

The opinion in support of the decision being entered today
is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEFFREY A. TILTON

Appeal 2007-2079
Application 10/185,220
Technology Center 1700

Decided: August 22, 2007

Before BRADLEY R. GARRIS, THOMAS A. WALTZ, and
JEFFREY T. SMITH, *Administrative Patent Judges*.

SMITH, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from a final rejection of claims 1, 5 and 9. We have jurisdiction under 35 U.S.C. § 6. Claim 1 is illustrative:

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1. A decorative laminate material, comprising:

a base layer of fibers selected from a group consisting of polyester, polypropylene, polyethylene, fiberglass, natural fibers, nylon, rayon and blends thereof having a density of between about 0.5 pcf and about 15.0 pcf, said base layer having a thickness of between about 0.25 and about 3.0 inches; and

a facing layer of polyester fibers having a density of between about 10 pcf and about 100 pcf, and producing an air flow resistance of between about 100,000 and about 3,500,000 mks rayls/meter, said facing layer having an exposed, printed face and a thickness of between about 0.01 and about 0.1 inches.

The Examiner relies upon the following references:

Delanty	US 3,882,216	May 6, 1975
Suzuki	US 4,377,615	Mar. 22, 1983
Shimada	US 6,572,575 B1	Jun. 3, 2003

Appellant's claimed invention is directed to a decorative laminate material comprising a base layer having a thickness of between about 0.25 and about 3.0 inches and a facing layer of polyester fibers having a thickness of between about 0.01 and about 0.1 inches. The face layer produces an air flow resistance of between about 100,000 and about 3,500,000 mks rayls/meter. The base layer of fibers has a density of between about 0.5 pcf (0.008009 g/cm^3) and about 15.0 pcf, (0.240276 g/cm^3) and the facing layer of polyester fibers has a density of between about 10 pcf (0.160184 g/cm^3) and about 100 pcf (1.60184 g/cm^3).¹

¹ The Specification does not define "pfc;" however, for purposes of this appeal, we presume that "pfc" refers to pounds per cubic foot.

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Appealed claims 1, 5, and 9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Suzuki in view of Delanty further in view of Shimada.

We have thoroughly reviewed each of Appellant's arguments for patentability. However, we are in full agreement with the Examiner that the claimed subject matter is unpatentable over the cited prior art. Accordingly, we will sustain the Examiner's rejections for the reasons set forth in the Answer, as well as those reasons set forth below.

The Examiner contends that Suzuki describes a laminate material comprising a base layer and facing layer that have thicknesses which overlap the claimed ranges (Answer 3). The Examiner's opinion is based on the basis weight and density described in column 3, lines 3-11, of the Suzuki reference.

Appellant contends that the Examiner has improperly interpreted column 3 of Suzuki. Specifically, Appellant contends that the density of 0.01-1.17 g/cm³ and 0.003-0.06 g/cm³ refers to the adhesive bonding materials of the upper and lower layers and not the fibers of the upper and lower layers respectively (Br. 9).

Regarding the thickness of the upper and lower layers, Suzuki states the following:

The terms "upper layer" and "lower layer" used in the present invention do not indicate a state wherein thickness of a nonwoven fabric is equally divided into two but indicate a case wherein in a state of a plurality of fibrous webs formed through mixing of different fibers being overlapped to constitute a nonwoven fabric, such nonwoven fabric is divided into an upper layer having a

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relatively higher density and a lower layer having a relatively lower density. The term “density” means a case wherein the amount of fibers and adhesive bonding materials in each of the upper layer and the lower layer is averaged. The terms “containing amount of adhesive bonding materials” and “denier” mean a case wherein a containing amount of adhesive bonding materials and denier of the fibers in the upper layer and the lower layer are averaged. (Suzuki, col. 2, ll. 21-36).

Appellant's position is not persuasive in light of Suzuki's discussion of density set forth above.

Appellant contends that the airflow resistance value for the facing layer of Suzuki differs from the claimed invention (Br. 10). The Examiner contends that the airflow resistance limitation is inherent in the invention of Suzuki (Answer 4).

Suzuki discloses that polyester is a suitable fabric for the upper and lower layers (Suzuki, col. 3, ll. 14-19). Suzuki also discloses that the fiber has a denier ranging from 1-4 and the density ranging from 0.01-1.17 g/cm³ (Suzuki, col. 3, ll. 3-6). The Specification discloses that when the facing layer is constructed from polyester fibers having an average diameter of between about 10 and about 50 microns which when intensified to a density of between about 10 pcf (0.160184 g/cm³) and about 100 pcf (1.60184 g/cm³) provide an airflow resistance value of between about 100,000 and about 3,500,000 mks rayls/meter (Specification 5). Thus, the Examiner reasonably determined, based on the similarity of the components utilized in the upper layer of the laminate material of Suzuki, that the airflow resistance limitation of the claim would have been inherent in the invention of Suzuki.

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Appellant has not directed us to evidence that establishes the airflow resistance of the reference is not inherent in Suzuki.

Appellant's discussion of the calculations for the thickness of the examples in Suzuki is not representative of the closest prior art (Br. 10). Suzuki provides a discussion of the various layers in column 3. Suzuki discloses the endpoints of the described range for the weight per unit area for the upper layer to be 35 g/m² and the density for the upper layer to be 0.01g/cm³ (Col. 3, ll. 3-11). Utilizing the formula provided by Appellant, Reply Brief page 3, the weight per unit area of 35 g/m² divided by the density value of 0.01g/cm³ arrives at the thickness value of 1.378 inches. This thickness falls within the scope of the claimed invention.

Regarding the subject matter of claims 5 and 9, Appellant contends that the Examiner has ignored the limitations of these claims (Reply Br. 4). Appellant's position is not persuasive. The Examiner referenced the range of denier for the fibers presented in the Suzuki reference as suggestive of the claimed fiber diameters (Answer 3). The Examiner cited the Delanty and Shimada references as suggestive of coating and printing on the exposed surface of the facing layer. Appellant has not directed us to evidence in rebuttal to the Examiner's position.

In conclusion, based on the foregoing and the reasons presented by the Examiner, the Examiner's decision rejecting the appealed claims is affirmed.

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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).

AFFIRMED

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