



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
**United States Patent and Trademark Office**  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/116,504	08/03/2016	Peter Petit	031513-9009-US00	9435
23409	7590	02/26/2020	EXAMINER	
MICHAEL BEST & FRIEDRICH LLP (Mke) 100 E WISCONSIN AVENUE SUITE 3300 MILWAUKEE, WI 53202			BARLOW, ADAM G	
			ART UNIT	PAPER NUMBER
			3633	
			NOTIFICATION DATE	DELIVERY MODE
			02/26/2020	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mkeipdocket@michaelbest.com

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

*Ex parte* PETER PETIT

---

Appeal 2019-004519  
Application 15/116,504  
Technology Center 3600

---

Before STEFAN STAICOVICI, MICHAEL J. FITZPATRICK, and  
WILLIAM A. CAPP, *Administrative Patent Judges*.

CAPP, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant<sup>1</sup> seeks our review under 35 U.S.C. § 134(a) of the final rejection of claims 1–18, and 20 under 35 U.S.C. § 102(a)(2) as anticipated by Petit (WO 2012/170566 A1, pub. Dec. 13, 2012) and claim 19 as unpatentable under 35 U.S.C. § 103(a) over Petit and Day (US 2010/0319751 A1, pub. Dec. 23, 2010).<sup>2</sup> We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

---

<sup>1</sup> We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies V-Glass, LLC as the real party in interest. Appeal Br. 2.

<sup>2</sup> The rejection of claims 3, 4, 6, 14, and 15 has subsequently been withdrawn by the Examiner. Ans. 3.

## THE INVENTION

Appellant's invention relates to glass panel assemblies. Spec. ¶ 2.  
Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A hermetically-sealed enclosure comprising:
  - at least two wall elements of substantially congruent shapes;
  - a spacer system defining an interior space between the wall elements; and
  - a bridge element including one or more flexible metal foil layers extending between adjacent, respective edges of the wall elements to isolate the interior space from a surrounding environment,
    - wherein the bridge element is substantially free of step discontinuities in total thickness along the intended weld path, and
    - wherein the bridge element is bonded to each of the wall elements via an ultrasonic weld to form a continuous bond line.

## OPINION

### *Anticipation by Petit*

#### *Claims 1, 2, 5, and 7–10*

Claim 1 is an independent claim and claims 2, 5, and 7–10 depend therefrom. Claims App. The Examiner finds that Petit discloses the invention substantially as claimed. Final Act. 2. In particular, the Examiner finds that Petit discloses a bridge element that is substantially free of step discontinuities in total thickness along the weld path. *Id.*

Appellant challenges the Examiner's finding regarding step discontinuities. Appeal Br. 7–9. Appellant argues that Petit teaches a foil loop/seal that has at least one step discontinuity at the juncture between the start of the loop and the end of the loop so that the excess loop material can be welded to itself. *Id.* at 9.

In response, the Examiner takes the position that, notwithstanding that the excess loop material of Petit is folded and welded at point 19 as shown in Figs. 10a–c, the bridge element, nevertheless, is “substantially” free of a step discontinuity. Ans. 4. According to the Examiner,

While there is a welded section, the welded fold occurs at the ends of the metal foil that surrounds the wall/panel elements (1, 2) at starting position (19). The remaining length of the metal foil around the perimeter of the glass elements is not disclosed as having any step discontinuities. One of ordinary skill would look at the foil of Petit that extends around the entire perimeter of the glass element and even with the fold, would consider the foil of Petit as being “substantially free of step discontinuities.” The examiner contends that the use of the term “substantially” would reasonable be interpreted as having almost no discontinuities, but still allowing for some discontinuities.

*Id.*

In reply, Appellant points out that the claim language in dispute is defined explicitly in the Specification as meaning limiting total thickness variation to no more than about 0.001 inches along the intended weld path. Reply Br. 3 (quoting Spec. ¶ 38). Appellant argues that, after being folded over as shown in Figures 10a–c, the thickness of Petit’s seal strip 6 at the fold amounts to a step discontinuity that exceeds 0.001 inches. *Id.*

According to Appellant, even a single discontinuity that exceeds 0.001 inches, falls outside of the scope of the claim, when construed in accordance with the explicit definition provided in Appellant’s Specification. *Id.*

The Examiner makes no factual finding as to whether the fold at point 19 of Petit results in a thickness variation of less than or equal to 0.001 inches. *See generally* Final Act.; Ans. In summary, Appellant applies the paragraph 38 definition as the meaning of the step discontinuity limitation

whereas the Examiner applies a broader meaning as to what it means to be “substantially free.”

The dispute between Appellant and the Examiner is largely a matter of claim construction. During examination of a patent application, pending claims are given their broadest reasonable construction consistent with the specification. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). Under the broadest reasonable interpretation standard, claim terms are given their ordinary and customary meaning as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

Ordinarily, the term “substantially” is treated as a term of approximation. *See Anchor Wall Sys. v. Rockwood Retaining Walls, Inc.*, 340 F.3d 1298, 1311 (Fed. Cir. 2003) (explaining that terms of approximation, such as “generally” and “substantially,” are descriptive terms commonly used in patent claims to avoid a strict numerical boundary to the specified parameter). However, when a patent applicant has elected to be a lexicographer by providing an explicit definition in the specification for a claim term, such definition controls.

[O]ur cases recognize that the specification may reveal a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess. In such cases, the inventor’s lexicography governs.

*Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005).

Hypothetically and in the absence of the explicit definition provided by Appellant at paragraph 38 of the Specification, the Examiner’s position would have carried more weight. However, given the circumstances here,

where Appellant has taken pains to provide an explicit definition, we give effect to such definition. *Phillips*, 415 F.3d at 1316. Applying the claim language in accordance with Appellant's definition, we agree with Appellant that the Examiner's findings of fact are not sufficient to establish that Petit anticipates claim 1.

We do not sustain the Examiner's anticipation rejection of claim 1, neither do we sustain the rejection of claims 1, 2, 5, and 7–10 that depend therefrom.

*Claims 11–13 and 16–19*

Claim 11 is an independent claim that is substantially similar in scope to claim 1 except that it recites a method and claims 12, 13, and 16–19 depend, directly or indirectly, therefrom. Claims App. As with claim 1, claim 11 contains a limitation directed to the bridge element being substantially free of step discontinuities in total thickness. *Id.* Thus, the Examiner's rejection of these claims suffers from the same infirmity that was identified above with respect to claim 1 discussed hereinabove. Thus, for essentially the same reason expressed above in connection with claim 1, we do not sustain the rejection of claims 11–13 and 16–19.

*Claim 20*

Claim 20 is an independent claim that is similar in scope to claim 1. Claims App. As with claim 1, claim 20 contains a limitation directed to the bridge element being substantially free of step discontinuities in total thickness. *Id.* Thus, the Examiner's rejection of this claim suffers from the same infirmity that was identified above with respect to claim 1 discussed hereinabove. Thus, for essentially the same reason expressed above in connection with claim 1, we do not sustain the rejection of claim 20.

*Unpatentability of Claim 19  
over Petit and Day*

Claim 19 depends from claim 11 and adds the limitation: “wherein at least one bond formed by the bonding steps is made to a coated surface of a wall element, and wherein the coating has been removed in the region of the weld path by chemical edge deletion.” Claims App. The Examiner relies on Day as teaching chemical edge deletion. Final Act. 5. However, the Examiner’s rejection of claim 19 suffers from the same infirmity that was identified above with respect to claim 11, which infirmity is not cured by Day. Thus, for essentially the same reason expressed above in connection with claim 11, we do not sustain the rejection of claim 19.

CONCLUSION

<b>Claims Rejected</b>	<b>§</b>	<b>Reference(s)</b>	<b>Aff’d</b>	<b>Rev’d</b>
1, 2, 5, 7–13, 16-18, 20	102	Petit		1, 2, 5, 7–13, 16-18, 20
19	103	Petit, Day		19
<b>Overall Outcome</b>				1, 2, 5, 7–13, 16-20

REVERSED