



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

Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO. Includes details for application 15/158,656 filed 05/19/2016 by Klaus Eimann, attorney 13863MQ, confirmation 7811. Also includes examiner WILLETT, TARYN T, art unit 1747, and notification date 06/10/2020 via ELECTRONIC mode.

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):

- centraldocket.im@pg.com
mayer.jk@pg.com
pair_pg@firsttofile.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KLAUS EIMANN, BRADLEY EDWARD WALSH, and
UWE SCHNEIDER

Appeal 2019-004719
Application 15/158,656
Technology Center 1700

Before JEFFREY T. SMITH, JULIA HEANEY, and
LILAN REN, *Administrative Patent Judges*.

REN, *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 and 3–35. *See* Final Act. 2–30. 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. Appellant identifies the real party in interest as “The Procter & Gamble Company of Cincinnati, Ohio.” Appeal Br. 1.

CLAIMED SUBJECT MATTER

The claims are directed to a process and apparatus for manufacturing an absorbent article using a laser source. Spec. 1:9–12. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method for manufacturing an absorbent article, the method comprising:

advancing a belt assembly, wherein the belt assembly comprises a first substrate defining a first outer surface, a second substrate defining a second outer surface, and an elastic material disposed between the first substrate and the second substrate; and

advancing the belt assembly to a first laser assembly, where the first laser assembly comprises a first laser source positioned adjacent the first surface and a second laser source positioned adjacent the second surface, wherein the first laser source operatively engages the first surface of the belt assembly imparting a first line of weakness on the first surface of the belt assembly and the second laser source operatively engages that second surface of the belt assembly imparting a second line of weakness on the second surface of the belt assembly, wherein the first line of weakness and the second line of weakness are coincident.

Claims Appendix (Appeal Br. 10).

REFERENCES

The prior art references relied upon by the Examiner are:

Name	Reference	Date
Mlinar '040	US 6,838,040 B2	Jan. 4, 2005
Mlinar	US 2003/0051805 A1	Mar. 20, 2003
Nakakado	US 2004/0035521 A1	Feb. 26, 2004
Feinstein	US 2010/0154992 A1	June 24, 2010
Verboomen	US 2014/0110037 A1	Apr. 24, 2014

REJECTIONS

Claims 1 and 5 are provisionally rejected on the ground of non-statutory double patenting. Final Act. 3.

Claims 1, 3, 6, and 7 are rejected under 35 U.S.C. § 103 as being unpatentable over Verboomen in view of Feinstein. Final Act. 4.

Claims 1, 3–5, 8, 9, and 11–16 are rejected under 35 U.S.C. § 103 as being unpatentable over Mlinar in view of Feinstein. Final Act. 6.

Claims 1, 3–5, 8–10, and 13–16 are rejected under 35 U.S.C. § 103 as being unpatentable over Nakakado in view of Verboomen and Feinstein. Final Act. 13.

Claims 17–22 are rejected under 35 U.S.C. § 103 as being unpatentable over Mlinar in view of Mlinar '040. Final Act. 19.

Claim 23 is rejected under 35 U.S.C. § 103 as being unpatentable over Mlinar in view of Mlinar '040 and Feinstein. Final Act. 22.

Claims 24–28, 30–31, and 33–35 are rejected under 35 U.S.C. § 103 as being unpatentable over Mlinar in view of Feinstein. Final Act. 23.

Claims 29 and 32 are rejected under 35 U.S.C. § 103 as being unpatentable over Mlinar in view of Feinstein and Nakakado. Final Act. 28.

OPINION

Claim 1 (Verboomen in view of Feinstein)

In rejecting claim 1 over Verboomen in view of Feinstein, the Examiner acknowledges that Verboomen does not teach a method “of advancing a belt assembly” that has first and second surfaces and “a first laser assembly . . . imparting a second line of weakness on the second surface of the belt assembly” so that “the first line of weakness and the second line of weakness are coincident.” Final Act. 4 (stating that

“Verboomen is silent to the duplication of the single laser assembly for forming a line of weakness on the belt to first and second laser assemblies that form first and second coincident lines of weakness”). The Examiner accordingly relies on Feinstein for the teaching. *Id.* Citing Feinstein’s teaching about applying heat for delamination, the Examiner finds that a skilled artisan would have been motivated to duplicate the prior art single laser source to produce the recited coincident first and second lines of weakness. *Id.* (citing Feinstein ¶¶ 22, 40, 44–46).

Appellant argues that the Examiner reversibly erred because the prior art does not teach applying the first and second laser sources on different sides of the belt assembly. Appeal Br. 5. The Examiner responds that the claim language does not preclude the first substrate being in the same plane as the second substrate. Ans. 4. The Examiner, however, does not explain how such an arrangement – that both laser sources are applied side by side as illustrated in the Examiner’s figure (*id.*) – could produce the recited coincident first and second lines of weakness. We accordingly do not sustain the rejection of claim 1 and its dependent claims based on Verboomen in view of Feinstein.

Claim 1 (Mlinar in view of Feinstein)

In rejecting claim 1 over Mlinar in view of Feinstein, the Examiner similarly acknowledges that Mlinar does not teach the first and second weaknesses being coincident and again cites Feinstein for the teaching. Final Act. 7. The Examiner finds that a skilled artisan would have duplicated Mlinar’s laser assembly to arrive at the recited coincident first and second lines of weakness. *Id.*

The record before us, however, lacks evidentiary support that the duplication of the prior art method necessarily results in the recited coincident first and second lines of weakness. We accordingly do not sustain the rejection of claim 1 and its dependent claims based on Mlinar and Feinstein.

Claim 1 (Nakakado, Verboomen, & Feinstein)

As with the rejection of claim 1 based on Verboomen and Feinstein, the Examiner's rejection of claim 1 based on Nakakado, Verboomen, and Feinstein is flawed in failing to show a teaching or suggestion of the recited coincident first and second lines of weakness. *See* Final Act 14. We accordingly do not sustain the rejection of claim 1 and its dependent claims based on Nakakado, Verboomen, and Feinstein.

Claim 17 (Mlinar & Mlinar '040)

Independent claim 17 recites similar steps as claim 1 and the Examiner cites Mlinar '040 at 6:66–7:5 for the teaching of a “second laser beam impart[ing] a second line of weakness onto [a] second substrate, wherein the second line of weakness is coincident with the first line of weakness.” Final Act. 20.

The Examiner acknowledges that the cited portion of Mlinar '040 describes applying two cutting assemblies on the same substrate to form one line of weakness but finds that a skilled artisan would have found it obvious to form the second line of weakness on another substrate. Ans. 8 (reasoning that doing so “would necessarily further reduce the tensile strength” of the material on which the line of weakness exists to achieve the objective of Mlinar '040). The evidence, however, lacks a showing that the prior art teaches or suggests applying a cutting assembly to the recited first and

second substrates on which the first and second lines of weakness are coincident. We accordingly do not sustain the rejection of claim 17 and its dependent claims based on Mlinar and Mlinar '040.

Claim 24 (Mlinar & Feinsten)

Independent claim 24 is similar to claim 1 and recites “wherein the first line of weakness is coincident with the second line of weakness.”

In rejecting claim 24 over Mlinar in view of Feinstein, the Examiner similarly acknowledges that Mlinar does not teach the first and second weaknesses being coincident and again cites Feinstein for the teaching. Final Act. 24–25. The Examiner finds that a skilled artisan would have duplicated Mlinar’s laser assembly to arrive at the recited coincident first and second lines of weakness. *Id.*

The record before us, however, lacks evidentiary support that the duplication of the prior art method necessarily results in the recited coincident first and second lines of weakness. We accordingly do not sustain the rejection of claim 24 and its dependent claims based on Mlinar and Feinstein.

Double Patenting Rejection

In light of the foregoing, we decline to reach the double patenting rejection. We refer this back to the Examiner to determine the appropriateness of this rejection. *See Ex parte Moncla*, 95 USPQ2d 1884, 1885 (BPAI 2010) (precedential). The Examiner should process the obviousness type double patenting rejection consistent with MPEP § 804 upon return of the present application to the jurisdiction of the Examiner.

CONCLUSION

The Examiner’s rejections are reversed.

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 5	Double patenting		Not reached	Not reached
1, 3, 6, 7	103	Verboomen, Feinstein		1, 3, 6, 7
1, 3–5, 8, 9, 11–16	103	Mlinar, Feinstein		1, 3–5, 8, 9, 11–16
1, 3–5, 8–10, 13–16	103	Nakakado, Verboomen, Feinstein		1, 3–5, 8–10, 13–16
17–22	103	Mlinar, Mlinar '040		17–22
23	103	Mlinar, Mlinar '040, Feinstein		23
24–28, 30–31, 33–35	103	Mlinar, Feinstein		24–28, 30–31, 33–35
29, 32	103	Mlinar, Feinstein, Nakakado		29, 32
Overall Outcome:				1, 3–35

REVERSED