

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JERRY A. PICKERING, SUZANNE P. CLARK and
SUSAN C. BARUCH

Appeal 2008-4953
Application 10/636,470
Technology Center 1700

Decided: September 30, 2008

Before CHARLES F. WARREN, CATHERINE Q. TIMM, and
JEFFREY T. SMITH, *Administrative Patent Judges*.

SMITH, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on an appeal under 35 U.S.C. § 134 from the Primary Examiner's final rejection of claims 1-26, 41-48 and 50, the only pending claims.¹ We have jurisdiction pursuant to 35 U.S.C. § 6.

¹ In rendering this decision we have considered the Appellants' arguments presented in the Brief dated November 13, 2007 and the Reply Brief filed January 22, 2008.

Appellants' invention is directed to a fuser roller. According to Appellants, the invention relates to a fluoroplastic sleeved fuser roller for producing good fusing and high image quality in electrophotographic imaging and recording processes. (Spec. 2, 5). Claim 1 is representative of the invention and is reproduced below:

1. A fuser member comprising:
a core;
a first cushioning layer adjacent to said core;
a second cushioning layer on top of said first cushioning layer; and
a plastic sleeve comprising a fluoroplastic.

ISSUES ON APPEAL

Claims 1-26, 41-48 and 50 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Chen ('817) (U.S. Patent 6,312,817 issued for November 6, 2001), in view of Chen ('210) (U.S. Patent 6,041,210 issued in March 21, 2000).

The Examiner (Ans. 4-5) contends that Chen ('817) discloses a fuser member comprising a core, a first cushioning layer adjacent to said core, a second cushioning layer on top of said first cushioning layer; and an outer layer. The outer layer of the fuser member of Chen ('817) is not described as comprising a fluoroplastic. The Examiner contends that Chen ('210) discloses a fuser member comprising a metallic core, a cushioning layer adjacent to said core, and an outer layer that comprises a fluoroplastic material along with silicon-based elastomer. (Ans. 5). The Examiner concludes that it would have been obvious to a person of ordinary skill in the

art to form the fuser member of Chen ('817) comprising the outer layer formed from materials described by Chen ('210). (Ans. 5).

Appellants contend that the Examiner has equated the outer layer of Chen ('817) with a sleeve, however, there is no support for this position. (App. Br. 3). According to Appellants, the Examiner is reading something into Chen ('817) that does not exist or is reconstructing Appellants invention through hindsight (App. Br. 3).

Appellants contend that a person of ordinary skill in the art "objectively reading Chen '817 would not find any teaching to replace the outer layer of the fuser member with a fluoroplastic sleeve as this would contradict the teachings of Chen '817."² (App. Br. 3). Appellants also contend that Chen ('210) teaches away from using fluoroplastic sleeve for fuser members. (App. Br. 4). Thus the combination of Chen ('817) and Chen ('210) would not yield Appellants invention. (App. Br. 4).

The issue presented is: Did Appellants identify reversible error in the Examiner's rejection of claim 1-26, 41-48 and 50 under § 103? We answer this question in the negative. The issue turns on whether a person of ordinary skill in the art would have found it obvious to include fluoroplastic materials and the outer layer of the fuser member of Chen ('817).³

² Appellants have not contended that it would not have been obvious to a person of ordinary skill in the art to form a fuser member comprising a metallic core or comprising multiple cushioning layers. (See Briefs generally).

³ Appellants' arguments are not directed to any specific claim. We will limit our analysis to claim 1 which we select as representative of the rejected claims.

We have thoroughly reviewed each of Appellants' arguments for patentability. However, we are in complete agreement with the Examiner that the claimed subject matter is not patentable within the meaning of § 103 in view of the applied prior art. Accordingly, we AFFIRM the Examiner's rejection.

OPINION

We determine the following Findings of Fact (FF) from the record presented in this appeal:

- (1) The specification discloses that a plastic sleeve of the present invention can be considered a layer. (Spec. 13).
- (2) The specification discloses that the sleeve can be formed on the cushion layer. (Spec. 13).
- (3) Suitable fluoropolymer materials for forming the fluoroplastic of the outer layer include polytetrafluoroethylene (PTFE) and PFA. (Spec. 13).
- (4) The outer layer of the fuser member of Chen ('817) is described as formed from a silicon-based elastomer. (Col. 3, ll. 52-53).
- (5) Chen ('210) discloses the outer layer of a fuser member may comprise silicone rubber or a fluoroelastomer. (Col. 2, ll. 32-35).
- (6) Chen ('210) describes suitable fluoroelastomers include a blend of PTFE and PFA fluoropolymers (i.e., fluoroplastics). (Col. 4, ll. 56-59).

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 art.” 35 U.S.C. § 103(a) (2000); *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1734 (2007); *Graham v. John Deere Co.*, 383 U.S. 1, 13-14 (1966). 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) secondary considerations such as evidence of unexpected results. See *Graham v. John Deere Co.*, 383 U.S. at 17-18.

Applying the preceding legal principles to the Factual Findings (FF) in the record of this appeal, we determine that the Examiner has established a *prima facie* case of obviousness. As shown by FF (1-6) above, a person of ordinary skill in the art would have found it obvious to include fluoroplastic materials in the outer layer of the fuser member of Chen ('817). Chen ('210) (FF 5) is evidence that a person of ordinary skill in the art would have reasonably expected that the outer layer of a fuser member could have been formed from either silicone materials or fluorine polymer materials. Chen ('210) (FF 6) discloses that blends of PTFE and PFA fluoropolymers are suitable for incorporation into the outer layer of a fuser member. Appellants have not asserted that blends of fluoropolymers are not suitable for the outer layer of the fuser member. Moreover, the transitional phrase “comprising” in claim 1 is entitled to its customary usage in claim interpretation, thus

opening the plastic sleeve to include unspecified, additional ingredients.

See, e.g., In re Baxter, 656 F.2d 679, 686-87 (CCPA 1981).

Appellants argue that the outer layer of Chen ('817) is not equivalent to a sleeve. (App. Br. 3). We do not agree. As set forth above, (FF 1) the specification discloses that a plastic sleeve of the present invention can be considered a layer.

Appellants argue that a fluoroelastomer is distinct from a fluoropolymer. In support of this argument Appellants cite to Chen ('210) (Col. 4, ll. 52-59). (App. Br. 4). This argument is not persuasive because it does not specifically address the fact that Chen '210 discloses PTFE and PFA fluoropolymers as suitable for the outer layer of a fuser member. (FF 6). That Appellants consider PTFE and PFA to be fluoropolymers is evidenced from their Specification (FF 3). The description of PTFE and PFA as "fluoroelastomer" by Chen ('210) does not overcome the fact that Chen '210 suggests using polymers Appellants consider within their disclosure by the present invention to be fluoropolymers.

For the foregoing reasons and those stated in the Answer, we affirm the appealed rejection.

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).

ORDER

The rejection of claims 1-26, 41-48 and 50 under 35 U.S.C. § 103(a) is affirmed.

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AFFIRMED

tc

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