

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 JOSEPH CHEUK MAU WONG

Appeal 2006-2846
Application 10/349,468
Technology Center 3600

Decided: March 14, 2007

Before BRADLEY R. GARRIS, JEFFREY T. SMITH, and
LINDA M. GAUDETTE, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal involves claims 1 and 3-12, the only claims pending in this application. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 134.

We AFFIRM.

INTRODUCTION

Appellant invented a laminated container holder that protects a user's hand from the extreme temperatures of a container's contents and a method of making the laminated container holder (Specification 1). The laminated container holder is composed of a plurality of layers including a graphics objects display layer attached to a thermal insulating layer (Claim 1). The thermal insulating layer is composed of "a low density polyethylene material." Claims 1 and 7 are illustrative:

1. A laminated sleeve for use with a container, the sleeve comprising: a plurality of layers, wherein

at least one layer of the plurality of layers is a thermal insulating layer comprising a low density polyethylene material, and

at least one other layer of the plurality of layers is a graphic objects display layer suitable for printing at least one graphic object thereon.

7. A method for manufacturing a laminated sleeve for use with a container comprising the steps of:

- a) providing a graphic objects display layer;
- b) transferring at least one graphic object onto the graphic objects display layer;
- c) providing at least one thermal insulating layer comprising a low density polyethylene material;
- d) overlaying the graphic objects display layer onto the at least one thermal insulating layer to form a sheet;
- e) cutting at least one sleeve pattern from the sheet; and
- f) folding and assembling the sleeve pattern to form the laminated sleeve.

The Examiner relies on the following prior art references as evidence of unpatentability¹:

Studen	US 3,473,682	Oct. 21, 1969
Henderson	US 4,540,611	Sep. 10, 1985
Shelby	US 5,445,315	Aug. 29, 1995
Dickert	US 5,826,786	Oct. 27, 1998
Welch	US 6,138,902	Oct. 31, 2000

Rosato, "Plastics Processing Data Handbook, Second edition, 1967.

The rejections as presented by the Examiner are as follows:

1. Claims 1, 7, and 9-12 are rejected under 35 U.S.C. § 103(a) as unpatentable over Henderson in view of Studen.
2. Claims 1, 3, 4, and 6 are rejected under 35 U.S.C. § 103(a) as unpatentable over Shelby in view of Studen.
3. Claims 1 and 3-12 are rejected under 35 U.S.C. § 103(a) as unpatentable over Dickert in view of either Welch or Shelby in further view of Studen.

Rather than reiterate the respective positions advocated by the Appellant and by the Examiner concerning these rejections, we refer to the Brief and to the Answer respectively for a complete exposition thereof.

OPINION

With regard to all of the § 103(a) rejections, Appellant argues none of the references discloses "a thermal insulating layer comprising a *low density* polyethylene material" (Br. 9, 11, 12). Appellant contends expanded

¹ In any further prosecution of this case, U.S. Patent 6,814,253 to Wong should be considered for double patenting.

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Polyethylene (EPE) is not the same as low density polyethylene (LDPE) (Br. 10-11). Appellant contends that LDPE has a unique polymer chain, namely a branched chain (Br. 10), whereas, EPE consists of “individual closed cells of inert gas suspended in a polyethylene medium” (Br. 10). Appellant also contends that the Examiner has not provided any evidence to support the assertion that EPE is an LDPE material (Br. 10).

The Examiner responds that expanded polyethylene foam (EPE) may be considered “a low density polyethylene material” as claimed (Answer 5). The Examiner relies on Rosato’s disclosure in the Plastics Processing Data Handbook that “expanded polyethylene” (EPE) is “a low density, semirigid, closed-cell, weather-stable, PE homopolymer” (Answer 5). Based on Rosato’s definition of “expanded polyethylene” the Examiner determines that Appellant’s claim to the insulating layer “comprising a low density polyethylene material” is satisfied by Studen’s disclosure of expanded polyethylene (Answer 5).

We agree with the Examiner’s ultimate conclusion that the claims are unpatentable over the applied prior art of the § 103(a) rejections.

We adopt the Examiner’s factual findings and conclusions set forth in the Answer. We add the following discussion primarily for emphasis and completeness.

Appellant’s only argued distinction over the art of record is the claim feature “a thermal insulating layer comprising a low density polyethylene material.” We must interpret the phrase “a low density polyethylene material.”

During examination of an application, an Examiner gives a claim its broadest reasonable construction in light of the Specification as the claim

would be interpreted by one of ordinary skill in the art. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316, 75 USPQ2d 1321, 1329 (Fed. Cir. 2005). An applicant's specification is examined for the definition of any claim term that would govern the Examiner's interpretation of the particular claim term at issue. *Id.*

Appellant does not specifically define "low density polyethylene material" in the Specification. The Specification does, however, state that the insulating layer is "preferably" comprised of a "polymer material" such as "a low density polyethylene foam" or an "expanded polyethylene foam" (Specification 6). From such disclosure, we construe these two phrases, "a low density polyethylene foam" and "expanded polyethylene foam," as at least overlapping.

We are further in agreement with the Examiner's broad, but reasonable, construction of the phrase "a low density polyethylene material" as a material made of polyethylene that has a low density (Answer 5). Based on this claim construction, the Examiner reasonably determined Studen's "expanded polyethylene" satisfies Appellant's claim limitation requiring that the insulating layer is made of "a low density polyethylene material."

As evidence of the propriety of the Examiner's interpretation, the Examiner provides the definition of "expanded polyethylene" from the Plastics Processing Data Handbook, which defines the material as a "low density . . . PE [polyethylene] homopolymer." Appellant has not rebutted this evidence (i.e., the Plastics Processing Data definition of "expanded polyethylene") provided by the Examiner.

The definition of "expanded polyethylene" provided by the Examiner additionally supports the Examiner's reasonable determination that

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Appellant's claim feature of "a low density polyethylene material" is satisfied by Studen's disclosure of "expanded polyethylene." We observe nothing in the claims expressly excluding "expanded polyethylene" from the claim feature "a low density polyethylene material." Based on the foregoing evidence, we determine, as the Examiner has previously indicated, that "a low density polyethylene material" includes "expanded polyethylene foam."

Accordingly, Appellant's only argued distinction, "a thermal insulating layer comprising a low density polyethylene material," is satisfied by the applied prior art. As a consequence, we affirm the following rejections: (1) claims 1, 7 and 9-12 under § 103(a) over Henderson in view of Studen, (2) claims 1, 3, 4, and 6 under § 103(a) over Shelby in view of Studen, and (3) claims 1 and 3-12 under § 103(a) over Dickert in view of either Welch or Shelby in further view of Studen.

CONCLUSION

The Examiner's decision is 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)(1)(iv)(2006).

AFFIRMED

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