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Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO. Includes application details for Michael AYERS and examiner information for EDWIN J. TOLEDO-DURAN.

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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* MICHAEL AYERS and JOSE URRUTIA

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Appeal 2019-004910  
Application 13/231,067  
Technology Center 3600

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Before MICHAEL L. HOELTER, WILLIAM A. CAPP, and  
LISA M. GUIJT, *Administrative Patent Judges*.

GUIJT, *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 rejection of claims 1, 3, 5, 6, 9, 11, and 12. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

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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. Appellant identifies Watershed Geosynthetics LLC as the real party in interest. Appeal Br. 2.

## THE INVENTION

Appellant's invention relates to "systems for erosion protection that typically take the form of a combination of synthetic mat and natural grass." Spec. ¶ 2. Claims 1 and 11 are the independent claims on appeal. Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A ground cover system for protecting ground soil on steep topographic ground against erosion, wherein the ground cover system comprises:

a synthetic grass which comprises a composite of one or more geo-textiles tufted with synthetic yarns;

at least one filter fabric to be placed directly atop the ground soil, and

an open grid mesh sandwiched between the synthetic grass and the filter fabric, with an upper portion of the open grid mesh facing and placed directly against the synthetic grass and a lower portion of the open grid mesh facing and placed against the filter fabric,

wherein the synthetic grass has blades with an average length of between about 1.25 and 3 inches, wherein the synthetic grass has a density of between about 20 ounces per square yard and 120 ounces per square yard, and wherein the open grid mesh comprises a synthetic drainage system for transmitting high-volume precipitation from atop the synthetic grass downward into the open grid mesh for absorption into the underlying ground soil to reduce precipitation runoff from the steep topographic ground.

### THE REJECTIONS

The Examiner relies upon the following as evidence in support of the rejections:

NAME	REFERENCE	DATE
Friedrich	US 4,444,815	Apr. 24, 1984
Mogford	WO 89/01076	Feb. 9, 1989
Prévost	US 6,338,885 B1	Jan. 15, 2002
Edwards	US 6,524,424 B2	Feb. 25, 2003
Dipple	US 2006/0045995 A1	Mar. 2, 2006
Ayers	US 2008/0069642 A1	Mar. 20, 2008

The following rejections are before us for review:

- I. Claims 1, 11, and 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Friedrich, Ayers, and Dipple.
- II. Claims 3 and 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Friedrich, Ayers, Dipple, and Mogford.
- III. Claim 5 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Friedrich, Ayers, Dipple, and Edwards.
- IV. Claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Friedrich, Ayers, Dipple, and Prévost.

### OPINION

#### *Rejection I*

Regarding independent claim 1, the Examiner finds Friedrich discloses, *inter alia*, a ground cover system including a synthetic grass (i.e., section of artificial grass 10), at least one filter fabric (i.e., filter mat 12 bonded to underside of artificial grass 10) to be placed directly atop the ground soil, and an open grid mesh (i.e., grid-like webs or ribs of the

backing for the synthetic grass 14) sandwiched between the synthetic grass and the filter fabric, as claimed. Final Act. 2–3 (citing Friedrich, Abstract).

The Examiner determines that Friedrich does not disclose a synthetic grass comprising a composite of one or more geo-textiles tufted with synthetic yarns or using the open grid mesh relative to steep topographic ground. Final Act. 3. The Examiner relies on Ayers for disclosing that “it is well-known in the art to provide synthetic grasses made of a composite of geotextiles tufted with synthetic yarns,” and also for disclosing “a cover system that can be installed in very steep slopes.” Final Act. 3 (citing Ayers, Abstract, ¶¶ 11, 29); *see also* Ans. 9, 10 (explaining that “[t]he structural element missing in [Friedrich’s artificial grass 10] is the ‘one or more geo-textiles tufted with synthetic yarns’”). The Examiner reasons that it would have been obvious to use a synthetic grass composite, as taught in Ayers, “to provide durability against ultraviolet light.” *Id.* (citing Ayers ¶ 29); *see also* Ans. 10 (reasoning that “more components mean more layers which results in better filtering and therefore cleaner drainage water after the drainage water crosses the cover to reach the soil”).

Appellant argues that

one of ordinary skill in the art would have no motivation to combine the cover systems of Ayers and Friedrich, which only include a layer of artificial or synthetic grass and a filter fabric, to create a three-component cover system comprising not only a synthetic grass (with a backing) and a filter fabric, but also an open grid mesh therebetween.

Appeal Br. 4–5. In support, Appellant submits that both Friedrich and Ayers disclose a two, not three, component system: (i) Friedrich discloses “a ground cover system with only a layer of artificial grass and a filter mat,” and more specifically, that Friedrich discloses “an artificial grass 10 that

includes ‘pile threads 18 protruding upwards from the grid-like **backing**’” and a second component, namely, “filter mat 12,” which is “bonded directly to the artificial grass 10” (*id.* at 5 (citing Friedrich 2:9–18)); and (ii) Ayers discloses “a two-component ground cover system comprising a synthetic grass 103/104 and an impermeable geomembrane 102,” wherein “the synthetic grass is ‘deployed directly on top of the geomembrane 102’” (*id.* (citing Ayers ¶ 60)). Appellant emphasizes that “element 14 is described in Friedrich as the ‘grid-like webs or ribs of the backing 14 for the grass,’” and therefore, one of ordinary skill in the art would understand that “element 14 is just the backing of the artificial grass 10 of Friedrich.” Reply Br. 2 (citing Friedrich 2:9–16).

Appellant concludes that “[a] person of ordinary skill in the art would not have been motivated to deconstruct the two-component system of Friedrich to create a three-component system.” Appeal Br. 5. In particular, Appellant argues that

the teachings of Ayers would not have motivated a person skilled in the art to deconstruct the artificial grass 10 of Friedrich and position its backing 14 against the synthetic grass of Ayers, which already includes its own backing. Indeed, it would [be] illogical to do so, as Ayers already had a backing.

*Id.* at 6. Appellant submits that “if one removes the backing 14 from the synthetic grass 10 of Friedrich, one is left with blades that are no longer tufted to a backing and thus you would not have synthetic grass.” Reply Br. 2. Appellant concludes that the Examiner’s combination relies improperly on hindsight. Final Act. 5–6.

The Examiner responds, *inter alia*, that “there is no ‘backing’ claimed.” Ans. 11.

We are persuaded by Appellant’s argument. Friedrich expressly discloses that “the grid-like webs or ribs 14 [are] *the backing* for the grass” and further, that ribs 14 may be coated to allow filter mat 12 “to be bonded *to the artificial grass.*” Friedrich 2:11–17 (emphasis added). Thus, as argued by Appellant, one skilled in the art would interpret ribs 14 as a component of Friedrich’s artificial (or synthetic) grass 10, and not as an open grid mesh separate from the artificial grass. *See* claim 1, *supra*, (reciting the synthetic grass as a structure separate from “an open grid mesh *sandwiched between* the synthetic grass and the filter fabric”) (emphasis added). In other words, the Examiner errs by interpreting the backing of Friedrich’s synthetic grass as a component that is *not* a part of the synthetic grass, but rather, as the separately claimed open grid mesh. We agree, therefore, with Appellant that one skilled in the art would not have arrived at Appellant’s claimed invention but for hindsight derived from Appellant’s Specification.<sup>2</sup>

Nor does the Examiner’s reliance on Dipple for disclosing the claimed density range of the synthetic grass blades cure the deficiency in the Examiner’s finding with respect to Friedrich *supra*. Final Act. 3–4.

Accordingly, we do not sustain the Examiner’s rejection of independent claim 1. The Examiner relies on the same finding with respect to Friedrich in the rejection of independent claim 11, which also recites a synthetic grass as a separate structure from an open grid mesh, and therefore,

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<sup>2</sup> Notably, Ayers discloses “a geomembrane 102 having studs that when covered by the bottom geotextile 104 of the turf creates a highly transmissive drainage” (Ayers ¶ 60), wherein Ayers’s studs perform the same function of Appellant’s claimed open grid mesh. *See, e.g.*, Spec. ¶ 16 (“the open grid mesh comprises a synthetic drainage system with drainage capacity to handle high-intensity precipitation”).

we also do not sustain the Examiner's rejection of claim 11 and claim 12 depending therefrom. Final Act. 2, 4.

*Rejections II–IV*

The Examiner's reliance on (i) Mogford for disclosing two fabric layers and a fabric comprising non-woven synthetic fabric (*see* Rejection II); (ii) Edwards for disclosing a filter fabric comprising woven filter fabrics (*see* Rejection III); and (iii) Prévost for disclosing synthetic grass comprising certain blades; does not cure the deficiency in the Examiner's finding with respect to independent claims 1 and 11, as discussed *supra*, and from which claims 3, 5, 6, and 9 depend.

Accordingly, for essentially the same reasons stated *supra* with respect to the rejection of claim 1, we also do not sustain the Examiner's rejection of claims 3, 5, 6, and 9.

CONCLUSION

In summary:

<b>Claims Rejected</b>	<b>§</b>	<b>Reference(s)</b>	<b>Affirmed</b>	<b>Reversed</b>
1, 11, 12	103(a)	Friedrich, Ayers, Dipple		1, 11, 12
3, 6	103(a)	Friedrich, Ayers, Dipple, Mogford		3, 6
5	103(a)	Friedrich, Ayers, Dipple, Edwards		5
9	103(a)	Friedrich, Ayers, Dipple, Prévost		9
<b>Overall Outcome</b>				1, 3, 5, 6, 9, 11, 12

REVERSED