

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte

MATHEW L. KOELE, ROBERT L. POPP, and WILLIAM M. LYNCH

Appeal 2008-2025
Application 11/196,169
Technology Center 3700

Decided: August 4, 2008

Before TONI R. SCHEINER, DONALD E. ADAMS, and
JEFFREY N. FREDMAN, *Administrative Patent Judges*.

FREDMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 involving claims to a mechanical fastening system which the Examiner has rejected as anticipated and obvious. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

Background

“One common form of mechanical attachment systems is the so called hook-and-loop system which comes in various forms and has both advantages and disadvantages in its application to such absorbent articles” (Spec. 1). The Specification teaches that “the loop material is relatively unstretchable and either forms a portion of the garment itself or is attached to the surface of the garment” (Spec. 1). According to the Specification, the “hook material is generally attached to an extensible substrate so that it can be positioned on the loop material for adjustment to the size and shape of the wearer of the garment” (Spec. 1).

Appellant teaches that the “mechanical fastening system comprises a stretchable loop fastener component mountable on the article and comprising an elastomeric substrate and a high bond point non-woven loop material. The non-woven loop material is secured in a substantially ungathered condition to the substrate.” (Spec. 2.)

Statement of the Case

The Claims

Claims 1-9, 11 and 12 are on appeal.¹ We will focus on claim 1 which is representative and reads as follows:

1. A mechanical fastening system for an article, said mechanical fastening system comprising:
a stretchable loop fastener component mountable on the article and comprising an elastomeric substrate and a high bond point non-woven loop material, said non-woven

¹ Claim 10 is not listed in any rejection and is therefore not under appeal.

loop material being secured in a substantially ungathered condition to the substrate; and

a hook fastener component mountable on the article and adapted for releasable engagement with the loop fastener component;

wherein the stretchable loop fastener component is stretchable relative to the hook fastener component when the fastener components are engaged.

The prior art

The Examiner relies on the following prior art references to show unpatentability:

Giacobbe	US 5,453,318	Sep. 26, 1995
Jackson et al.	US 5,614,281	Mar. 25, 1997
Buell et al.	US 5,628,741	May 13, 1997

The issues

The rejections as presented by the Examiner are as follows:

- A. Claims 1, 6, 7, and 12 stand rejected under 35 U.S.C. § 102(b), as being anticipated by Jackson as evidenced by Giacobbe.
- B. Claims 2-5, 8, and 11 stand rejected under 35 U.S.C. § 103(a), as being obvious over Jackson and Giacobbe.
- C. Claim 9 stands rejected under 35 U.S.C. § 103(a), as being obvious over Jackson and Buell.

A. 35 U.S.C. § 102(b) rejection over Jackson and Giacobbe

Appellants argue that Jackson does not disclose “a high bond point non-woven loop material, said non-woven loop material being secured in a substantially ungathered condition to the substrate” (App. Br. 4). Appellants contend that “Jackson et al. is directed to a ‘creped’ nonwoven laminate loop

fastening material for mechanical fastening systems. Indeed, in the title, abstract, specification and claims of Jackson et al. the nonwoven laminate is always referred to as being “creped” (App. Br. 4).

The Examiner “contends that the applicant's arguments are not commensurate with the scope of the claims” (Ans. 7). The Examiner argues that “the teaching of a creped material, while gathered in some areas because it is considered as crinkled, may not be excluded because at least some portions would not be crinkled” (Ans. 7-8).

The Examiner further argues that “as shown in figure 2 of Jackson, the portions 18 of the crinkled fabric are gathered, or bought together in one place, while portions 16 of the crinkled fabric are considered ungathered, or not bought together in one place” (Ans. 8).

In view of these conflicting positions, we frame the anticipation issue before us as follows:

Would the ordinary artisan have reasonably interpreted the claimed phrase “substantially ungathered” to broadly encompass the creped material disclosed by Jackson?

Finding of Fact

1. Jackson teaches “an improved loop fastening material for a mechanical or hook and loop fastening system” (Jackson, col. 4, ll. 25-27).

2. Jackson teaches that the material is a “creped nonwoven laminate loop material” (Jackson, col. 7, ll. 46-47). Jackson discloses that the material is creped in the title, abstract, and figures of the invention (*see, e.g.* Jackson, fig. 2, 5).

3. Jackson teaches that “[a]s a result of the creping process employed in making the creped nonwoven laminate loop material of this invention, nonwoven layer **12** (see FIGS. **1** and **2**) is creped or ‘bunched,’ thereby forming raised areas **16** separated by non-raised areas **18** in nonwoven layer **12** and thus imparting rugosities or wrinkles in nonwoven layer **12”** (Jackson, col. 9, ll. 8-13).

4. The Specification teaches that the “nonwoven facing can be gathered or ungathered when bonded to the other substrate, and similarly the other substrate can be gathered or ungathered when bonded to the nonwoven facing (Spec. 22 ¶ 0085).

Discussion of 35 U.S.C. § 102(b) over Jackson and Giacobbe

We interpret the claims using the broadest reasonable interpretation. See, e.g., *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000) (“[D]uring examination proceedings, claims are given their broadest reasonable interpretation consistent with the specification.”). Appellants specification, indicates that the material may be either gathered or ungathered (FF 4) and in light of the ordinary meaning of the phrase “substantially ungathered”, we find that claim 1 requires that the material is secured in a “substantially ungathered condition” (Claim 1).

The definition of “creped” provided by the Jackson reference equates “creped” with “bunched” (FF 3). One definition for “bunched” at <http://dictionary.reference.com/browse/bunched> is “[t]o gather (fabric) into folds.” Therefore, the interpretation proffered by the Examiner would essentially read the word “creped” as meaning the exact opposite of “creped” as taught by Jackson (FF 3).

We find it unreasonable to interpret something that is designated as “creped” (FF 1-3) in the prior art as being “substantially ungathered” (Claim 1) in order to render the claim anticipated when that interpretation would result in reading the word as identical to its antonym. The Federal Circuit addressed a similar question in *Buszard*, and noted “[w]e agree with Buszard that it is not a reasonable claim interpretation to equate ‘flexible’ with ‘rigid’” *In re Buszard*, 504 F.3d 1364, 1367 (Fed. Cir. 2007).

We reverse the rejection of claims 1, 6, 7, and 12 under 35 U.S.C. § 102(b) as anticipated by Jackson evidenced by Giacobbe.

B. 35 U.S.C. § 103(a) rejection over Jackson and Giacobbe

The Examiner relies on the combination of Jackson and Giacobbe as discussed above. The Examiner further relies upon Jackson to teach the specific bond points and non woven densities. The Examiner provides no further discussion as to why “creped” should be interpreted as “substantially ungathered” and the rejected claims all ultimately depend from claim 1.

We reverse the rejection of claims 2-5, 8, and 11 as obvious under 35 U.S.C. § 103(a) over Jackson and Giacobbe since the rejection utilizes the same unreasonable claim interpretation of “substantially ungathered” as the above.

C. 35 U.S.C. § 103(a) rejection over Jackson and Buell

The Examiner relies on Jackson as discussed above. The Examiner further relies upon Buell to teach mechanically restrained composites. The Examiner provides no further discussion as to why “creped” should be interpreted as “substantially ungathered” and the rejected claims depend from claim 1.

We reverse the rejection of claim 9 as obvious under 35 U.S.C. § 103(a) over Jackson and Buell since the rejection utilizes the same unreasonable claim interpretation of “substantially ungathered” as the above.

CONCLUSION

In summary, we reverse the rejection of claims 1, 6, 7, and 12 under 35 U.S.C. § 102(b). We reverse the rejection of claims 2-5, 8, 9, and 11 as obvious under 35 U.S.C. § 103(a).

REVERSED

cdc

Christopher M. Goff (27839)
ARMSTRONG TEASDALE LLP
ONE METROPOLITAN SQUARE
SUITE 2600
ST. LOUIS MO 63102