

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAN L. JACKSON

Appeal No. 1997-3119
Application No. 08/216,221

ON BRIEF¹

Before CALVERT, COHEN, and BAHR, Administrative Patent Judges.
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 3 through 6, 8, 12, and 13. Claims 15 through 20, the only other claims remaining in the application, stand withdrawn from consideration by the examiner under 37 CFR § 1.142(b) as

¹ A hearing set for June 6, 2000 was waived by appellant (Paper No. 20).

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being directed to a non-elected invention.

Appellant's invention pertains to a breathable, decorative wall covering and to a breathable, decorative wall covering prepared by a particular process. An understanding of the invention can be derived from a reading of exemplary claims 1 and 8, copies of which appear in the APPENDIX to the main brief (Paper No. 15).

As evidence of obviousness, the examiner has applied the documents listed below:

Bodrogi 1989	4,804,572	Feb. 14,
Silverstein 1991	5,000,810	Mar. 19,
Rusincovitch et al 1993 (Rusincovitch)	5,262,444	Nov. 16,

The following rejections are before us for review.

Claims 1 and 3 through 6 stand rejected under 35 U.S.C. § 103 as being unpatentable over either Silverstein, Bodrogi, or Rusincovitch.

Claims 8, 12, and 13 stand rejected under 35 U.S.C. § 103 as being unpatentable over either Silverstein, Bodrogi, or Rusincovitch.

The content of the examiner's rejections and response to

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the argument presented by appellant appears in the office action dated June 28, 1995 and the answer (Paper Nos. 5 and 16), while the complete statement of appellant's argument can be found in the main and reply briefs (Paper Nos. 15 and 17).

Appellant indicates (main brief, page 5) that claims 1, 3 through 6, 8, 12, and 13 do not stand or fall together, but fails to individually refer to, address, and distinguish in the briefs the content of each claim relative to the applied prior art; 37 CFR § 1.192(c)(7) and (c)(8)(iv). Thus, we shall focus exclusively upon the subject matter of independent claims 1 and 8, infra, with the dependent claims standing or falling with their respective parent claims.

OPINION

In reaching our conclusion on the obviousness issues raised in this appeal, this panel of the board has carefully considered appellant's specification and claims, the applied patents,² and the respective viewpoints of appellant and the

² In our evaluation of the applied references, we have considered all of the disclosure of each patent for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the

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examiner. As a consequence of our review, we make the
determinations which follow.

inferences which one skilled in the art would reasonably have
been expected to draw from the disclosure. See *In re Preda*,
401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

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We reverse the rejections of appellant's claims under 35 U.S.C. § 103. Our reasoning in support of this conclusion appears below.

Each of independent claims 1 and 8 is drawn to a breathable, decorative, wall covering³ with the specified feature of, inter alia, a moisture permeability of from about 25 perms to about 50 perms.

The examiner has concluded that the claimed invention would have been obvious in light of each of three separate prior art teachings, which references we treat individually below.

A reading of the Bodrogi reference reveals the teaching of a stain resistant wall covering that can include a plastisol composition and a nonwoven backing. Considered as a whole, however, we do not find therein a suggestion for a nonwoven substrate having an array of hydroentangled fibers

³ The reference to "Process claim 8" (main brief, page 2) is in error, since claim 8 is clearly drawn to the product ("A breathable, decorative wall covering") resulting from the process recitations set forth in the claim (product-by-process claim). The determination of patentability of a product by process claim is based upon the product itself, not its method of production. See In re Thorpe, 777 F.2d 695, 697, 227 USPQ 964, 966 (Fed. Cir. 1985).

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and, more particularly, a suggestion for the claimed moisture permeability

of from about 25 perms to about 50 perms. Therefore, the rejections based upon Bodrogi must be reversed.

The Silverstein patent addresses decorative composite materials or laminates for use in wall coverings. Specifically, the patentee relies upon a polymeric plasticized polyvinyl chloride film applied to, for example, a nonwoven substrate. The object of Silverstein is to effect a wall covering with greater stain resistance, washability and wearability. As was the case with the Bodrogi reference, supra, we do not discern from the overall Silverstein teaching any suggestion for the claimed moisture permeability of from about 25 perms to about 50 perms or for a nonwoven substrate having an array of hydroentangled fibers. It follows, therefore, that the rejections based upon this reference must be reversed.

Like the examiner, we fully appreciate the relevance of the Rusincovitch patent to the claimed subject matter. The patentee teaches a porous, breathable wall covering to

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overcome a mildew problem. Plastisol is applied to a nonwoven substrate. For embossed wall covering Sample A (column 11, lines 56 through 62), the nonwoven substrate is identified as Dexter 10108T.⁴ As one having ordinary skill would have readily understood from Rusincovitch (Table I and column 12, lines 19 through 28), the elimination of embossing from sample A (average perm value of 17.3 including a 19.5 and a 17.4) would yield perm values that are even higher.⁵

Notwithstanding the above, we conclude that the particular wall covering of appellant's claims 1 and 8 would not have been suggested by the Rusincovitch disclosure.

It is important to recognize that appellant achieves porosity by the interface between a particularly specified average coating weight of a plastisol composition and a

⁴ Rusincovitch does not describe Dexter 10108T as a nonwoven substrate having hydroentangled fibers. In the present specification (page 7), appellant broadly makes reference to well known hydroentangled fabrics commercially available from C.H. Dexter Corp. In the reply brief (page 3), appellant asserts that none of the references would have motivated one to select a nonwoven substrate having hydroentangled fibers.

⁵ We note that, as indicated by appellant (specification, page 2) those practicing this art were aware of very high values of about 72 perms for wall coverings.

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nonwoven substrate having an array of hydroentangled fibers, as distinguished from the Rusincovitch teaching (column 9, lines 8 through 30) of achieving porosity by the inclusion of a low boiling point additive which outgasses from a plastisol to leave holes therein.

While the Rusincovitch patent teaches moisture permeability up to about 20 perms, and a plastisol coating weight of about 6 ounces per square yard, it cannot fairly be said that this reference teaching, assessed as a whole, would have been suggestive of a wall covering comprising a plastisol composition with an average weight from about 1.5 ounces per square yard to about 5.0 ounces per square yard fused to and supported by a nonwoven substrate having an array of hydroentangled fibers, wherein the wall covering has a moisture permeability of from about 25 perms to about 50 perms. For these reasons, the rejections based upon the Rusincovitch patent cannot be sustained.

In summary, this panel of the board has:

reversed the rejection of claims 1 and 3 through 6 under 35 U.S.C. § 103 as being unpatentable over either Silverstein, Bodrogi, or Rusincovitch; and

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reversed the rejection of claims 8, 12, and 13 under
35 U.S.C. § 103 as being unpatentable over either Silverstein,
Bodrogi, or Rusincovitch.

The decision of the examiner is reversed.

REVERSED

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IAN A. CALVERT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
IRWIN CHARLES COHEN)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
JENNIFER BAHR)	
Administrative Patent Judge)	

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