

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte OTTO M.IIG and RANDALL A. SFERRAZZA

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Appeal No. 2006-0472  
Application 10/859,119<sup>1</sup>

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ON BRIEF

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Before GARRIS, PAK and FRANKLIN, Administrative Patent Judges.  
PAK, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the examiner's final rejection of claims 14 through 16, which are all of the claims pending in the above-mentioned application. We have jurisdiction pursuant to 35 U.S.C. § 134.

APPEALED SUBJECT MATTER

The subject matter on appeal is directed to a system for making yarns of bulked continuous nylon filaments. See the

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<sup>1</sup> Application for patent filed June 3, 2004.



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#### DISCUSSION

On this record, we cannot meaningfully reviewed the aforementioned rejections since the scope of the claims on appeal cannot be ascertained. See In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970); In re Steele, 305 F.2d 859, 862-63, 134 USPQ 292, 295 (CCPA 1962). Accordingly, we vacate the aforementioned rejections and enter forth a new ground of rejection against claims 14 through 16 under 35 U.S.C. § 112, second paragraph, pursuant to 37 CFR § 41.50(b)(2004).

Claims 14 through 16 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly and distinctly point out what the appellants regard as their invention. We note that the claims on appeal require, inter alia, that "the texturing unit includes means for directing a fluid jet onto the nylon filaments of the BCF at a sufficiently low fluid jet velocity and at a sufficiently high fluid jet temperature to impart an alpha-crystalline content in the BCF of at least about 45% and to obtain a yarn skein shrinkage of less than about 0.50 inch (emphasis added)." See independent claim 14. In other words, the claims on appeal define a component of the claimed texturing unit in a means-plus-function format.

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When, as here, the claimed component is written in a means-plus-function format, we must interpret it as being limited to the corresponding structure described in the specification and the equivalents thereof. In re Donaldson Co., 16 F.3d 1189, 1193, 29 USPQ2d 1845, 1848 (Fed. Cir. 1994)(en banc). However, we cannot ascertain from the specification the structure corresponding to the claimed means-plus-function component. The specification, at page 5, states in relevant part:

In accordance with the present invention, fluid jet texturizer of the texturing unit 30 exhibits relatively low efficiency. That is, the orifice size of the fluid jet texturizer is provided with a relatively larger size fluid jet orifice (i.e., as compared to higher efficiency texturizers) so as to operate at a relatively lower fluid jet velocity. Operating at such a lower fluid jet velocity, however, will not impart the desired cylinder bulk (cc/g) properties. Therefore, in accordance with the present invention, the fluid jet texturizer is operated also at a relatively higher temperature so that comparable cylinder bulk properties (i.e., as compared to higher efficiency texturizers) may be obtained. Therefore, the texturing unit 30 includes, according to the present invention, a fluid jet texturizer operable at sufficiently low fluid jet velocity and at a sufficiently high fluid jet temperature to obtain a yarn skein shrinkage of less than about 0.50 inch (preferably about 0.25 inch or less). When nylon-6 is employed to form the filaments, the fluid jet texturizer will operate at a sufficiently low fluid.

This description in the specification does not indicate what particular structure is responsible for producing the claimed

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dual functions, i.e., producing a sufficiently high fluid temperature and a sufficiently low fluid jet velocity. Moreover, to the extent that "a relatively larger size fluid jet orifice" forms part of the corresponding structure, we cannot ascertain what fluid jet orifice size is included by the structure corresponding to the claimed means-plus-function components. This is especially true in this situation since the undefined relative fluid jet orifice size referred to in the specification is also dependent on the pressure to which fluid is subjected in producing a low fluid velocity jet. The specification simply does not link or associate any specific structure to the dual functions (producing a sufficiently low fluid jet velocity and a sufficiently high fluid jet temperature) recited in the claims on appeal. B. Braun Med., Inc. V. Abbott Labs., 124 F.3d 1419, 1424, 43 USPQ2d 1896, 1899 (Fed. Cir. 1997) ("structure disclosed in the specification is 'corresponding' structure only if the specification or prosecution history clearly links or associates that structure to the function recited in the claim. This duty to link or associate structure to function is the quid pro quo for the convenience of employ § 112, ¶6."). Nor does the specification describe the corresponding structure of the claimed means-plus-function component in such a manner that one skilled

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in the art would know and understand what structure corresponds to the claimed means-plus-function component. Atmel Corp. v. Information Storage Devices Inc., 198 F.3d 1374, 1382, 53 USPQ2d 1225, 1230 (Fed. Cir. 1999). It follows that the claims on appeal are not definite within the meaning of § 112, second paragraph.

#### OTHER ISSUE

As indicated supra, we have vacated the examiner's aforementioned rejections since the scope of the claims cannot be properly construed. However, upon clarification of the scope of the claims on appeal, the examiner must re-evaluate the applicability of the examiner's aforementioned rejections.

#### CONCLUSION

For the reasons set forth above, we enter a new ground of rejection against the claims on appeal under 35 U.S.C. § 112, second paragraph, and vacate the rejections set forth by the examiner.

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Insert Form Paragraph for a new ground of rejection (Rule  
41.50(b))

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

VACATED/41.50(b)

BRADLEY R. GARRIS	)	
Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
CHUNG K. PAK	)	APPEALS AND
Administrative Patent Judge	)	INTERFERENCES
	)	
	)	
BEVERLY A. FRANKLIN	)	
Administrative Patent Judge	)	

CKP/sld

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