

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BERNHARD MUSSIG
and GERT SCHMEER

Appeal 2007-4315
Application 10/317,684
Technology Center 1700

Decided: March 4, 2008

Before PETER F. KRATZ, CATHERINE Q. TIMM, and
JEFFREY T. SMITH, *Administrative Patent Judges*.

TIMM, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 22-46. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

I. BACKGROUND

The invention relates to a backing film and a process for producing the backing film. The backing film includes at least two intermeshed coextruded layers of different composition. The interface between the two layers has a nonlinear course in cross section. Claim 22 is illustrative of the subject matter on appeal:

22. A backing film which comprises at least two intermeshed coextruded layers of different composition, whose interface has a nonlinear course in cross section, which continues laminarly in the machine direction, wherein said backing film has been oriented in the machine direction and has plane-parallel outer faces.

Appellants request review of the sole rejection maintained by the Examiner, namely, the rejection of claims 22-46 under 35 U.S.C. § 103(a) over Engelmann et al. (US 5,093,187 issued Mar. 3, 1992) in view of Reid, Jr. et al. (US 5,810,406 issued Sep. 22, 1998).

II. DISCUSSION

According to the Examiner, Englemann describes a tear strip including coextruded layers (Ans. 3). The layers do not intermesh such that they have a non-linear course in cross section so the Examiner turns to Reid which teaches mechanical bonding coextruded layers within a trim strip using intermeshing lugs and recesses (Ans. 3-4). According to the Examiner, “one of ordinary skill, motivated by an expectation of improving the mechanical connecting properties of the two coextruded layers in the manner shown in [Reid,] would join and intermesh together the two layers of [Englemann] and thereby form the claimed genus of backing films.” (Ans. 4).

Appellants contend that the evidence cited by the Examiner does not support the Examiner's conclusion of obviousness because there is no suggestion arising from knowledge within the prior art to use lugs and recesses, as taught by Reid for use in a trim strip, in the coextruded layers of a tear strip.

The issue on appeal arising from the contentions of Appellants and the Examiner is: Would one of ordinary skill in the art have found it obvious to incorporate the lugs and recesses used in Reid's trim strip into the tear strip of Englemann?

A preponderance of the evidence of record supports the following Findings of Facts (FF):

1. Englemann is directed to tear strips used, for instance, for tearing open cardboard articles (Englemann, col. 1, ll. 11-20). The tear strip includes a base layer and a toughened layer (Englemann, col. 2, ll. 48-54). The two layers are chemically similar, the difference being the toughened layer contains more toughening additive than the base layer (*see, e.g.*, col. 3, ll. 6-22).
2. Tear strips are thin, on the order of 50-150 µm, and narrow, on the order of 2-8 mm (Englemann, col. 5, ll. 37-40; *see also* col. 1, ll. 20-27). Moreover, those of ordinary skill in the art desire to produce tear strips with the smallest possible thickness for cost reasons (Englemann, col. 2, ll. 29-34).
3. Reid is directed to moldings such as trim strips attached by way of a tape backing to automotive vehicles (Reid, col. 1, ll. 6-7 and 13-23). The trim strips are manufactured by coextruding an outer decorative layer of thermoplastic or rubber and an inner backing layer of a

foamed material such that a strong attachment between the layers is accomplished (Reid, col. 1, ll. 6-12).

4. An automotive trim strip is a larger profile molding than a tear strip (*see, e.g.*, Reid, Figs. 1 and 2).
5. In automotive trim strips, delamination or separation between layers is a problem, and adhesive between the layers is conventionally used to prevent delamination (Reid, col. 1, ll. 37-41). Reid replaces the conventionally used adhesive with mechanical means of bonding, namely, lugs 28 and recesses 30 (Reid, col. 1, ll. 12-18 and 44-48; col. 2, ll. 61-67).

A claimed invention is unpatentable if the differences between it and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the pertinent art. 35 U.S.C. § 103(a)(2000). The examiner bears the initial burden of presenting a *prima facie* case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

Applying the preceding legal principles to the Factual Findings in the record of this appeal, we determine that the Examiner has not established a *prima facie* case of obviousness.

Automotive trim strips are larger profile moldings than the 50-150 μm tear strips of Englemann (FF 2-4). In automotive trim strips, delamination of the outer decorative layer from the foam backing is a problem (FF 5). The tear strip of Englemann is made from layers of chemically similar materials (FF 1). There is no evidence that delamination is a problem for such chemically similar layers. Given the disparate product profiles and design considerations in the two disparate products, the evidence falls short

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of supporting a conclusion that one of ordinary skill in the art would have combined the lugs and recesses of Reid with the tear strip of Englemann.

III. CONCLUSION

The evidence fails to support the rejection of claims 22-46 under 35 U.S.C. § 103(a) over Engelmann in view of Reid.

IV. DECISION

The decision of the Examiner is reversed.

REVERSED

PL initials:
sld

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