

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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 JEAN-LOUIS MONNERIE and PASCAL DEBYSER

Appeal No. 2005-2556
Application No. 10/142,512

ON BRIEF

Before WARREN, KRATZ, and FRANKLIN, Administrative Patent Judges.

FRANKLIN, 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 1-12. A copy of independent claims 1 and 9 is set forth in the attached appendix.

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

Thornton et al. (Thornton)	4,557,968	Dec. 10, 1985
Gilbert De Cauwer et al. (De Cauwer)	5,643,524	Jul. 1, 1997
Yamada et al. (Yamada) ¹ (published Japanese Kokai Patent Application)	10-60736	Mar. 3, 1998

¹The record shows that both a non-idiomatic English translation by computer and an idiomatic English translation by McElroy Translation Company has been provided for Japanese patent 10-60736. We use the English translation by McElroy Translation Company.

Appeal No. 2005-2556
Application No. 10/142,512

The examiner also relies upon appellants' admitted prior art as described on pages 1 and 2 of the specification.

Claims 1, 2, and 5-10 stand rejected under 35 U.S.C. § 102(b) as being anticipated by, or in the alternative under 35 U.S.C. § 103(a) as being obvious over Yamada.

Claims 1, 2, and 5-10 stand rejected under 35 U.S.C. § 103 as being unpatentable over appellants' admitted prior art in view of Yamada.

Claims 3, 4, 11 and 12 stand rejected under 35 U.S.C. § 103 as being obvious over appellants' admitted prior art in view of Yamada and further in view of De Cauwer and Thornton.

Appellants arguments throughout the brief and reply brief focus on the subject matter of claims 1 (apparatus claim) and 9 (method claim). We therefore limit our consideration to these claims in this appeal. See 37 CFR § 41.37(c)(1)(vii) (September 2004); formerly 37 CFR § 1.192(c)(7)(2003). Also see Ex parte Schier, 21 USPQ2d 1016, 1018 (Bd. Pat. App. & Int. 1991).

OPINION

We have carefully reviewed the appellants' brief and reply brief, the examiner's answer, and the evidence of record. This review has led us to the following determinations.

I. The 35 U.S.C. § 102(b)/103(a) rejection of claims 1, 2, 5-10 over Yamada

The examiner's position for this rejection is set forth on pages 4-6 of the answer.

Beginning on page 6 of the brief, appellants argue that Yamada does not disclose or suggest that flat yarns can reduce a volume of air in the forming fabric and improve surface roughness. Beginning on page 2 of the reply brief, appellants

also argue that Yamada does not teach "an apparatus for the production of nonwovens." As such, appellants argue that Yamada does not teach each and every limitation of the claim.

Beginning on page 4 of the answer, the examiner's position is that while Yamada does not expressly state that the fabric formed with the elliptical filaments carry less air volume than a fabric containing round filaments, such properties would be inherent of a fabric woven with flat-shaped filaments according to Yamada. Answer, pages 4-5. Also, on page 13 of the answer, the examiner again points out that Yamada sets forth the structure as claimed. More specifically, the examiner refers to the idiomatic translation at paragraph 25, and states that Yamada teaches it is desirable to use an "elliptical (flat) shape" filament for making a woven fabric. We agree with the examiner's position, and add the following for emphasis.

With regard to appellants' argument that Yamada does not teach an apparatus for the production of nonwovens, the examiner correctly points out that Yamada teaches that the fabrics are useful for a net conveyer used in an adhesion process of making nonwoven fabrics by thermal bonding, and refers to paragraphs 1, 28, 29, and 45 of Yamada. Answer, page 4. Appellants have not fairly explained, much less proven, how the claimed apparatus for forming a non-woven fabric patentably distinguishes over the net conveyor for making non-woven fabrics via the adhesion process of Yamada.

On page 3 of the reply brief, appellants argue that it is not enough to merely allege that because a document purportedly recites disparate yarn shapes, that the document must "inherently" speak to the instantly claimed invention.

Appellants state that the document must disclose or suggest the properties of the claimed invention for inherency to attach. On page 4 of the reply brief, appellants also argue Yamada does not suggest the problem of flutter that is solved by their invention. However, the examiner has found that Yamada discloses all of the claimed limitations but for a recited functional property of the forming fabric. As such, it is incumbent upon appellants to show that the flat yarn-containing fabric disclosed in Yamada does not actually possess the characteristics recited in appellants' claims. Appellants have not done so in the instant case. See In re Ludtke, 441 F.2d 660, 664, 169 USPQ 563, 566-567 (CCPA 1971) (when an alleged distinction between appellants' claims and the reference is recited in functional language, it is incumbent upon appellants to show that the structure disclosed by the reference does not actually possess such characteristics).

In the paragraph bridging pages 4-5 of the reply brief, appellants also argue that there is no exact identity that can be found in Yamada upon which the examiner relies upon inherency. Appellants argue that Yamada merely teaches a general statement that a yarn having at least one of the many shapes described may be useful in a variety of different technologies. Appellants argue Yamada does not describe any utility of such shapes and certainly does not describe the particular utility of reducing air volume of a fabric when using the particular shape of flat yarns as described by the instant invention.

On this issue, we refer to the examiner's findings on pages 4-5 of the answer. We add that Yamada discloses that " . . .

when used as a structural material for a woven fabric for industrial use, either a circular or elliptical (flat) shape is desireable." See paragprah [0025] of Yamada. Hence, appellants' assertion that "no such identity can be found" on page 5 of the reply brief skews this specific teaching of Yamada. That is, it is a preferred embodiment that flat filaments be used in a woven construction. There is no picking and choosing from a myriad of shapes. Rather, a flat shape is clearly described as one embodiment. With regard to the particular utility, again, the list provided in Yamada is not so exhaustive that picking and choosing would result. See paragraph 1 and 29 of Yamada, for example.

In view of the above, we affirm the anticipation rejection, and also affirm the obviousness rejection for the reasons set forth in the answer and in view of the teachings of Yamada regarding a net conveyor use thereof for processing fabric by the thermal bonding method. Also, we note that anticipation is the epitome of obviousness.²

II. The 35 U.S.C. § 103 rejection of claims 1, 2, and 5-10 as being obvious over appellants' admitted prior art in view of Yamada

Beginning on page 6 of the brief, appellants again argue that Yamada merely provides a laundry list of yarn shapes

² This statement that "anticipation is the epitome of obviousness" is made in the same context set forth in the case of In re Structural Rubber Prods. Co. v. Park Rubber Co., 749 F.2d 707, 716, 223 USPQ 1264, 1271 (Fed. Cir. 1984). In this case, the Court referred to the statement that "[t]hough it is never necessary to so hold, a disclosure that anticipates under § 102 also renders the claim invalid

including round or circular. Appellants also argue that Yamada teaches away from the instant invention because there is no teaching by Yamada regarding the beneficial use of flat yarns when compared with round yarns. On page 7 of the brief, appellants argue that Yamada teaches away because of the teaching that round and flat yarns are interchangeable.³

Again, we are not convinced by such arguments concerning Yamada, for the reasons discussed supra, and, hence, for the same reasons, we also affirm this rejection. We add that while Yamada discloses flat yarns or round yarns, such does not change appellants' burden of showing that when using flat yarns, Yamada's invention does not reduce a volume of air in the forming fabric and improve surface roughness.

III. The 35 U.S.C. § 103 rejection of claims 3, 4, 11, and 12 as being obvious over appellants' admitted prior art in view of Yamada and further in view of De Cauwer and Thornton

Beginning on page 7 of the brief, appellants argue that De Cauwer and Thornton do not cure the deficiencies of Yamada.

However, for the reasons discussed supra, we find no failings in Yamada. Therefore, we affirm the 35 U.S.C. § 103 rejection of claims 3, 4, 11, and 12.

IV. Conclusion

Each of the rejections is affirmed.

under § 103, for 'anticipation is the epitome of obviousness,' In re Fracalossi, 681 F.2d 792, 215 USPQ 569 (CCPA 1982)."

³ We note that appellants do not dispute the findings by the examiner regarding the admitted prior art made on page 6 of the answer.

Appeal No. 2005-2556
Application No. 10/142,512

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

AFFIRMED

CHARLES F. WARREN)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
PETER F. KRATZ)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
)	
)	
)	
)	
BEVERLY A. FRANKLIN)	
Administrative Patent Judge)	

BAF/hh

Appeal No. 2005-2556
Application No. 10/142,512

FROMMER, LAWRENCE & HAUG
745 FIFTH AVE. - 10TH FLOOR.
NEW YORK, NY 10151

APPENDIX

1. An apparatus for the production of a nonwoven fabric produced by way of a melt-bonding process whereby fibers are deposited upon a forming fabric to create the nonwoven web, article, or structure, the improvement comprising:

a forming fabric for use in combination with said apparatus which is woven and includes flat cross machine direction yarns or flat machine direction yarns so as to reduce a volume of [or, sic] air in the forming fabric and improve surface roughness of the forming fabric in comparison to that of a similarly woven forming fabric woven from only round cross-sectional shaped yarns.

9. A method for the production of a nonwoven fabric comprising the steps of:

providing a melt-bonding apparatus whereby fibers are deposited upon a forming fabric to create a nonwoven web, structure, or article; and

using in combination with said apparatus a forming fabric which is woven and includes flat cross machine direction yarns or flat machine direction yarns so as to reduce a volume of [or, sic] air in the forming fabric and improve surface roughness of the forming fabric in comparison to that of a similarly woven forming fabric woven from only round cross-sectional shaped yarns.