

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 32

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PAUL G. SWISZCZ and WENDELL B. COLSON

Appeal No. 97-0056
Application No. 07/791,156¹

ON BRIEF

Before STAAB, CRAWFORD, and BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 57 through 60, which are all of the claims pending in this application.²

¹ Application for patent filed November 13, 1991.

² Claims 9, 10 and 18 through 40 were canceled in Paper No. 14, filed January 13, 1994. Claims 1 and 41 were canceled in Paper No. 19, filed December 23, 1994. Claims 2 through 8, 11 through 17, 42 through 56, 61 and 62 were canceled in the amendment after final rejection filed June 9, 1995, the entry of which is acknowledged on page 1 of the examiner's answer.

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We AFFIRM.

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art reference, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

The appellants state on page 3 of the brief that "each of the claims, being independent, should be separately considered." However, as the appellants have chosen to argue the patentability of the claims without regard to any particular claim, we shall consider each of the appellants' arguments based on representative claim 59, with claims 57, 58 and 60 standing or falling therewith. See In re Wiseman, 596 F.2d 1019, 1021-1022, 201 USPQ 658, 660 (CCPA 1979); In re Burckel, 592 F.2d 1175, 1178-1179, 201 USPQ 67, 70 (CCPA 1979); In re Hellsund, 474 F.2d 1307, 1309-1310, 177 USPQ 170, 172 (CCPA 1973).

Claims 57 through 60 stand rejected under 35 U.S.C. § 103 as being unpatentable over Duval. The examiner concedes that Duval fails to teach the application of an anti-fray composition on discrete portions of each of the strips of

textile fabric, but takes official notice that it is well known to apply anti-fray compositions to fabrics and panels like that disclosed by Duval (answer, page 3). As the appellants have not challenged the examiner's taking of official notice, we will accept the examiner's position that the broad concept of the application of anti-fray composition to textile fabric material used for the formation of cellular window coverings of the type disclosed by Duval is well known in the art.

The appellants argue that their "novel contribution resides in the elimination or non-application of the treatment composition to those areas of the fabric intended for receipt of an adhesive" (brief, page 4) and that the examiner has not shown any objective teaching in the prior art to suggest that it would have been obvious to leave untreated those areas intended for subsequent application of adhesive (brief, page 6). However, as correctly noted by the examiner, claims 57 through 60 do not preclude the anti-fray treatment composition from being applied to the entire fabric with the adhesive subsequently being applied thereon (answer, page 4). In other words, the application of anti-fray composition over the

entire fabric strip (10) of Duval followed by the application of adhesive to portions (12, 14) of the strip would satisfy the language in claim 59 that the textile material comprise "a first discrete portion [intermediate portions 16] having an anti-fray composition thereon and a second discrete portion [portions 12, 14] having an adhesive composition providing an anti-fray composition thereon." Additionally, it is noted that such an application of the anti-fray composition would also yield a treated fabric defining "at least two areas having respectively different characteristics" as recited in claim 57. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. In re Van Geuns, 988 F.2d 1181, 1184, 26 USPQ2d 1057, 1059 (Fed. Cir. 1993). Accordingly, in this case, although the appellants' specification does disclose applying anti-fray or other treatment composition to the fabric while leaving those portions intended for subsequent application of adhesive untreated, these limitations are not read into the claims.

The appellants' argument on page 7 of the brief that it is difficult to treat only portions of fabrics and that,

consequently, the ordinary procedure in the prior art is to search for adhesive-compatible coatings rather than to treat specific areas is likewise unpersuasive. As noted above, the claim language does not preclude the application of an adhesive-compatible anti-fray or other treatment composition to the entire fabric followed by application of an adhesive.

For the reasons discussed above, we shall sustain the examiner's rejection of representative claim 59 and of claims 57, 58 and 60, which stand or fall therewith.

With regard to claim 57, we note the "single fabric density" limitation. Further, we acknowledge the appellants' recognition that the inventive fabric of Duval comprises higher density portions where the adhesive is to be applied and intermediate portions (16) of lesser density (brief, page 3). However, we also note that the appellants have not argued that provision of a single density fabric is a patentably distinguishing feature of the appellants' claimed invention. In fact, the appellants have expressly stated that the fabric of the appellants' invention may be of "uniform density throughout, or of any varying density as a user might select" (brief, pages 3 and 4). Rather, the appellants have argued

that the patentable distinction resides in the non-application of the treatment composition to those areas of the fabric intended for receipt of an adhesive, as discussed above. Since we have sustained the examiner's position that the application of anti-fray compositions to a fabric of the type disclosed by Duval is well known in the art and since the claims do not preclude application of the treatment composition over the entire fabric, including those areas intended for receipt of an adhesive, we affirm the examiner's decision rejecting claim 57 as obvious without further consideration. See In re Baxter Travenol Labs., 952 F.2d 388, 391, 21 USPQ2d 1281, 1285 (Fed. Cir. 1991).

CONCLUSION

To summarize, the decision of the examiner to reject claims 57 through 60 under 35 U.S.C. § 103 is AFFIRMED.

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

AFFIRMED

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| LAWRENCE J. STAAB |) | |
| Administrative Patent Judge |) | |
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| |) | BOARD OF PATENT |
| MURRIEL E. CRAWFORD |) | APPEALS |
| Administrative Patent Judge |) | AND |
| |) | INTERFERENCES |
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| |) | |
| JENNIFER BAHR |) | |
| Administrative Patent Judge |) | |

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APPEAL NO. 97-0056 - JUDGE BAHR

APPLICATION NO. 07/791,156

APJ BAHR

APJ STAAB

APJ CRAWFORD

DECISION: **AFFIRMED**

Prepared By: Carolyn Whitfield

DRAFT TYPED: 08 Jun 00

FINAL TYPED: 20 May 99