

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board

Paper No. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte DARRELL H. CORBETT  
and STUART A. SMITH

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Appeal No. 2002-2114  
Application No. 09/164,792

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ON BRIEF

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Before GARRIS, OWENS, and PAWLIKOWSKI, Administrative Patent Judges.

PAWLIKOWSKI, Administrative Patent Judge.

**DECISION ON APPEAL**

This is a decision on appeal under 35 U.S.C. §134 from the examiner's final rejection of claims 8, 9, and 10. A copy of these claims is set forth in the attached appendix.

The examiner relies upon the following reference as evidence of unpatentability:

Hopkins et al. Hopkins)

5,685,940

Nov. 11, 1997

Claims 8-10 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 8 and 9 of U.S. Patent No. 5,685,940 (Hopkins).

We note that, beginning on page 3 of the Brief, appellants state that they reserve the right to file a terminal disclaimer in the event that their appeal proves unsuccessful.

#### OPINION

We have carefully reviewed appellants' Brief and Reply Brief, and the examiner's Answer. This review has led us to agree with the examiner's rejection for the following reasons.

Appellants argue that their claims concern a method for reducing core crush using tiedown plies in the chamfer region. (Brief, page 3.) On page 4 of the Brief, appellants argue that prior to their present invention, no one, at least in the art of record, and to the knowledge of appellants or assignee, used tiedown plies as described and claimed in the chamfer area.

Appellants also state that the present application has an effective filing date of **March 15, 1996**, which is prior to the filing date of the Hopkins patent (**March 20, 1996**). (Brief, page 4.) Appellants state that a patent issuing on the present application will therefore have a term shorter than the Hopkins patent, and that there is, therefore, no extension of term to disclaim. (Brief, page 4.)

Under the aforementioned circumstances (i.e., the Hopkins patent being the later filed application), the question of whether the timewise extension of the right to exclude granted by a patent is justified or unjustified must be addressed. See MPEP § 804 (II) (B) (1) (b) (Aug. 2001). In so doing, we note that a two-

way test is to be applied only when the applicant could not have filed the claims in a single application and there is administrative delay. In re Berg, 140 F.3d 1428, 1431, 46 USPQ2d 1226, 1229 (Fed. Cir. 1998). We observe that at the top of page 3 of Paper No. 11, the examiner determined that a one-way test is appropriate in the present application "[s]ince there was no administrative delay in the prosecution of the present application . . .".

In applying the one-way test, the examiner concluded that appellants' claims 8-10 are unpatentable under the judicially created doctrine of obviousness-type double patenting over claims 8 and 9 of Hopkins. We refer to pages 3-4 of the answer regarding the examiner's reasons for this conclusion. We agree with the examiner's conclusion for the following reasons.

With respect to appellants' claim 8, appellants argue that their claim 8 recites a method for reducing core crush by contacting the chamfer of a honeycomb core with a carbon or fiberglass tiedown ply. Appellants also argue that Hopkins defines a different invention focused on holding the tiedown ply still on the tool during cure. (Brief, page 4.) The examiner correctly indicates that claim 8 of Hopkins is also directed to a method for reducing core crush. We also find the claim 8 of Hopkins is directed to a method involving contacting the chamfer region of the core with a tiedown ply. See step (a) of Hopkins' claim 8. Hence, we are unconvinced by appellants' arguments that their claim 8 is unpatentable over claims 8 and 9 of Hopkins.

With respect to appellants' claim 9, appellants argue that Hopkins' claim 8 has no description of using a barrier film. On page 4 of the answer, the examiner correctly points out that Hopkins' claim 9 teaches use of a barrier film. We agree.

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With respect to appellants' claim 10, appellants argue that this claim recites a method that provides egress for volatiles from the honeycomb core. The examiner states that the structure utilized in the method of claim 8 of Hopkins would inherently allow for the escape of volatiles also. In view of the similarity of materials and structure, and absent evidence to the contrary, we agree with the examiner's conclusion here.

In view of the above, we affirm the rejection.

**AFFIRMED**

Bradley R. Garris	)	
Administrative Patent Judge	)	
	)	
	)	
Terry J. Owens	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
Beverly A. Pawlikowski	)	
Administrative Patent Judge	)	

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**APPENDIX**

8. A method for reducing core crush during manufacture of a chamfered composite honeycomb sandwich panel having a laminate face sheet adhered to a honeycomb core, the core having a chamfer, comprising the step of:

contacting a carbon or fiberglass fabric tiedown ply with the honeycomb core of the panel in the region of the chamfer to prevent slippage between the core and the laminate face sheet.

9. The method of claim 8 wherein the laminate face sheet includes a barrier film to prevent resin flow from the laminate face sheet into cells of the core.

10. A method to provide egress for escape of volatiles from a honeycomb core during autoclave curing of a composite sandwich panel containing the core, comprising the steps of:

positioning a carbon or fiberglass fabric tiedown ply in contact with the core between the core and a laminate adhered over the core, the ply allowing volatiles to escape from the core and equalizing the pressure between the core and an autoclave during cure of the panel.