filler were present, Driesen would have expressly disclosed as such. Accordingly, the Examiner's rejection is sufficiently supported by the record.

Rejection 3

Claim 24

Appellant sets forth similar arguments with respect to the rejection of independent claim 24, which is based on the combination of Friedmann and Schlosser as discussed above regarding Rejection 1 and claim 15. That is, Appellant argues Schlosser does not disclose providing circumferential tension and the order of method steps patentably distinguishes the claims. Appeal Br. 8–9. Although Rejection 3 does not rely on Altmeyer, our discussion above with respect to Friedmann and Schlosser is equally applicable to Rejection 3 as the Examiner's rationale with respect to circumferential tension and the order of method steps is similar to Rejection 1. *See* Final Act. 7–8. Accordingly, we are not persuaded by Appellant's arguments for similar reasons as discussed above for Rejection 1.

Claims 25 and 26

Regarding claims 25 and 26, although Appellant lists those claims separately, Appellant does no more than make general allegations that the claim would not have been obvious. Appeal Br. 10. Such generalized allegations are not persuasive of reversible error.

Claim 28

Regarding claim 28, which depends from claim 26, and recites “the overlapping end areas are welded without a welding filler,” Appellant does not address the Examiner’s finding that Friedmann discloses synthetic plastic material that is welded. Appeal Br. 10; Final Act. 9, citing Friedmann, col. 6, ll. 58–63. Accordingly, we are not persuaded by Appellant’s argument.

Claim 31

Regarding claim 31, which depends from claim 24 and further recites “the at least one blank of the film web is wrapped about the annular body by infeed movements of molded bodies acting on the film web that is initially flat,” Appellant does not address the Examiner’s finding that Schlosser discloses a blank of a film web (sheet) is wrapped about the annular body 14 by infeed movement of molded bodies 22, 24 acting on the film web 12 that is initially flat. Appeal Br. 10–11; Final Act. 9. Accordingly, we are not persuaded by Appellant’s argument.

Claim 32

Regarding claim 32, which depends from claim 24, and recites “the overlapping areas are connected by welding while the overlapping end areas are pressed against one another by feeding in pressure-applying pieces,” similar to claim 23. The Examiner relies on similar rationale in order to reject claim 32: “any welding requires some pressure applied to a joining ends, even if it is a weight of the webs itself; the end of the web that overlays the other end is viewed as a pressure applying piece.” Final Act. 9. Accordingly, we reverse the Examiner’s rejection of claim 32 for the same reasons discussed above for claim 23.

Claim 33

Regarding claim 33, which depends from claim 24 and recites the “film web is perforated,” despite Appellant’s general allegations to the contrary (Appeal Br. 11–12), the Examiner expressly found Friedmann discloses perforated film webs. Final Act. 9, citing Friedmann, col. 4, ll. 4–8. Appellant does not provide any discussion as to why the Examiner’s finding is in error. Accordingly, we are not persuaded the Examiner erred in rejecting claim 33 as obvious over Friedmann and Schlosser.

CONCLUSION

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed	New Ground
15–17, 22, 23, 34	103	Altmeyer, Friedmann, Schlosser	15–17, 22, 34	23	22

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed	New Ground
19	103	Altmeyer, Friedmann, Schlosser, Driesen	19		
24–26, 28, 31–33	103	Friedmann, Schlosser	24–26, 28, 31, 33	32	
Overall Outcome			15–17, 19, 22, 24–26, 28, 31, 33, 34	23, 32	22

TIME PERIOD FOR RESPONSE

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). 37 C.F.R. § 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.”

37 C.F.R. § 41.50(b) also provides that the Appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution*. Submit an appropriate amendment of the claims so rejected or new Evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the prosecution will be remanded to the examiner. . . .

(2) *Request rehearing*. Request that the proceeding be reheard under § 41.52 by the Board upon the same Record. . . .

Further guidance on responding to a new ground of rejection can be found in the Manual of Patent Examining Procedure § 1214.01.

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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-IN-PART; 37 C.F.R. § 41.50(b)