

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS CAMPION, STEVEN ARTHUR CEDOZ and DENNIS
ROBERT LARRATT

Appeal 2008-2653
Application 10/159574
Technology Center 1700

Decided: June 16, 2008

Before THOMAS A. WALTZ, PETER F. KRATZ, and
JEFFREY T. SMITH, *Administrative Patent Judges*.
KRATZ, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on an appeal from the Examiner's final rejection of claims 1-12. We have jurisdiction pursuant to 35 U.S.C. § 6.

Appellants' invention, as claimed, is directed to a fibrous blanket with a profiled weight and thickness made with entangled fibers. The product blanket includes an uncured binder. The blanket is disclosed to be useful in a variety of applications, including the making of molded parts therefrom (Spec. 1-3). Claim 1 is illustrative and reproduced below:

1. A fibrous blanket with a profiled weight and thickness, comprising:

a fibrous blanket formed of a coherent mass randomly oriented entangled fibers; the fibrous blanket having a width, a length and a thickness; the fibrous blanket having first and second major surfaces that are each defined by the width and length of the fibrous blanket; the first major surface of the fibrous blanket being substantially planar; the second major surface of the fibrous blanket being non-planar; the fibrous blanket having first and second lateral edges that each extend between the first and second major surfaces of the fibrous blanket for the length of the fibrous blanket; the fibrous blanket having a weight per unit area of the first major surface of the fibrous blanket; the weight of the fibrous blanket per unit area of the first major surface of the fibrous blanket and the thickness the fibrous blanket varying, in a selected manner across the width of the fibrous blanket, in a direction perpendicular to the first and second lateral edges of the fibrous blanket as a function of a perpendicular distance from the first lateral edge of the fibrous blanket; and the fibrous blanket having an uncured binder that bonds fibers of the fibrous blanket together at points of intersection of the fibers within the fibrous blanket whereby, through a later application of heat and pressure [to] the fibrous blanket, the fibrous blanket can be formed into and set in a desired shape having desired density and thickness characteristics.

The Examiner relies on the following prior art references as evidence in rejecting the appealed claims:

Shakel	5,567,504	Oct. 22, 1996
Batdorf	6,103,049	Aug. 15, 2000

Claims 1-12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Schakel in view of Batdorf. We affirm for reasons as set forth in the Answer and below.

Appellants argue all of the claims together as a group. Thus, we select claim 1 as the representative claim on which we decide this appeal as to the single obviousness ground of rejection before us.

Under 35 U.S.C. § 103, the factual inquiry into obviousness requires a determination of: (1) the scope and content of the prior art; (2) the differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) any secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). “[A]nalysis [of whether the subject matter of a claim is obvious] need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int’l Co. Teleflex, Inc.*, 127 S. Ct. 1727, 1741 (2007). See *DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1361 (Fed. Cir. 2006)(“The motivation need not be found in the references sought to be combined, but may be found in any number of sources, including common knowledge, the prior art as a whole, or the nature of the problem itself.”). “The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR*, 127 S. Ct. at 1739.

Appellants do not particularly dispute the Examiner’s determinations and assertions that Schakel discloses or suggests a fibrous mat (blanket) that includes regions having thicknesses and weights than differ from other

regions thereof, which teachings of Schakel would have suggested a fibrous product having profile characteristics, such as a non-planar surface, that correspond with the claim 1 requirements therefore. (Ans. 3; Schakel, Figs 3 and 6, col. 3, l. 59-col. 4, l. 7 and col. 4, l. 59-col. 5, l. 3 and Br. 6-7). Rather, Appellants essentially express their opposition to the Examiner's obviousness rejection by contending that: (1) Schakel employs a cured binder in their duct board (fibrous mat) rather than an uncured binder as required by representative claim 1 and (2) that Schakel with or without the further teachings of Batdorf does not teach or suggest the use of an uncured binder as an alternative to the cured binder thereof (Br. 6-7).

The Examiner is of the viewpoint that Schakel is silent with regard to the curing status of the mat binder. Thus, the Examiner acknowledges that Schakel does not explicitly teach that Schakel's fibrous product includes an uncured binder/resin (Ans.3-4). However, the Examiner additionally relies on the teachings of Batdorf. In particular, the Examiner refers to Batdorf for disclosing that either cured or uncured resins/binders can be employed in a fibrous mat (blanket) product that is to be subjected to cutting or trimming, a trimming such as the fibrous product of Schakel is subjected to (Ans. 3-4; Batdorf, col. 1, ll. 5-35; Schakel, col. 1, l. 60-col. 2, l. 10). The Examiner maintains that an ordinarily skilled artisan "would have been motivated to employ a mat comprising uncured binder resin in Schakel because Batdorf teaches that such mats are useful in processes such as the one disclosed in Schakel for forming products such as duct boards" (Ans. 4).

Thus the issue before us is: Have Appellants identified reversible error in the Examiner's obviousness rejection by their assertion that "Schakel et al. and Batdorf, when considered alone or together, fail to

disclose or suggest a fibrous blanket with uncured binder and a profiled weight and thickness that can be molded into a desired shape by the application of heat and pressure as set forth in claim 1 ...” (Br. 7)?

We answer this question in the negative and affirm the Examiner’s obviousness rejection.

It is significant that the Examiner has identified a reasonable rationale for the proposed use of an uncured resin (binder) in Schakel given the additional teachings of Batdorf (both cured and uncured resins/binders are taught by Batdorf to be acceptable for use in a fibrous mat product that is to be subjected to a cutting operation, as is the fibrous mat product of Schakel), which rationale is not specifically addressed by Appellants in their Briefs, much less persuasively disputed. After all, there are only two choices in employing a binder (cured or uncured) in the fibrous mat/blanket that is profiled in Schakel. Moreover, Batdorf discloses that the fibrous products containing such cured or uncured resin can be used in a variety of products requiring cutting operations, such as duct board like Schakel is concerned with (Batzdorf, col. 1, ll. 12-21).

We further note that Appellants acknowledge in the “BACKGROUND OF THE INVENTION” section of their Specification that the use of cured or uncured binders in making fibrous blanket products, albeit blankets of uniform thickness, is known in the art (Spec. 1).¹ Given

¹ It is axiomatic that admitted prior art in an Applicants' Specification may be used in determining the patentability of a claimed invention and that consideration of the prior art cited by the Examiner may include consideration of the admitted prior art found in an Applicants' Specification. *In re Nomiya*, 509 F.2d 566, 570-571 (CCPA 1975); *In re Davis*, 305 F.2d

these disclosures in the prior art, it is our view that one of ordinary skill in the art would have recognized the alternative of employing an uncured binder in a mat/blanket to be cut or profiled, such as the mat of Shakel, as an obvious option; that is, an option that would have been readily apparent to an artisan of ordinary skill level based on the teachings of the applied prior art.

As a final point, we note that no unexpected results or other indicia of unobviousness have been furnished and asserted by Appellants for the claimed product.

On this record, we affirm the Examiner's obviousness rejection.

CONCLUSION

The decision of the Examiner to reject claims 1-12 under 35 U.S.C. § 103(a) as being unpatentable over Schakel in view of Batdorf is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

AFFIRMED

tc

JOHNS MANVILLE
10100 WEST UTE AVENUE
P.O. BOX 625005
LITTLETON, CO 80162-5005

501, 503 (CCPA 1962); *In re Hedges*, 783 F.2d 1038, 1039-1040 (Fed. Cir. 1986).