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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SHINICHIRO INATOMI, HIROYASU SAKAGUCHI, and
ATSUSHI DAIMON

Appeal 2019-003706
Application 14/777,812
Technology Center 1700

Before BEVERLY A. FRANKLIN, DONNA M. PRAISS, and
MICHAEL G. McMANUS, *Administrative Patent Judges*.

FRANKLIN, *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, 2, and 4–7. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

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 TOYOBO CO., LTD. and TOYO CLOTH CO., LTD. Appeal Br. 1.

CLAIMED SUBJECT MATTER

Claim 1 is illustrative of Appellant's subject matter on appeal and is set forth below:

1. A resin-coated non-woven fabric, which comprises
a filament non-woven fabric that is of a thermocompression-bondable type, is made of a polyethylene terephthalate, and has a weight of 50 to 120 g/m², and
a resin coat layer positioned over a surface of the filament non-woven fabric and having a coating amount of 40 to 150 g/m² after dried, wherein the resin coat layer contains 10 to 45% by mass of a vinyl chloride unit and 30 to 55% by mass of a (meth)acrylic acid ester unit, and
a surface of the resin coat layer has an embossed pattern,
wherein the resin-coated non-woven fabric has a strength of 65 N/cm or more when the fabric is broken by pulling at a pulling rate of 200 mm/min.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Ishizuka	US 2007/0100049 A1	May 3, 2007
Kaneda	US 2009/0117806 A1	May 7, 2009
Kawasaki Yukio (JP '277)	JP H11-241277	September 7, 1999
Inatomi Shinichiro (JP '601)	JP 2013-032601	February 14, 2013

REJECTIONS

1. Claims 1, 2, and 4–7 are rejected under 35 U.S.C. § 103 as being unpatentable over JP '601"².

² A machine translation is used for this document.

2. Claims 1, 2, and 4–7 are rejected under 35 U.S.C. § 103 as being unpatentable over JP '277'³ in view of Kaneda and further in view of Ishizuka.

OPINION

Upon consideration of the evidence and each of the respective positions set forth in the record, we find that the preponderance of evidence supports Appellant's position in the record. Accordingly, we reverse each of the Examiner's rejections on appeal essentially for the reasons set forth by Appellant, with the following emphasis.

Rejection 1

The dispositive issue in Rejection 1 is whether the record supports the position that JP '601 inherently discloses the claimed strength of 65 N/cm or more when the fabric is broken by pulling at a pulling rate of 200 mm/min.

It is the Examiner's position that, although JP '601 does not explicitly disclose a resin-coated non-woven fabric having a strength of 65 N/cm or more when the fabric is broken by pulling at a pulling rate of 200 mm/min, the claimed property is deemed to naturally flow from the structure in the prior art since JP'601 teaches an invention with a substantially similar structure and chemical composition as claimed by Appellant. Ans. 4–5.

Appellant argues that JP '601 does not disclose or suggest that its fabric has a strength of 65 N/cm or more when the fabric is broken by pulling at a pulling rate of 200 mm/min. a feature recited in claim 1. Appeal

³ A machine translation is used for this document.

Br. 2. Appellant argues that JP '601 discloses a fabric in which its filaments are treated by using needle punching to further entangle the fibers. JP '601 ¶ 24, Examples 1–5, and Comparative Examples 1–5. Appellant points out that Appellant's fabric is not needle punched. E.g., Spec. Example 1. Appellant's point is that the structure of JP '601 is therefore different from Appellant's claimed fabric because JP '601's fabric is needle-punched whereas Appellant's fabric is not needle-punched. In support thereof, Appellant points to Example 1 of Appellant's Specification involving a fabric that is not needle-punched and compares it with the fabric of Comparative Example 8 of Appellant's Specification that is needle-punched. Appeal Br. 2–3. Appellant states that the test results show that Comparative Example 8's fabric strength was only 53 N/cm whereas the fabric strength of Appellant's Example 1 is 95 N/cm. Spec., Tables 1 and 2. Appeal Br. 3. The Examiner's response is set forth on pages 13–14 of the Answer. Therein, the Examiner states that Appellant has failed to consider the difference in structure between the different fabrics which may influence the resultant tensile strength, and then compares certain disclosure of JP '601 with Appellant's Comparative Example 8. In so doing, it appears the Examiner misses the point being made by Appellant that JP '601's fabric is structurally different because the fabric is needle-punched whereas Appellant's fabric is not needle-punched as described in Appellant's Specification. This is an important issue raised by Appellant not adequately addressed by the Examiner because the Examiner's rationale is that JP '601's similar structure inherently meets the claimed fabric strength. The preponderance of the evidence (discussed, *supra*) supports the position that

the fabrics are not similar in structure. As such, the Examiner's rationale is unsupported. We thus reverse Rejection 1.

Rejection 2

We refer to the Examiner's stated rejection as presented on pages 7–12 and 18–26 of the Answer.

Appellant's position is set forth on pages 7–17 of the Appeal Brief and pages 1–2 of the Reply Brief. Appellant argues, *inter alia*, that the applied art does not suggest the claimed amount of vinyl chloride and (meth)acrylic acid ester unit. Appeal Br. 8–9. The Examiner recognizes that the claimed amount is not taught by JP '277 or Kaneda. Ans. 8–9. The Examiner also admits the claimed amount of these components is not set forth in Ishizuka. Ans. 9. However, the Examiner concludes that it would have been obvious to determine an appropriate amount of both the vinyl chloride unit and the (meth)acrylic acid ester unit in the resin composition using nothing more than routine experimentation. Ans. 9. We agree with Appellant that this generalization lacks an evidence-based rationale to support a *prima facie* case of obviousness for the reasons discussed on pages 8–9 of the Appeal Brief. As such, we add that the rejection also fails to provide any basis in fact and/or technical reasoning to reasonably support the determination that the fabric of the applied art would inherently have the claimed strength. *Ex parte Levy*, 17 USPQ2d 1461, 1464 (BPAI 1990).

We thus reverse Rejection 2.

CONCLUSION

We reverse the Examiner's decision.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 2, 4-7	103	JP '601		1, 2, 4-7
1, 2, 4-7	103	JP '277, Kaneda, Ishizuka		1, 2, 4-7
Overall Outcome				1, 2, 4-7

REVERSED