

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 JAYSHREE SETH and
JERRY W. HALL

Appeal 2006-2144
Application 10/001,158
Technology Center 1700

Decided: September 26, 2006

Before KIMLIN, PAK, and WARREN, *Administrative Patent Judges*.
PAK, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the Examiner's Final Rejection of claims 1 through 36, which are all of the claims pending in the above-identified application. We have jurisdiction pursuant to 35 U.S.C. § 134.

I. APPEALED SUBJECT MATTER

The subject matter on appeal is directed to a disposable personal care cleaning article "formed from a melt extruded fibrous web that has incorporated into the fibers forming web . . . a melt extruded lathering

surfactant.” See the Specification, page 1. To obtain this article, a thermoplastic resin and a lathering surfactant can be blended prior to or within an extruder where the resulting blend is formed into melt extruded fibers which can be in the form of a web or can be used to form a web. See the Specification, pages 3 and 5. “[The] lathering surfactant is generally a surfactant which when incorporated into the fiber and used in the cleansing article and combined with water and mechanically agitated generates a foam or lather at an initial foam volume of greater than 30 . . .” See the Specification, page 4.

Further details of the appealed subject matter are recited in claim 1 which is reproduced below:

1. A disposable personal care cleansing article comprising a fibrous web containing melt extruded fibers, the melt extruded fibers comprising a blend of fiber-forming polymer with a melt extruded altering surfactant, wherein the article has a foam volume for two or more rinsings, where the initial foam value is at least 30 ml and said article is substantially dry prior to use.

II. PRIOR ART

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

McAtee	US 6,153,208	Nov. 28, 2000
Hasenoerhrl	WO 98/52537	Nov. 26, 1998

III. REJECTION

Claims 1 through 36 stand rejected under 35 U.S.C. §103 as unpatentable over the combined disclosures of McAtee and Hasenoerhrl.

IV. FACTUAL FINDINGS AND CONCLUSIONS

We have carefully considered the claims, Specification and prior art references, including the arguments advanced by the Appellants and the Examiner in support of their respective positions. This review has led us to conclude that the Examiner's § 103 rejection set forth in the Answer¹ is not well founded. Accordingly, we will not sustain the Examiner's decision rejecting the claims on appeal for the reasons set forth in the Brief². We add the following primarily for emphasis.

As recognized by the Examiner (Answer 3),

McAtee[‘s disposable cleansing implement] differs from the claimed invention because McAtee does not disclose adding [its lathering] surfactant to the polymer melt before the fibers are extruded but instead applies the surfactant to the fibers after the nonwoven is formed.

Indeed, McAtee mentions that a lathering surfactant, conditioning agents and any optional ingredients can be added on to or impregnated into a substrate by “spraying, printing, splashing, dipping, or coating.” See, *e.g.*, col. 50, ll. 59-64.

To remedy this deficiency, the Examiner relies on the disclosure of Hansenoehrl. See the Answer 3-4. Although Hansenoehrl teaches or suggests mixing a surfactant for imparting hydrophobic or hydrophilic properties to a substrate with a polymeric material before forming fibers for the substrate, it does not teach or suggest blending and extruding a lathering surfactant and a polymeric melt together to form fibers. See pages 34 and

¹ We refer to the Supplemental Answer mailed on June 20, 2005 as the Answer.

² We refer to the Brief filed on July 27, 2004 as the Brief.

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35. In fact, as correctly pointed out by the Appellants (Reply Brief³ 1-2), Hansenoehrl specifically teaches that to form a disposable cleansing product, the lathering surfactant should be added onto or impregnated into a substrate as exactly taught by McAtee. See page 33.

Under these circumstances, we are constrained to agree with the Appellants that the Examiner, on this record, has not demonstrated that the collective teachings of McAtee and Hansenoehrl would have led one of ordinary skill in the art to the claimed invention within meaning of 35 U.S.C. § 103. Accordingly, we reverse the Examiner's decision rejecting the claims on appeal under § 103.

V. CONCLUSION

The rejection of claims 1 through 36 is reversed.

REVERSED

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³ We refer to the Response to Examiner's Supplemental Answer dated July 20, 2005 as the Reply Brief.