

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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 HYUNGBYUM KIM, EOYEON HWANG,
HYUNGWOO PARK, and EUNJUNG KANG

Appeal No. 2005-0961
Application No. 09/990,787

ON BRIEF

Before WILLIAM F. SMITH, GARRIS, and JEFFREY T. SMITH,
Administrative Patent Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal which involves claims 1-16.

The subject matter on appeal relates to a liner for personal care products. With reference to Figures 2 and 3 of the appellants' drawing, the liner 31 comprises a hydrophilic first bodyside apertured nonwoven layer 41 laminated with a hydrophobic

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We refer to the brief and to the answer for a complete discussion of the viewpoints expressed by the appellants and by the examiner concerning these rejections.

OPINION

For the reasons set forth in the answer and below, these rejections will be sustained.

On the record of this appeal, the appellants have chosen to not contest the examiner's section 112, second paragraph, rejection of claims 11 and 12. See pages 4 and 8 of the brief. Therefore, we hereby summarily sustain this rejection.

As for the section 102 rejection, it is paramount to bear in mind that a reference will anticipate if it expressly or inherently discloses every limitation recited in the claims even though it does not address the intended use of the claimed structure. In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). Further, in our consideration of this rejection, it is important to recognize that, during examination proceedings, claims are given their broadest reasonable interpretation consistent with the specification. In

¹(...continued)
1 and 13 which are representative of the aforementioned claim groupings.

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re Hyatt, 211 F.2d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 1998).

The examiner has properly found appealed independent claim 1 to be anticipated by Chen. This is because the claim 1 liner is structurally indistinguishable from the liner of Chen since each includes a hydrophilic apertured nonwoven layer laminated with a hydrophobic apertured nonwoven layer (e.g., see Chen's Figure 5, the paragraph bridging pages 41 and 42 and the second full paragraph on page 48). According to the appellants, this anticipation finding is erroneous because the aforementioned layers of the claim 1 liner and Chen's liner are opposite to one another, that is, the bodyside layer of claim 1 is the hydrophilic layer whereas the bodyside layer of Chen is the hydrophobic layer. This argument is unpersuasive for several reasons.

First, this argument concerns the intended use of the claim 1 liner rather than its structure. As previously explained, a reference disclosing recited structural limitations will anticipate a claim even though it does not disclose the intended use of the claim structure. Schreiber, 128 F.3d at 1477, 44 USPQ2d at 1431. Here, the "bodyside" recitation of claim 1 relates solely to the disposition of the claimed liner during use

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and therefore does not serve to structurally distinguish the claim liner from Chen's liner.

Second, as correctly pointed out by the examiner and not disputed by the appellants, Chen discloses an embodiment wherein his dual-zone web or liner is formed of apertured multiple plies (e.g., again see the second full paragraph on page 48). Because each of these apertured multiple plies would comprise a hydrophilic apertured nonwoven layer laminated with a hydrophobic apertured nonwoven layer, the ultimate multi-ply product would necessarily contain a hydrophilic layer disposed between a first hydrophobic layer (e.g., in contact with a body) and a second hydrophobic layer (e.g., in contact with Chen's absorbent core). We fully agree with the examiner's finding that this sandwiched hydrophilic layer would be properly characterized as "bodyside" relative to the second hydrophobic layer. Viewed from this perspective, Chen's multi-ply embodiment would read on all aspects of appealed claim 1 including the "bodyside" recitation thereof.

In this latter regard, it is appropriate to emphasize the examiner's well taken point that the claim term "bodyside" merely requires the layer in question to be on the side which is nearer to the body as opposed to requiring that the layer be "body-

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contacting." Similarly, the term "comprising" leaves claim 1 open to the inclusion of additional liner structures such as a hydrophobic layer between the recited hydrophilic layer and a user's body. See In re Baxter, 656 F.2d 679, 686, 210 USPQ 795, 802 (CCPA 1981)("comprising" leaves claims open to inclusion of other elements, materials, etc.). Moreover, it is appropriate to remind the appellants of the earlier mentioned legal principle that, during examination proceedings, claims are given their broadest reasonable interpretation consistent with the specification. Hyatt, 211 F.2d at 1372, 54 USPQ2d at 1667. Certainly, interpreting appealed claim 1 to encompass a multiple layer embodiment of the type taught by Chen is reasonable and consistent with the subject specification (e.g., see the last paragraph on specification page 9 which teaches that the liner may comprise multiple layers).

Third, the appellants' argument also is unpersuasive because Chen's bodyside layer (i.e., his body-contacting layer) comprises a mixture of both hydrophobic as well as hydrophilic fibers (e.g., see the last paragraph on page 5 in comparison with Figures 1 and 5). When broadly interpreted, appealed claim 1 encompasses an embodiment of the type taught by Chen wherein the bodyside or body-contacting layer includes both hydrophilic and

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hydrophobic nonwoven material. This interpretation of claim 1, though broad, is reasonable and consistent with the appellants' specification which explicitly discloses an embodiment wherein the bodyside layer of the appellants' invention, like the bodyside layer of Chen's invention, is preferably made from a blend of hydrophilic fibers and hydrophobic fibers (see the first paragraph on specification page 13).

Under these circumstances, we agree with the examiner's finding that independent claim 1 is anticipated by Chen.

Regarding separately argued independent claim 13, the appellants in essence reiterate their above discussed argument by stating that claim 13 "further reinforces the fact that the hydrophilic layer would face the body of the wearer by the liner's relationship with the other components of the pantiliner claimed" (brief, page 7). However, for reasons analogous to those previously discussed, the claim 13 pantiliner would encompass Chen's pantiliner embodiments wherein the liner is in the form of multiple plies (again see page 48) and wherein the liner bodyside surface comprises a mixture of hydrophobic as well as hydrophilic nonwoven materials (again see page 5). Furthermore, this interpretation of claim 13 is reasonable and

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consistent with the appellants' specification for the reasons detailed with respect to appealed claim 1.

In light of the foregoing and for the reasons expressed in the answer, we hereby sustain the examiner's section 102 rejection of all appealed claims as being anticipated by Chen.

The decision of the examiner is affirmed.

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

AFFIRMED

William F. Smith)	
Administrative Patent Judge)	
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Bradley R. Garris)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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)	
Jeffrey T. Smith)	
Administrative Patent Judge)	

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Kimberly-Clark Worldwide, Inc.
401 North Lake Street
Neenah, WI 54956

BRG:tdl