

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HANS RIES,
SYLVIA MONSHEIMER,
and RAINER GOERING

Appeal 2008-4112
Application 10/329,531
Technology Center 1700

Decided: August 21, 2008

Before BRADLEY R. GARRIS, THOMAS A. WALTZ, and
CATHERINE Q. TIMM, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1-10, 12-16, 18, 19, and 21-30. We have jurisdiction under 35 U.S.C. § 6.

We AFFIRM.

Appellants claim a composite comprising two components (claim 18) or three components (claim 1), each differing in structure from the other(s).

Representative claims 1 and 18 are reproduced below from the Claim Appendix of Appellants' Brief:

1. A liquid- or vapor-conducting system comprising the following three components I, II and III, each differing in structure from the others:

I an attachment,

II a jointing zone comprising a coextruded multilayer composite which comprises at least two layers A and B, and

III a hollow article selected from the group consisting of a plastic fuel tank, container for an activated carbon filter, stilling reservoir, fuel line, brake fluid line, hydraulic fluid line, and coolant line,

wherein at least layer B can be cohesively bonded to the attachment (I) and at least layer A can be cohesively bonded to the hollow article (III), and

wherein at least one layer is a barrier layer which prevents diffusion of a conducted liquid or vapor selected from the group consisting of fuel, brake fluid, hydraulic fluid and hydrocarbon coolant,

wherein I is connected to the coextruded multilayer composite II by welding or by insertion of II into an injection mold used to produce I,

wherein III is connected to the coextruded multilayer composite II by welding or by insertion of II into an injection mold used to produce III,

wherein the layers of the attachment and of the hollow articles to be bonded are composed of a thermoplastic molding composition.

18. A composite comprising the following two components II and III, each differing in structure from the other:

II a coextruded multilayer composite comprising at least two layers, and

III a hollow article selected from the group consisting of a plastic fuel tank, container for an activated carbon filter, stilling reservoir, fuel line, brake fluid line, hydraulic fluid line, and coolant line,

wherein at least one layer is a barrier layer which prevents diffusion of a conducted liquid or vapor;

wherein III is connected to the coextruded multilayer composite II by welding or by insertion of II into an injection mold used to produce III; and

wherein the conducted liquid or vapor is selected from the group consisting of fuel, brake fluid, hydraulic fluid and hydrocarbon coolant.

The following prior art is relied upon by the Examiner as evidence of unpatentability:

Roeber	5,858,492	Jan. 12, 1999
Turner	5,915,418	Jun. 29, 1999
Wood	5,928,745	Jul. 27, 1999

Claims 1-3, 9, 10, 12-16, 18, 19, 21, 22, and 27 are rejected under 35 U.S.C. § 102(b) as being anticipated by Wood.

Under 35 U.S.C. § 103(a), claims 4-8 and 23-26 are rejected as being unpatentable over Wood in view of Roeber, and claims 28-30 are rejected as being unpatentable over Wood in view of Turner.

We will sustain each of these rejections based on the findings of fact, conclusions of law and rebuttals to argument which are well expressed in the Answer. We add the following comments for emphasis.

Concerning the § 102 rejection, Appellants present arguments directed to the three component system of claim 1 only. No separate arguments are presented for the two component composite of independent claim 18 or for any of the dependent claims which are included in the § 102 rejection. With regard to claim 1, Appellants argue that Wood fails to satisfy the claim requirement that each of the three recited components differ in structure from the others (Br. 6). According to Appellants, the cyclodextrin barrier additive material of Wood “will always have the same structure as the fuel tank itself, either as a coating or as part of the fuel tank *per se*,” and, “while the tanks [of Wood] can be formed having ports for sensor installation and for a fuel inlet tubes (col. 7, ll. 62-62), this does not alter the fact that the fuel tank, separate barrier layer(s) containing cyclodextrin, and attachments such as ports, do not **each** differ in structure” (*id.*).

Wood discloses a multilayer fuel tank comprising a structural layer and a barrier layer wherein cyclodextrin barrier additive material can be in the structural layer, in any or all laminate layers or in a single layer or intermediate film layer in a multilayer structure (col. 3, ll. 44-51). Patentee further discloses that the fuel tank can be formed by coextruding one or more polymer types and two or more layers (col. 6, ll. 17-22). Finally, Wood teaches that the fuel tank can be formed by joining sections via heat welding and that the tank can be formed having ports for sensor installation and for fuel inlet tubes (col. 7, ll. 57-63).

Based on these findings of fact, we cannot agree with Appellants’ argument that Wood’s cyclodextrin barrier additive material “will always have the same structure as the fuel tank itself, either as a coating or as part of the fuel tank *per se*” (Br. 6). For example, when present as a fuel tank

coating, the barrier material necessarily will be larger than the fuel tank and therefore will not “have the same structure as the fuel tank itself” (*id*).

Although the barrier coating structure and the fuel tank structure may have the same shape, nevertheless they are different structures because they necessarily have different sizes. Moreover, an attachment such as the inlet tube of Wood’s fuel tank unquestionably would have a structure differing in both size and shape from the barrier coating structure as well as the fuel tank structure, and Appellants do not argue otherwise with any reasonable specificity.

In this latter regard, we observe that independent claim 18 requires only two components which differ in structure from each other, namely, a coextruded multilayer composite and a hollow article such as a fuel line. Wood’s above-discussed multilayer fuel tank and fuel inlet tube read on Appellants’ claimed multilayer composite and fuel line respectively. As indicated previously, Appellants do not argue with reasonable specificity that patentee’s fuel tank and fuel line fail to satisfy the “differing in structure” requirement of claim 18.¹

¹ Though not specifically directed to claim 18, Appellants assert that “there is no disclosure in **Wood et al.**, that the ports and inlet tubes of **Wood et al.** are any different, material-wise, from the tank main body” (Br. 6). However, neither independent claim 18 nor independent claim 1 requires components which are different “material-wise” (*id*). Instead, these claims simply require that the components differ “in structure” (claims 1, 18). In any event, in accordance with our earlier discussed finding, Wood expressly teaches “[o]ne or more polymer types and two or more layers of melt are coextruded in a coextrusion dye to have a film with versatile properties” (col. 6, ll. 19-22). This teaching militates against Appellants’ assertion that Wood contains no disclosure of using different materials.

For the reasons set forth above and in the Answer, Appellants have failed to show error on the Examiner's part in finding independent claims 1 and 18 to be anticipated by Wood. We sustain, therefore, the § 102 rejection of claims 1-3, 9, 10, 12-16, 18, 19, 21, 22, and 27 based on Wood.

Appellants make no separate argument concerning the § 103 rejection of claims 4-8 and 23-26 as being unpatentable over Wood in view of Roeber (Br. 7-8). Accordingly, we sustain this rejection for the reasons advanced earlier.

As for the § 103 rejection of claims 28-30 over Wood in view of Turner, Appellants present the additional argument that the Examiner has not explained why one of ordinary skill in this art would have combined Wood and Turner (Br. 8). This is incorrect. The Examiner, in fact, has provided an explanation why an artisan would have combined the applied references in the proposed manner (Ans., second full para. at 6, para. bridging 8-9). For this reason and since Appellants identify no error in this explanation, we also sustain the § 103 rejection of claims 28-30.

The decision of the Examiner 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).

AFFIRMED

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