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14/575,015	12/18/2014	Marco NAHMIAS NANNI	13260.0006-01	1039
22852	7590	03/03/2020	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			FISCHER, JUSTIN R	
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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* MARCO NAHMIAS NANNI, LUCA GIANNINI, and ANGELA  
LOSTRITTO

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Appeal 2019-003593  
Application 14/575,015  
Technology Center 1700

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BEFORE ROMULO H. DELMENDO, BEVERLY A. FRANKLIN, and  
SHELDON M. MCGEE, *Administrative Patent Judges*.

FRANKLIN, *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 to reject claims 19–34. We have jurisdiction under 35 U.S.C. § 6(b). We heard oral arguments on February 13, 2020. On page 3 of the Appeal Brief, Appellant indicates that this case is related to U.S. Patent Application No. 14/536,641 (having Appeal No. 2019-003591).

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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(a). Appellant identifies the real party in interest as Pirelli Tyre S.p.A. Appeal Br. 3.

We REVERSE.

### CLAIMED SUBJECT MATTER

Claim 19 is illustrative of Appellant's subject matter on appeal and is set forth below (with text in bold for emphasis):

19. A tire for vehicle wheels comprising:
- a carcass structure comprising at least one carcass layer;
  - a belt structure** applied in a radially outer position with respect to said carcass structure;
  - a tread band applied in a radially outer position with respect to said belt structure;
  - and
  - at least one elastomeric material layer disposed between said tread band and said belt structure,**
- wherein said elastomeric material layer extends over a surface substantially corresponding to a development surface of said **belt structure** or over a portion of a surface substantially corresponding to a development surface of said **belt structure,**
- and
- wherein said elastomeric material layer comprises an elastomeric material that comprises fibres formed of magnesium and/or aluminium chain silicates, said fibres having nanometric dimensions.

### REFERENCES

The prior art relied upon by the Examiner is:

<b>Name</b>	<b>Reference</b>	<b>Date</b>
Asari <sup>2</sup> (Derwent abstract and full translation)	JP 2005-219523A	Aug. 18, 2005
Augustin	US 2,689,841	Sept. 21, 1954
Cassidy	GB 52446/69	Oct. 27, 1969
Santilli	US 4,419,273	Dec. 6, 1983
Romé	US 7,910,511 B2	Mar. 22, 2011
Matsunuma (abstract)	JP 60-15203	Jan. 25, 1985
Makino	US 4,735,247	Apr. 5, 1988

### REJECTIONS

1. Claim 19–26, 28–32, 34, and 35 are rejected under pre-AIA35 U.S.C. § 103(a) as being unpatentable over Asari and further in view of Augustin.

2. Claim 27 is rejected under pre-AIA35 U.S.C. § 103(a) as being unpatentable over Asari and Augustin as applied in claim 29 above and further in view of Cassidy and/or Santilli and/or Romé.

3. Claim 33 is rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Asari and Augustin as applied in claim 30 above and further in view of Matsunuma and/or Makino.<sup>3</sup>

### OPINION

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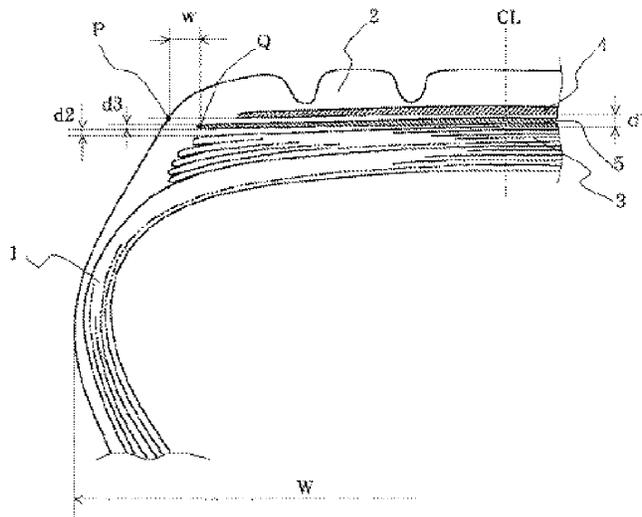
<sup>2</sup> The Examiner refers to this reference as “Asazato” in the record, but we identify this reference as “Asari” which is the correct name of the inventor for this reference.

<sup>3</sup> Although this rejection was not listed on page 3 of the Answer, it was addressed on page 20 of the Appeal Brief, and listed as a rejection on pages 4–5 of the Non-final Office Action dated June 4, 2018, so we include it here.



Appellant argues that Asari's colored rubber layer 5 is not disposed between the tread band and belt structure, as claimed. Appeal Br. 11–12. Appellant argues that Asari places the colored rubber layer 5 between the belt layer group 3 and the protective layer 4, which is beneath the tread layer 2, as an indicator for retreading. Asari at ¶¶ [0001]–[0013]. Asari's Figure 1 is set forth below:

[Fig. 1]



Appellant submits that thus, Asari's colored rubber layer 5 is not disposed between the tread band and belt structure, as claimed. Rather, the colored rubber layer 5 is disposed within the recited "belt structure" and, thus, cannot meet this claim requirement of being disposed between the tread band and belt structure. Appeal Br. 12.

In response, the Examiner states:

Appellant argues that a person of ordinary skill in the art would recognize that Asazato's (referred to by Appellant as Asari) protective

layer 4 constitutes part of the belt structure recited in the claims. The Examiner respectfully disagrees. The claims as currently drafted simply require a carcass structure and a belt structure applied in a radially outer position with respect to said carcass structure. The tire of Asazato includes an elastomeric material layer 5 that is positioned between a belt structure 3 and a tread band 2 as required by the claims. The fact that an additional reinforcement layer 4 is positioned on the outside of elastomeric material layer fails to render the claims non-obvious. Again, the claims simply require the presence of “a belt structure” and nothing in the claims restricts viewing the combination of working belt layers 3 as such “a belt structure”.

Ans. 3–4.

In reply, Appellant states:

This argument conflates the terms “belt structure” and “layer,” which one of ordinary skill in the art reading Appellant’s specification would have understood to have separate and distinct meanings. *See In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (Claims must be given their broadest reasonable construction “in light of the specification as it would be interpreted by one of ordinary skill in the art.”). The specification teaches that a layer is only a portion of a belt structure. Namely, a “belt structure 106” comprises “one or more belt layers 106 a, 106 b” and “at least one reinforcing layer” 106 c, when present. As-filed specification at p. 12, ll. 12–25, Figure 1. Hence the term “belt structure” of the claims refers to the belt as a whole, including all belt layers (i.e. belt layers 106 a, 106 b) and any reinforcing layer 106 c.

A person of ordinary skill in the art would have recognized Asari’s belt layer group 3 and protective layer 4 collectively constitute the “belt structure” recited in claim 19. For example, Asari’s protective layer 4 is similar in structure and composition to the reinforcing layer 106 c described in the specification. Compare Asari at ¶[0022] (“The protective layer 4 can include the high elastic cord being arranged in a circumferential direction, and as the high elastic cord in this case, can preferably use the organic fiber cord with a tensile strength of 13 cN/dtex or higher.”), with Specification at p. 12, ll. 19–

25 (The reinforcing layer 106 c “generally incorporates a plurality of reinforcing cords, typically textile cords, oriented in a substantially circumferential direction . . .”).

Because Asari explains that rubber layer 5 “is arranged between the belt layer group 3 and protective layer 4,” one of skill would understand Asari teaches that its colored rubber layer 5 is disposed within the recited “belt structure,” as the “belt structure” encompasses both belt layer group 3 and protective layer 4. Asari at ¶[0015]. Therefore, Asari fails to teach and/or suggest all the claim elements.

Reply Br. 3–4 (bolding and emphases omitted).

We agree with Appellant’s stated position as set forth above and give the interpretation of the claim term “belt structure” as explained by Appellant in the record as discussed, *supra*. It follows that Asari’s colored rubber layer 5 is not disposed between the tread band and belt structure, as claimed. We note that although claims are given their broadest reasonable interpretation during examination, the interpretation must not be unreasonably broad. *In re Suitco Surface, Inc.*, 603 F.3d 1255, 1260 (Fed. Cir. 2010) (“[T]his court has instructed that any such construction be “consistent with the specification, . . . and that claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art.”); *In re Smith Int’l, Inc.*, 871 F.3d 1375, 1382 (Fed. Cir. 2017) (“[T]he protocol of giving claims their broadest reasonable interpretation . . . does not include giving claims a legally incorrect interpretation’ ‘divorced from the specification and the record evidence.’”) (internal citation omitted).

We thus reverse Rejection 1. We also reverse Rejections 2 and 3 for the same reasons.

### CONCLUSION

We reverse the Examiner's decision.

### DECISION SUMMARY

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Reversed</b>	<b>Affirmed</b>
19–26, 28–32, 34, 35	103	Asari, Augustin	19–26, 28–32, 34, 35	
27	103	Asari, Augustin, Cassidy, Santilli, Romé	27	
33	10	Asari, Augustin Matsunuma, Makino	33	
<b>Overall Outcome</b>			19–35	

REVERSED