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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JILL VANDENBOSCH, JEAN-FRANCOIS MORISSETTE,
JEAN-LUC LEMYRE, LUC DIONNE, and ALEXANDRE MEUNIER

Appeal 2019-003219
Application 14/772,497
Technology Center 3700

Before DANIEL S. SONG, BENJAMIN D. M. WOOD, and
BRETT C. MARTIN, *Administrative Patent Judges*.

SONG, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1–3, 24–38, 46–49, 52, 53, and 75–87. We have jurisdiction under 35 U.S.C. § 6(b). An oral hearing with the

¹ 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 AIRBOSS ENGINEERED PRODUCTS INC. Appeal Br. 3.

Appellant's representative was conducted via telephone on June 4, 2020, a transcript of which will be entered into the record in due course.

We REVERSE.

CLAIMED SUBJECT MATTER

The claims are directed to personal protective equipment. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A protective glove for protecting a wearer against noxious agents, the protective glove comprising:
 - a hand covering for receiving a hand of the wearer, the hand covering comprising a palm portion for facing a palm of the wearer's hand, a back portion for facing a back of the wearer's hand, finger portions for receiving fingers of the wearer's hand, and a thumb portion for receiving a thumb of the wearer's hand; and
 - a cuff for receiving a wrist of the wearer and extending towards a forearm of the wearer;wherein:
 - a plurality of regions of the protective glove have different properties and are disposed to cover different parts of at least one of the wearer's hand, wrist and forearm;
 - each of the regions of the protective glove provides a level of protection against noxious agents;
 - the level of protection against noxious agents of relatively more protective ones of the regions of the protective glove is greater than the level of protection against noxious agents of relatively less protective ones of the regions of the protective glove; and
 - the relatively less protective ones of the regions of the protective glove are non-contiguous and spaced apart from one another by the relatively more protective ones of the regions of the protective glove.*

Appeal Br. 22, Claims App. (emphasis added).

REJECTIONS

1. The Examiner rejects claims 1–3, 24, 37, and 38 under 35 U.S.C. § 102(b) as anticipated by Mattesky (US 2009/0126074 A1, published May 21, 2009). Final Act. 3.

2. The Examiner rejects claims 25–36, 46–49, 52, 53, 75–83, and 87² under 35 U.S.C. § 103(a) as being unpatentable over Mattesky. Final Act. 6.

3. The Examiner rejects claims 84–86 under 35 U.S.C. § 103(a) as being unpatentable over Mattesky in view of Bohringer et al. (US 2007/0181001 A1, published Aug. 9, 2007). Final Act. 23.

OPINION

Rejection 1: Anticipated by Mattesky

The Examiner rejects claims 1–3, 24, 37, and 38 as being anticipated by Mattesky. Final Act. 3. As to independent claim 1, the Examiner finds that Mattesky discloses a protective glove having a plurality of regions that have different properties, wherein “the relatively less protective ones of the regions of the protective glove are noncontiguous and spaced apart from one another by the relatively more protective ones of the regions of the protective glove” as recited in claim 1. Final Act. 4. To explain the rejection, the Examiner provides an annotated version of Figure 6 of Mattesky as reproduced below:

²² The heading of this rejection omits claim 87 but the body of the Final Action indicates that claim 87 is subject to this rejection as well. See Final Act. 23.

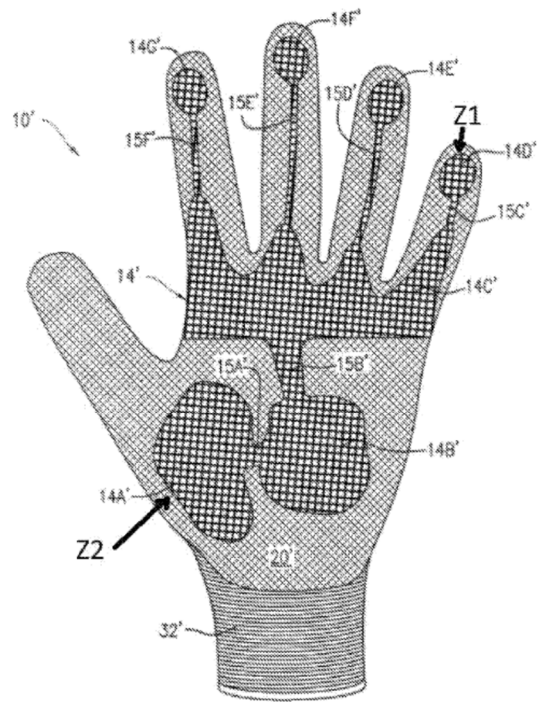


FIG. 6

Ans. 5.

The illustration reproduced above is the Examiner-annotated version of Figure 6 of Mattesky, which shows a top plan view of a palm side of a glove with its outer coating layer removed, and having the annotations “Z1” and “Z2” with corresponding arrows pointing to the small finger and the thenar regions of the glove. *See id.* In rejecting claim 1, the Examiner asserts that a dictionary definition of “non-contiguous” is “not next to each other.” Ans. 3, citing www.Onelook.com. As such, referring to the annotated version of Figure 6 of Mattesky, the Examiner explains that “Z1 and Z2 are non-contiguous and spaced apart from each other by (14’) which extends laterally along the entire palm portion of the glove.” Ans. 4.

The Appellant disagrees and argues that Mattesky fails to disclose that “the ‘shell or substrate 12’ includes relatively less protective regions of the

protective glove that are *non-contiguous* and *spaced apart from one another* by relatively more protective regions of the protective glove, as recited in claim 1.” Appeal Br. 9. The Appellant argues that in view of the Specification and Figure 1, the broadest reasonable interpretation of “non-contiguous” is “‘islands’ or regions that are ‘isolated from one another.’” Reply Br. 2, citing Spec. pg. 26, ll. 17–20; *see also* Reply Br. 3 (identifying ten instances in which the terms “island” or “islands” are used, and three instances in which “isolated from one another” is used). The Appellant argues that its interpretation “uses the term ‘non-contiguous’ just as it is commonly understood,” and a person of ordinary skill in the art would have understood the meaning of “non-contiguous” based on the intrinsic record, and not based on extrinsic evidence such as a dictionary. Reply Br. 3–4. In addition, the Appellant further argues that none of the dictionaries provided in Onelook.com for the terms “non-contiguous” or “contiguous” supports the asserted definition of “not next to each other” for “non-contiguous” or Reply Br. 4–6.

We generally agree with the Appellant. First, it is problematic that although the Examiner asserts a dictionary definition, the Examiner does not identify the dictionary from which the definition is derived. Second, we agree with the Appellant that in view of the Specification, a person of ordinary skill in the art would have understood the limitation at issue to refer to a spatial separation of the less protective regions such that they are “isolated from one another,” and on their own (i.e., an “island”), without connection to each other by the same less protective material. Reply Br. 7; *see also* Reply Br. 2–3.

Accordingly, the Examiner's finding that Figure 6 of Mattesky demonstrates "Z1" and "Z2" that "are non-contiguous and spaced apart from each other" is not based on a reasonable interpretation of "non-contiguous." Ans. 4. The mere fact that these points are not positioned next to each other does not establish that they are non-contiguous. In that regard, the Examiner's interpretation of "not next to each other," appears to be superfluous to the claimed recitation that the relatively less protective ones of the regions are "spaced apart," such that this interpretation would render the limitation "non-contiguous" essentially meaningless. Ans. 3.

Thus, we agree with the Appellant that the anticipation rejection of claim 1 based on Mattesky is deficient because "one can easily trace a line around reinforcing element 14 going from Z1 to Z2, indicating that Z1 and Z2: (1) share a border, (2) are not 'islands' with respect to each other, and (3) are not isolated from one another." Reply Br. 6-7. Although the annotated Figure 6 illustrates Z1 to be seemingly isolated from Z2, in reality, the shell 12 of Mattesky is a unitary substrate that forms the underlying layer of the glove such that although not shown in Figure 6, the shell 12 also forms the back side of the glove such that Z1 and Z2 are not isolated from one another. *See* Mattesky Fig. 5, ¶ 15.

Therefore, in view of the above considerations, we reverse the Examiner's anticipation of rejection of claim 1. Claims 2, 3, 24, 37, and 38, also rejected, ultimately depend from claim 1, and thus, we reverse the rejection of these claims as well. The remaining issues pertaining to this rejection, and arguments specifically directed to dependent claims 37 and 38 are moot. *See* Appeal Br. 12.

Rejection 2: Obvious Over Mattesky

The Examiner rejects claims 25–36, 46–49, 52, 53, and 75–83 as being unpatentable over Mattesky. Final Act. 6. Preliminarily, we note that claims 25–36 and 75–83 ultimately depend from independent claim 1. The Examiner’s rejection of these dependent claims does not address the above-noted deficiency in the rejection of claim 1. Final Act. 7–10, 19–23. Thus, the rejection of claims 25–36 and 75–83 is reversed. We address the rejections of independent claims 46, 47, 52, and 53 in detail *infra*.

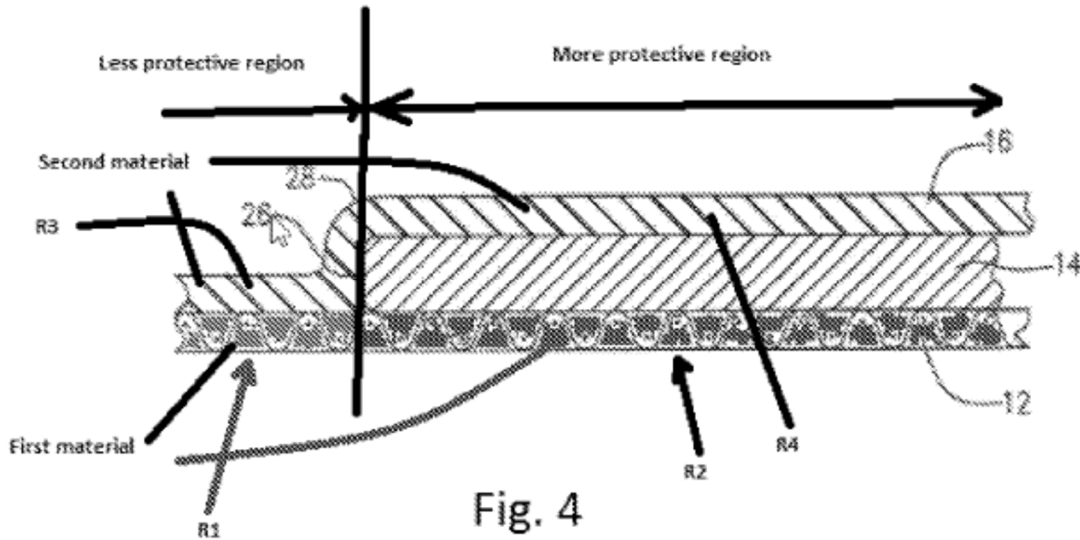
Claim 46

Claim 46 recites, *inter alia*, “respective ones of the second subset of the regions of the protective glove are non-contiguous and spaced apart from one another by respective ones of the first subset of the regions of the protective glove.” Appeal Br. 26, Claims App. In rejecting the claim, the Examiner finds that Mattesky discloses the above noted limitation. Final Act. 10–12. Thus, the dispositive issue as to independent claim 46 is substantively identical to the claim interpretation issue and fact finding addressed above relative to claim 1. Accordingly, for the reasons discussed above, we reverse this rejection of claim 46 as well.

Claims 47 and 52

Claims 47 and 52 each recites, *inter alia*, that “the first material includes a part that overlays the second material and a part that does not overlay the second material, and the second material includes a part that is overlaid by the first material and a part that is not overlaid by the first material.” Appeal Br. 26, 27, Claims App. In rejecting the claim, the

Examiner finds that Mattesky discloses the above noted limitation. Final Act. 12. To explain, the Examiner provides an annotated version of Figure 4 of Mattesky as reproduced below:



Ans. 6.

The illustration reproduced above is the Examiner’s annotated version of Figure 4 of Mattesky, which shows a sectional view of the glove with, *inter alia*, the shell 12 annotated as “First material,” and the coating layer 16 annotated as “Second material.” According to the Examiner, Figure 4 of Mattesky,

illustrates that the first material (See Fig. 4 []) includes a part or portion (R1) that overlays the second material (See Fig. 4) and a part (R2) that does not overlay the second material (See Fig. 4) because they are separated by layer (14), and the second material (See Fig. 4) includes a part (R3) that is overlaid by the first material and a part (R4) that is not overlaid by the first material.

Ans. 6.

The Appellant disagrees and argues that Mattesky does not disclose the above noted limitation. Appeal Br. 13, 16. We generally agree with the

Appellant and find the Examiner's rejection unsustainable. In particular, the Examiner's rejection asserts that the shell 12 (i.e., the first material) includes a part that overlays the coating layer 16 (i.e., the second material), and that the coating layer 16 includes a part that is overlaid by the shell 12 and a part that is not overlaid by the shell. *See* Ans. 6. However, protective gloves such as that disclosed in Mattesky are worn with the protective layers as the outer surface of the glove. Accordingly, Mattesky discloses the shell 12 (i.e., the first layer) includes a part that *underlays* the coating layer 16 (i.e., the second layer). Thus, the Examiner's finding is premised on an unreasonably broad interpretation of "overlay" to mean the opposite.

Accordingly, we reverse the rejection of independent claims 47 and 52, as well as of claims 48 and 49 that ultimately depend from claim 47.

Claim 53

Claim 53 recites, *inter alia*, "the membranous material includes a part that overlays the fibrous material and a part that does not overlay the fibrous material." Appeal Br. 27–28, Claims App. Thus, although the language of claim 53 differs from claims 47 and 52 in that it identifies the various materials (i.e., "membranous material" and "fibrous material"), the Examiner's rejection is based on the same overly broad interpretation of the term "overlay" discussed above relative to claims 47 and 52. Accordingly, we reverse the rejection of claim 53.

Rejection 3: Obvious Over Mattesky and Bohringer

Claims 84–86 ultimately depend from independent claim 1. Appeal Br. 29, Claims App. The Examiner rejects these claims as unpatentable over

Mattesky in view of Bohringer, finding that Mattesky fails to disclose activated carbon particles. Final Act. 23. The Examiner relies on Bohringer for disclosing a protective glove made from a material that comprises activated carbon particles. Final Act. 24. However, the Examiner's reliance on Bohringer does not remedy the deficiencies of the rejection of claim 1. Therefore, this rejection is also reversed.

CONCLUSION

The Examiner's rejections are reversed.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1-3, 24, 37, 38	102(b)	Mattesky		1-3, 24, 37, 38
25-36, 46-49, 52, 53, 75-83, 87	103(a)	Mattesky		25-36, 46-49, 52, 53, 75-83, 87
84-86	103(a)	Mattesky, Bohringer		84-86
Overall Outcome				1-3, 24-38, 46-49, 52, 53, and 75-87

REVERSED