

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID G. ABDALLAH

Appeal No. 2005-0704
Application No. 09/812,293

ON BRIEF

Before KIMLIN, GARRIS and OWENS, Administrative Patent Judges.
KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 2-10 and 21-23. Claims 11-18, the other pending claims in the present application, have been withdrawn from consideration.

Claim 21 is illustrative:

21. A green tire incorporating a body ply comprising an elastomeric sheet and a plurality of rows of reinforcement cords embedded therein by extruding an elastomeric material between and around the cords in the plurality of rows, the body ply having edges forming an axially extending seam, wherein each of the reinforcement cords has a diameter d_1 , wherein adjacent

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cords in a first of the plurality of rows are spaced a distance d_{a-a} and wherein adjacent cords in a second of the plurality of rows are spaced a distance d_{b-b} and wherein these distances are equal and uniform.

In the rejection of the appealed claims, the examiner relies upon the following references:

Kiemer	4,274,821	Jun. 23, 1981
Ible	4,300,878	Nov. 17, 1981
Sicka et al. (Sicka)	4,657,718	Apr. 14, 1987
Tompkins	5,292,472	Mar. 08, 1994
Nagumo	JP 5-294,104	Nov. 05, 1993

Appellant's claimed invention is directed to a green tire having a body ply that comprises an elastomeric sheet with a plurality of rows of reinforcing cords embedded therein. The elastomeric sheet is formed by extruding elastomeric material between and around the cords in a plurality of rows. Also, the body ply has edges which form an axially extending seam.

Appealed claims 2-10 and 21-23 stand rejected under 35 U.S.C. § 102(b) as being anticipated by JP '104. The appealed claims also stand rejected under 35 U.S.C. § 103(a) as being unpatentable over JP '104 in view of Kiemer, Ible, Sicka and Tompkins. In addition, claims 8-10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over JP '104.

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For each of the examiner's three rejections, appellant submits that the claims stand or fall together with independent claim 21 (see page 5 of principal brief).

We have thoroughly reviewed each of appellant's arguments for patentability. However, we find the examiner's rejections well-founded and supported by the prior art evidence relied upon. Accordingly, we will sustain the examiner's rejections for essentially those reasons expressed in the answer, and we add the following primarily for emphasis.

We consider first the examiner's rejection of the appealed claims under § 102 over JP '104. Since claim 21 is drafted in product-by-process format, certain principles of patent jurisprudence apply. If a product defined by a product-by-process claim reasonably appears to be substantially the same as or obvious from the prior art, the claim is unpatentable even though the prior product was made by a different process. In re Thorpe, 777 F.2d 695, 697, 227 USPQ 964, 966 (Fed. Cir. 1985). In the present case, although the body ply comprising a plurality of rows of reinforcement cords of JP '104 is made by laminating two elastomeric sheets together, as opposed to the recited extrusion process, we agree with the examiner that the resulting

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green tires of appellant and JP '104 reasonably appear to be substantially the same. In addition to agreeing with the examiner's reasoned analysis that the reference lamination of still hot elastomeric sheets results in a merging of the sheets that is indistinguishable from a single sheet, we find that Fig. 2 of JP '104 suggests a body ply that is essentially a single elastomeric sheet. We note that the English translation of JP '104 describes rubber 6 of Fig. 2 as a "monolayer" (see paragraph 0014, penultimate line). As stated by the examiner, appellant has not carried his burden of proffering objective evidence which establishes that an extruded body ply within the scope of the appealed claims is substantially different than the body ply fairly taught by JP '104. Also, while appellant directs our attention to the fact that the appealed claims are directed to a "green tire" that is formed without the heat of vulcanization, the fact remains that the final product, a vulcanized tire, would seem to have essentially the same structure for the relevant body ply whether formed by extrusion or lamination.

Inasmuch as we have affirmed the examiner's § 102 rejection, it logically follows that we will sustain the examiner's § 103 rejections. It is well settled that anticipation is the epitome

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of obviousness. Furthermore, even if, for the sake of argument, JP '104 does not describe the claimed green tire within the meaning of § 102, we concur with the examiner that it would have been obvious for one of ordinary skill in the art to replace the lamination process of JP '104 with the recited extrusion process. The secondary references cited by the examiner, Kiemer, Ible, sk and Tompkins, simply supply further evidence of what is acknowledged in appellant's specification.

Appellant's specification acknowledges that it was known in the art to use an extrusion apparatus to form a body ply having two rows of reinforcement elements, although the advantage of a seamless ply is at the cost of a significant initial equipment investment (see paragraph bridging pages 1 and 2 of appellant's specification). Also, the specification acknowledges that it was known in the art to use an extrusion apparatus to form a single layer body ply having steel belts, and it only requires replacing a removable guide insert with the insert of the present invention to produce an elastomeric sheet having a plurality of rows of reinforcement cords (see page 5 of specification, last paragraph).

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Consequently, we are satisfied that it would have been obvious for one of ordinary skill in the art to modify the known extrusion apparatus with a guide insert that corresponds to the known pattern of reinforcement cords ultimately desired, as long as the disadvantage of an axially extending seam can be tolerated. We note that appellant bases no arguments upon objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the inference of obviousness established by the state of the prior art.

In conclusion, based on the foregoing, the examiner's decision rejecting the appealed claims is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

AFFIRMED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
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BRADLEY R. GARRIS)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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)	
TERRY J. OWENS)	
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