

The opinion in support of the decision being entered today was not
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HARRY BUSSEY, JR.
And
HARRY BUSSEY, III

Appeal No. 2006-1666
Application No. 10/211,683

ON BRIEF

Before KIMLIN, WARREN, and WALTZ, Administrative Patent Judges.
KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 7,
8, 17, 18 and 39. Claims 2-5 and 9 have been allowed, and claim
19 would be allowable if rewritten in independent form. Claims
1 and 17 are illustrative:

1. A laminated construction comprising

at least one layer having a plurality of criss-crossing foamed filaments adhered to each other and defining a net with mesh openings selected from the group consisting of an elongated diamond shape and a square shape, each said filament being of circular cross section with a diameter of 1/8 inch, said layer characterized in being laterally stretchable with limited longitudinal stretchability; and

at least a second layer laminated to said one layer.

17. An insulation medium comprising

a laminated structure including a plurality of layers of net material disposed in overlying laminated relation to each other, each said layer having a plurality of criss-crossing foamed plastic filaments adhered to each other and defining a net, said laminated structure being characterized in having a lateral stiffness sufficient to be frictionally held between a pair of elongated supports;

a foil layer disposed over one side of said laminated structure for reflecting heat; and

a paper layer disposed over an opposite side of said laminated structure.

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

Li et al. (Li)	4,562,022	Dec. 31, 1985
Porter	4,650,864	Feb. 3, 1987
Sneyd, Jr. (Sneyd)	4,710,185	Dec. 1, 1987

Appellants' claimed invention is directed to a laminated construction that finds utility in insulation, packaging, piping and pool covers. The construction of claim 1 comprises at least

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one layer having a plurality of criss-crossing foamed filaments that define a net with mesh openings wherein the cross section of the filaments has a diameter of 1/8 inch. Appealed claim 17 defines an insulation medium having a plurality of layers of net material disposed in overlying laminated relation to each other, with each layer having a plurality of criss-crossing foamed plastic filaments which define a net.

Appealed claims 1, 7, 8 and 39 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sneyd. Claims 17 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Port in view of Li.

We have thoroughly reviewed the respective positions advanced by appellants and the examiner. In so doing, we find that the examiner's § 103 rejection over Sneyd is not well-founded. However, we agree with the examiner that the subject matter of claims 17 and 18 would have been obvious to one of ordinary skill in the art in view of the applied prior art. Accordingly, we will not sustain the examiner's § 103 rejection of claims 1, 7 and 8 and 39, but affirm the examiner's § 103 rejection of claims 17 and 18.

We consider first the examiner's § 103 rejection of claims 1, 7, 8 and 39 over Sneyd. Sneyd discloses an absorbent article

comprising the presently claimed plurality of criss-crossing filaments that define a net that is laterally stretchable with limited longitudinal stretchability. However, as appreciated by the examiner, Sneyd does not teach that the filaments have a circular cross-section with a diameter of 1/8 inch, i.e., 125 mils. Rather, Sneyd teaches that the individual filaments may have diameters in the range of from about 3 to about 12 mils (column 7, lines 25 et. seq.). Accordingly, it can be seen that the claimed diameter of 125 mils is more than 10 times the upper limit of the range disclosed by Sneyd. Since Sneyd discloses that “[t]he present invention relates, generally, to absorbent articles configured for proximate contact with a mammalian body in order to receive a fluid containing discharge therefrom” (column 1, lines 9-12), and the present invention is directed to insulation material, we must agree with appellants that one of ordinary skill in the art would not have had the requisite motivation to significantly increase the diameter of Sneyd’s filaments to conform to the claimed construction. While the examiner maintains that “Sneyd teaches a general structure for any absorbent article for receiving a fluid containing discharge from any mammalian body” and is not limited to the size constraints of a sanitary napkin (page 9 of the answer, second

paragraph), the examiner has failed to establish that any absorbent articles used in contact with a mammalian body would have filaments of the claimed diameter. Although the rejected claims are not limited to insulation material, the examiner's rejection is based on a modification of Sneyd that is lacking in evidentiary support.

We now turn to the § 103 rejection of claims 17 and 18 over Porter in view of Li. A principal argument of appellants is that the foam board of Porter "neither has a plurality of layers of net materials disposed in overlying laminated relation to each other nor a layer having a plurality of criss-crossing foamed plastic filaments adhered to each other and defining a net" (page 11 of principal brief, first paragraph). We agree with the examiner, however, that appellants improperly interpret their claim language as requiring contact between the claimed "plurality of layers of net material disposed in overlying laminated relation to each other" (claim 17, lines 2-3). We agree with the examiner's reasoning that "other layers can be present between the net material layers as long as all of the layers are laminated and are in overlying relation to each other" (sentence bridging pages 15 and 16 of answer). We find no error in the examiner's finding that "the two scrim materials

[of Porter] separated by a foam board are in overlying laminated relation because they are both in laminated and overlying relation to the foam" (page 16 of answer, first paragraph). Indeed, the definition for the term "overlie" offered by appellants, which is "to lie over or upon," does not require contact and, therefore, supports the examiner's position. We concur with the examiner that one layer of scrim material in Porter's Example 8 overlies both a foam board and another layer of scrim material.

As for the claim 17 recitation that the "laminated structure being characterized in having a lateral stiffness sufficient to be frictionally held between a pair of elongated supports," we concur with the examiner's reasoning regarding the breadth of the claim limitation in relation to the lateral stiffness of Porter's foam board (see paragraph bridging pages 16 and 17 of answer).

Concerning Porter's failure to disclose the use of foamed plastic filaments, we agree with the examiner's legal conclusion that "it would have been obvious to one having ordinary skill in the art at the time the Applicants' invention was made to foam the plastics filaments of Porter in order to, as taught by Li et al., improve the thermal insulation properties and make the

facing lighter, which is a desire of Porter" (page 7 of answer, second paragraph). As for appellants' argument that the scrim material of Porter must have sufficient strength for wind resistance, we are satisfied that one of ordinary skill in the art would have found it obvious to select the material for the scrim, be it foamed or otherwise, to fit the particular use of the insulation material, while balancing the properties of strength, thermal insulation, and weight. Also, we note that appellants base no argument upon objective evidence of nonobviousness, such as unexpected results.

One final point remains. Upon return of this application to the examiner, the examiner should consider the obviousness of the subject matter defined by claims 1, 7, 8 and 39 over the combined teachings of Porter and Li, bearing in mind that the diameter of a foamed filament may be a matter of optimization for one of ordinary skill in the art.

In conclusion, based on the foregoing, the examiner's rejection of claims 1, 7, 8 and 39 under § 103 is reversed, and the examiner's § 103 rejecting of claims 17 and 18 is affirmed. Accordingly, the examiner's decision rejecting the appealed claims is affirmed-in-part.

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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)(iv) (effective Sept. 13, 2004).

AFFIRMED-IN-PART

Edward C. Kimlin)	
Administrative Patent Judge)	
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