

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 AXEL SCHULTE

Appeal 2006-2254
Application 10/182,369
Technology Center 1700

Decided: September 29, 2006

Before GARRIS, TIMM, and JEFFREY T. SMITH, *Administrative Patent Judges*.

JEFFREY T. SMITH, *Administrative Patent Judge*.

DECISION ON APPEAL

Applicant appeals the final rejection of claims 11-25, all of the pending claims. We have jurisdiction under 35 U.S.C. § 134.

We AFFIRM.

BACKGROUND

Appellant's invention relates to a process for producing an adhering fastening element from a plastic material. The claimed invention specifies the processes which occur in the preshaping station and the shaping station where the adhering fastening element obtains a mushroom-shaped head.

Claim 11, as presented in the Brief, appears below:

11. A process for producing an adhering fastening element from plastic material with a strip or sheet backing element and with a plurality of interlocking elements on at least one side of the backing element, each of the interlocking elements having a mushroom-shaped head component connected to the backing element by a stalk component, the process comprising the steps of:

in a preshaping station, feeding thermoplastic material in a pulpy, plastic, pasty or liquid state into a gap between a pressure roller and a shaping roller, rotating the pressure and shaping rollers to form a backing element in the gap and to form at least stalk components extending from at least one side of the backing element through openings in a sieve on the shaping roller, preshaping outer ends of the stalk components while in the openings in the sieve by preshaping elements in the openings at a side of the sieve remote from the pressure roller to provide preshaped outer ends of the stalk components, and allowing the plastic material to set at least partially in the openings in the sieve;

guiding the backing elements with the stalk components preformed thereon in a conveying direction away from the preshaping station; and

in a shaping station located downstream of the preshaping station in the conveying direction, shaping the preformed outer ends of the stalk components by widening the preformed outer ends into mushroom-shaped head components of one of different configurations by ultrasonic energy and a shaping tool engaging the outer ends of the stalk components.

The Examiner relies on the following references in rejecting the appealed subject matter:

Obeda US 3,499,808 Mar. 10, 1970

MacLaughlin US 4,514,242 Apr. 30, 1985

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Frantz	US 5,658,408	Aug. 19, 1997
Parellada	US 5,981,027	Nov. 9, 1999
Miller	US 6,054,091	Apr. 25, 2000
Noda	US 6,174,990 B1	Jan. 16, 2001
Tuma	US 6,627,133 B1	Sep. 30, 2003

The Examiner has entered the following grounds of rejection:

- a) claims 11 and 21 are anticipated under 35 U.S.C. § 102(b) by Parellada;
- b) claims 12-17 are unpatentable under 35 U.S.C. § 103(a) over Parellada in view of Obeda;
- c) claims 18-19 are unpatentable under 35 U.S.C. § 103(a) over Parellada in view of Obeda and Frantz;
- d) claim 20 is unpatentable under 35 U.S.C. § 103(a) over Parellada in view of Obeda and MacLaughlin;
- e) claim 22 is unpatentable under 35 U.S.C. § 103(a) over Parellada in view of Miller and Noda; and
- f) claims 23-25 are unpatentable under 35 U.S.C. § 103(a) over Parellada in view of Tuma.

We have carefully reviewed the claims, specification and applied prior art, including all of the arguments advanced by both the Examiner and Appellant in support of their respective positions. This review leads us to conclude that the Examiner's rejections under § 102 and § 103 are well founded. Our reasons follow.

Rather than reiterate the conflicting view points advanced by the Examiner and the Appellant concerning the above noted rejections, we refer to the Answer, mailed February 21, 2006, and to the Briefs filed January 23, 2006 and February 28, 2006.

OPINION

The rejection under § 102

Claims 11 and 21 stand rejected under 35 U.S.C. § 102(b) as anticipated by Parellada.¹ The Examiner has found that Parellada describes a process for producing an adhering fastening element from a plastic material comprising a backing element that is provided with a plurality of interlocking elements each of which has a head component that is connected to the backing (Answer 3). The Examiner asserts that the process of producing the fastening element of Parellada anticipates the presently claimed invention.

Appellant argues that Parellada does not anticipate the claimed subject matter because: (1) Parellada does not use fastener elements comprising a stalk and a head as an adhering fastening element; (2) Parellada does not form mushroom-shaped head components; and (3) Parellada does not employ preshaping elements in a sieve at the side of the sieve remote from the pressure roller to provide preshaped outer ends of the stalk components (Br. 6).

Appellant's arguments are not persuasive. We agree with the Examiner's response as appearing on pages 6 and 7 of the Answer. We also

¹ Appellant has grouped the arguments for claims 11 and 21 together. We select claim 11 as representative of these claims.

note that Appellant's arguments 1 and 2 are not directed to the process for producing an adhering fastening element as specified by claim 11.

Regarding argument 3, Parellada employs preshaping elements in a sieve at the side of the sieve remote from the pressure roller to provide preshaped outer ends of the stalk components (see Figure 1).

Appellant argues that the Examiner has acknowledged that the products of Parellada are different from the products of the claimed invention. As such, the process of Parellada cannot anticipate the subject matter of claim 11 (Reply Br. 2). This argument is not persuasive. The Parellada reference, as correctly identified by the Examiner, provides a process that includes a preshaping station and a shaping station that includes all the process limitations of the claimed invention. It is noted that Parellada discloses the additional step of including yarn which is subsequently fastened into place by deforming the head portion of the stalk into a mushroom-shaped fastener. (See para. bridging cols. 3 and 4). This additional step is not precluded by claim 11.

Appellant argues that the description of the preshaping of the outer ends of the stalk distinguishes the claimed invention from that of Parellada. We do not agree. The stalk portions of Parellada like the presently claimed invention are formed through the use of a sieve. The sieve and pressure roller are used to provide a shaping of the outer edges of the stalk component that is suitable for subsequent shaping into a mushroom type fastener. (Note Figs. 6-8). The claimed subject matter does not preclude the outer end of the stalk from having a cylindrical shape after preshaping.

Appellant's arguments regarding the use of ultrasonic energy to form the mushroom-shaped head components are not persuasive because the

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Parellada reference discloses that ultrasonic energy is suitable for this purpose. (note col. 4).

The Examiner's rejection of claims 11 and 21 under 35 U.S.C. § 102(b) is affirmed.

Now we turn to the obviousness rejections.

The rejections under § 103

The Appellant primarily argues dependent claims 12-25 as a group. Appellant, Brief page 8, asserts that the claims are allowable for the reasons presented in the discussion of claim 11. Appellant further identifies some of the characteristics of the dependent claims and concludes that this subject matter is not anticipated or rendered obvious. Appellant's arguments are not persuasive for the reasons set forth by the Examiner. The Examiner has cited several additional prior art references which have been indicated as teaching or suggesting the claimed subject matter.

Appellant has argued that the Obeda, Frantz, and MacLaughlin references are not properly combinable with Parellada because these references are not analogous to Parellada (Br. 9-10).

The Examiner has cited each of these references for various aspects of Parellada such as the shape of the sonotrode and/or counterhold elements of the shaping tool (Obeda and MacLaughlin) and the Frantz reference for describing the amplitude suitable for welding conditions. (See Answer, 4-5). Thus, we determine that the cited references are properly combinable with Parellada because the references are pertinent to the various aspects of Parellada and the claimed invention

In light of the foregoing and for the reasons expressed in the Answer, it is our determination that the Examiner has established a prima facie case

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of obviousness with respect to the argued claims under consideration which has not been successfully rebutted by Appellant. Therefore, the rejections under review are affirmed.

CONCLUSION

For the foregoing reasons and those set forth in the Answer, having considered Appellant's arguments, based on the totality of the record, we determine that the Examiner has established *prima facie* of cases of unpatentability under §§ 102 and 103 which have not been adequately rebutted by Appellant. Accordingly, the Examiner's rejections under 35 U.S.C. §§ 102 and 103 have been affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(iv)(2004).

AFFIRMED

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