

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 35

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PHILIPPE REITERER, JEAN LE NORMAND,
ROY PARMENTIER, and
CHRISTOPHER J. CARTER

Appeal No. 2004-0567
Application No. 09/628,704

ON BRIEF

Before OWENS, DELMENDO, and JEFFREY T. SMITH, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from the final rejection of claims 1-10, which are all of the claims pending in the application.

THE INVENTION

The appellants claim a tack pad and a method for making it. Claims 1 and 8 are illustrative:

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1. A tack pad having opposite major surfaces and a thickness of at least about 5mm comprising a non-woven cross-laid carded web having a multi-layer structure which is needle-tacked and bonded, at least one major surface of which is impregnated with an acrylic tackifier.

8. A method of making a tack pad comprising the steps of forming a non-woven, cross-laid multi-layer web which includes carded thermo-bonding fibers, needle tacking the cross-laid web to provide a web having a thickness of at about 5 mm, impregnating at least one major surface of the needle tacked web with a heat-reactive acrylic tackifier, and heating to thermally-bond the web and cure the tackifier.

THE REFERENCES

Neal	3,056,154	Oct. 2, 1962
Lester	3,780,392	Dec. 25, 1973
Pässler et al. (Pässler)	4,352,846	Oct. 5, 1982
Schoonen et al. (Schoonen) (Canadian patent)	1,305,839	Aug. 4, 1992

THE REJECTIONS

The claims stand rejected under 35 U.S.C. § 103 as follows:
claims 1-3, 5, 6 and 8 over Pässler in view of Schoonen;
claims 4, 9 and 10 over Pässler in view of Schoonen and Lester;
and claim 7 over Pässler in view of Schoonen and Neal.

OPINION

We reverse the aforementioned rejections. We need to address only claims 1 and 8, which are the sole independent claims.¹

¹ The examiner does not rely upon Lester or Neal for any disclosure that remedies the deficiency in the combination of

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Pässler discloses a cleaning cloth which has a resilient latex foam layer (2) extending below and penetrating into the interior of an about 0.5-5 mm thick needled nonwoven fabric layer (3) (col. 1, lines 31-32; col. 2, lines 24-33; col. 3, lines 4-8). "The needled nonwoven is formed of crosslaid superposed fiber layers which are linked together through intensive needling at the rate of, say, 45 needles per square centimeter. This intensive needling not only interlaces the individual fiber layers but also results in precise adjustment of the resilience and in a reorientation of large portions of fibers in a direction perpendicular to the surface" (col. 3, lines 20-27). The nonwoven fabric layer has, on its surface opposite to the foam layer, rubber strips which advantageously are about 0.2-1.5 mm high and which serve to remove coarser dirt by scraperlike action (col. 1, lines 30-31 and 36-37). The rubber strips may be pressed "without much effort into the structure of the punched nonwoven so as to be flush with its top surface, with the fibers of the nonwoven then bearing directly on the surface of the object being cleaned" (col. 1, lines 43-47). "The nonwoven itself serves in the cleaning cloth as a water reservoir whose water-absorptive capacity is affected but slightly by light

Pässler and Schoonen as to the independent claims.

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pressure. Very large amounts of water may therefore be stored in the punched nonwoven without its surface feeling particularly wet" (col. 2, lines 52-57). The portion of the latex foam layer extending below the nonwoven fabric layer "has particularly soft, resilient properties and is permeated by countless interconnected open pores. These communicate hydraulically with the fibers of the needled nonwoven, thus resulting in a pronounced water-absorption effect" (col. 2, lines 33-37). That portion of the latex foam layer has spongelike absorbency (col. 2, lines 47-48) and "communicates with the top surface in a manner enhancing the suction effect. This enhanced suction effect is due on the one hand to the storage capacity of the needled nonwoven, which is largely independent of the external use of pressure, and on the other hand to the fast rate at which the open-pore foamed-plastic layer is able to take up liquid or give it up to the nonwoven" (col. 3, lines 27-36). The cleaning cloth "lends itself well to the drying of windows and cars, tiles, wash basins, dishes, etc." (col. 2, lines 41-42).

Schoonen discloses tack cloths for removing "dust and the like particulate matter from metal or other surfaces which are about to be painted or otherwise finished" (page 1, lines 6-8) and which "also find use in the home, where they are often referred to as dust cloths, to remove dust or lint from various

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household surfaces, such as furniture and appliances" (col. 1, lines 29-32). The tack cloths comprise a sheet of woven or nonwoven fibrous material and at least 3 wt% pressure sensitive adhesive which can be an acrylic polymer (page 7, lines 4-7 and 15-19; page 15, lines 16-18). The nonwoven fibrous material may be a highly entangled multi-layer carded fiber web (page 9, line 35 - page 10, line 14). Schoonen does not disclose that the nonwoven web can be needle tacked and does not disclose the thickness of the tack cloth.

The examiner argues that "Pässler et al. is used to pick up dirt (column 1, lines 35-37)" (answer, page 6). This portion of Pässler does not state that the cleaning cloth is used to pick up dirt but, rather, states that "[i]n use, the surface of the cleaning cloth provided with the rubber strips serves to remove coarser dirt through the scraperlike action of the rubber strips."

The examiner argues that it would have been obvious to one of ordinary skill in the art to include Schoonen's pressure sensitive adhesive tackifier in Pässler's cleaning cloth to improve the holding capacity of the cleaning cloth for dust or other similar matter (answer, pages 4-6). This argument is not well taken because, as discussed above, Pässler's cleaning cloth is designed for scraping off dirt and absorbing water, not for

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collecting dust. The examiner has not explained why the references themselves would have led one of ordinary skill in the art to modify Pässler's scraping/water absorbing cleaning cloth such that it can function as a tack cloth for collecting dust. Nor has the examiner provided evidence that it was known generally in the art to modify water absorbent scraping and cleaning cloths such as that of Pässler such that they can function as tack cloths.

Thus, the record indicates that the motivation relied upon by the examiner for modifying Pässler's cleaning cloth in the manner proposed by the examiner comes from the appellants' specification rather than coming from the applied prior art. Hence, the record indicates that the examiner used impermissible hindsight in rejecting the appellants' claims. See *W.L. Gore & Associates v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984); *In re Rothermel*, 276 F.2d 393, 396, 125 USPQ 328, 331 (CCPA 1960). Accordingly, we reverse the examiner's rejection.

DECISION

The rejections under 35 U.S.C. § 103 of claims 1-3, 5, 6 and 8 over Pässler in view of Schoonen, claims 4, 9 and 10 over

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Pässler in view of Schoonen and Lester, and claim 7 over Pässler
in view of Schoonen and Neal, are reversed.

REVERSED

TERRY J. OWENS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
ROMULO H. DELMENDO)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JEFFREY T. SMITH)	
Administrative Patent Judge)	

TJO/dal

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