

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. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRYAN DAVID HAYNES, BILLY DEAN ARNOLD,
JUSTIN MAX DUELLMAN, RYAN CLINTON FRANK,
JEFFERY LAWRENCE MCMANUS, CHARLES ALLEN SMITH,
TY JACKSON STOKES, KEVIN EDWARD SMITH, DARRYL FRANKLIN CLARK,
DEBRA JEAN MCDOWALL, SAMUEL EDWARD MARMON,
CHRISTOPHER COSGROVE CREAGAN, XIN NING and DAVID LEWIS MYERS

Appeal No. 2002-2246
Application No. 09/192,110

ON BRIEF

Before WARREN, KRATZ and JEFFREY T. SMITH, *Administrative Patent Judges*.
JEFFREY T. SMITH, *Administrative Patent Judge*.

DECISION ON APPEAL

Applicants appeal the decision of the Primary Examiner finally rejecting claims 1 to 20 and 43 to 46, all of the claims present in the application.^{1, 2} We have jurisdiction under 35 U.S.C. § 134.

¹ In rendering our decision, we have considered Appellants' arguments presented in the Brief, filed February 8, 2002 and the Reply Brief, filed July 2, 2002. We have considered the Examiner's position presented in the Answer, mailed April 23, 2002.

² The Examiner has indicated that the after Final amendment, filed August 30, 2001, has been entered and the rejection of claims 1 to 20 and 43 to 46 under 35 U.S.C. § 112, second paragraph, has been withdrawn. (Answer, p. 2). However, the amendment has not been clerically entered in the record. Prior to disposition of the application, the Examiner should ensure that the amendment is properly entered into the record.

BACKGROUND

Appellants' invention relates to a nonwoven web composite. The nonwoven web composite includes a matrix comprising filaments that are formed by splitting a bicomponent thermoplastic filament. The bicomponent filament includes a first thermoplastic polymer and a second thermoplastic polymer arranged in distinct zones across a cross-section of the individual bicomponent filament. The first and second thermoplastic polymers are incompatible with each other and are responsive to a nonmechanical stimulus that induces separation from each other. The matrix also includes fibers or particles as third component. The nonwoven composite is useful in personal care absorbent articles. Claim 1, which is representative of the claimed invention, appears below:

1. A nonwoven web composite, comprising:

a matrix including filaments formed by splitting bicomponent thermoplastic filaments, the bicomponent filaments including a first thermoplastic polymer and a second thermoplastic polymer arranged in distinct zones across a cross-section of individual bicomponent filaments;

the first and second thermoplastic polymers being incompatible with each other and responsive to a nonmechanical stimulus to induce separation from each other; and

a third component contained within the matrix, the third component selected from the group consisting of fibers, particles, and combinations thereof.

CITED PRIOR ART³

As evidence of unpatentability, the Examiner relies on the following references:

Pike et al. (Pike)	5,759,926	Jun. 02, 1998
Hansen et al. (Hansen)	5,981,410	Nov. 09, 1999

The Examiner has rejected claims 1 to 20 and 43 to 46 as unpatentable under 35 U.S.C. § 103(a) as obvious over Pike in view of Hansen.⁴ (Answer, p. 3).

DISCUSSION

We have carefully reviewed the claims, specification and applied prior art, including all of the arguments advanced by both the Examiner and Appellants in support of their respective positions. This review leads us to conclude that the Examiner's § 103 rejection is not well founded. Our reasons for this determination follow.

Rather than reiterate the respective positions advanced by the Examiner and Appellants, we refer to the Examiners Answer and to Appellants' Briefs for a complete exposition thereof.

When determining the patentability of a claimed invention which combines known elements, "the question is whether there is something in the prior art as a whole to suggest

³ The Examiner has cited the following U.S. patent references but has not included them in the statement of the rejection: 6,118,041; 6,120,783; 6,120,488; and 6,142,985.

⁴ The Examiner has withdrawn the rejection of claims 1 to 20 and 43 to 46 under 35 U.S.C. § 112, second paragraph, has been withdrawn. (Answer, p. 2).

the desirability, and thus the obviousness, of making the combination. [Citations omitted].”
Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 1462, 221 USPQ 481, 488 (Fed. Cir. 1984). In the present case, we answer this question in the negative.

The Examiner asserts Pike teaches the creation of nonwoven web comprising splittable bicomponent thermoplastic filaments wherein the filaments are formed from incompatible polymers. The Examiner acknowledges that Pike does not include absorbent fibers or superabsorbent particles as a third component. To remedy this deficiency the Examiner relies on Hansen. According to the Examiner, Hansen describes a nonwoven web comprising splittable fibers and absorbent pulp fibers and superabsorbent particles. The Examiner concludes that it would have been obvious to include absorbent pulp fibers and superabsorbent particles in the nonwoven composite of Pike to enhance the absorbent properties. (Answer, pp. 4-5).

The subject matter of claims 1 and 43, all of the independent claims, includes a third component within the matrix. The matrix of the claimed invention is the result of splitting the bicomponent thermoplastic filaments.

Pike discloses splitting bicomponent thermoplastic filaments. The properties of the split fibers include barrier properties, uniform fiber coverage and high fiber surface area.

Pike discloses the split fibers are suitable for various uses including disposable articles, e.g., protective garments, sterilization wraps, wiper cloth and covers for absorbent articles. (Col. 10). Pike discloses the filaments can be laminated to other layers. (Cols. 10-11). Pike discloses the bicomponent filaments are dried prior to bonding to other layers. (Col. 9). Pike does not disclose the additional layer is combined with the bicomponent filaments prior to splitting.

Hansen discloses the bicomponent fibers are eccentrically, concentrically or side-by-side type. (Col. 3). Hansen discloses the bicomponent filaments are bound to other fibers including superabsorbent polymers. (Col. 5). However, Hansen does not disclose the bicomponents filaments are splittable. Thus, Hansen does not disclose the bicomponents filaments are bound to absorbent fibers and/or superabsorbent particles prior to splitting.

We are not convinced that it would have been obvious to include fibers and particles in the nonwoven composite of Pike as suggested by the Examiner. The Examiner has not directed us to a basis for adding a third component to the filaments prior to splitting so as to incorporate the third component within the matrix of Pike. Pike discloses the lamination of the split filaments to additional layers. However, these layers are added to the filaments after the matrix has been formed and are not incorporated within the matrix.

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The present record indicates that the motivation relied upon by the Examiner to include fibers and particles in the nonwoven composite of Pike comes from the Appellants' description of their invention in the specification rather than coming from the applied prior art and that, therefore, the Examiner used impermissible hindsight in rejecting the claims. *See W.L. Gore & Associates Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983); *In re Rothermel*, 276 F.2d 393, 396, 125 USPQ 328, 331 (CCPA 1960). Consequently, the Examiner's rejection is reversed.

CONCLUSION

For the above reasons we conclude that the Examiner has not carried the burden of establishing a *prima facie* case of obviousness of the invention recited in any of the Appellants' claims. Consequently, we reverse the Examiner's 35 U.S.C. § 103 rejections.

REVERSED

CHARLES F. WARREN
Administrative Patent Judge

PETER F. KRATZ
Administrative Patent Judge

JEFFREY T. SMITH
Administrative Patent Judge

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