Paper No. 31

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BEN BRUNER, JAMES F. HESLEP,
HANS-JOSEF BEHRENS, KONRAD SCHMITZ,
and
KARLHEINZ WOLF

Appeal No. 2000-0698
Application No. 08/960,694

HEARD: Nov. 7, 2002

Before OWENS, LIEBERMAN, and DELMENDO, Administrative Patent Judges.

DELMENDO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal under 35 U.S.C. § 134 (2002) from the examiner's final rejection of claims 9 and 10, which are all of the claims pending in the above-identified application.

The subject matter on appeal relates to an elastane multifilament yarn with two to six individual filaments which,

upon being unwound from a bobbin, is splittable into individual filaments. According to the appellants, the individual filaments of the invention are "not mutually plied, entangled, or locally or longitudinally stuck together." (Specification, page 2, lines 16-20.) Further details of this appealed subject matter are recited in illustrative claim 9 reproduced below:

> 9. An elastane multifilament yarn with two to six individual filaments which, upon being unwound from a bobbin, is splittable into individual filaments and which is produced by an improved dry spinning process for producing an elastane multifilament yarn, wherein an elastane solution is dry spun to form the yarn, in which the improvement comprises reducing or preventing interfilamentary adhesion by
>
> 1) deploying in the spinning head of a conventional dry spinning apparatus at least one multihole spinning jet whose individual capillaries are located on one plate, the distance x between capillaries on one jet plate and the distance y between capillaries on any adjacent multihole spinning jet plates conforming to the relationship 40 mm < x < y < 500 mm,
>
> 2) laminarizing the gas flow in the dry spinning apparatus to prevent entangling of the individual filaments from adjacent multihole jets,
>
> 3) passing the resulting elastane yarns leaving the spinning shaft through a first thread guide with one opening per individual filament and then through a second thread guide which gathers a plurality of individual filaments together to form a multifilament, and
>
> 4) winding up the multifilament yarn,
>
> whereby the resulting elastane filaments are free from adhesion to one another.

The examiner relies on the following prior art reference as evidence of unpatentability:

Regenstein 4,411,142 Oct. 25, 1983

Claims 9 and 10 on appeal stand rejected under 35 U.S.C. § 102(b) as anticipated by Regenstein. (Examiner's answer of Nov. 29, 1999, pages 3-8.)

We reverse this rejection.

"To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently." In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). Here, it is our judgment that Regenstein does not describe every limitation of the claimed invention, either explicitly or inherently.

We first note that appealed claim 9 recites "product-by-process" limitations. Thus, "product-by-process" claim interpretation principles apply. Specifically, the patentability of the recited product must be adjudged on the product itself, not on the process by which it is made; that is, the recited product would be unpatentable over a prior art product that is indistinguishable in terms of structure, even if the prior art product is made by a different process. In re Thorpe, 777 F.2d 695, 697, 227 USPQ 964, 966 (Fed. Cir. 1985).

Regenstein describes an improved elastic yarn supply package in the form of a double-face, two-thread system, warp-knit tape from which the elastic yarns may be unraveled. (Column 2, lines 6-9.) Regenstein teaches the use of a two needle-bar machine having at least two fully threaded guide bars which are controlled to form basic stitch patterns of no more than two needle spaces wide and which preferably repeat within no more than every two courses. (Column 2, lines 24-31.) As a preferred embodiment, Regenstein teaches that at least one of the guide bars is threaded with two or more low denier spandex[1] strands. At column 4, lines 18-35, Regenstein discloses:

> It is preferred that two or more elastic strands be threaded in each guide of at least one of the guide bars. Preferably all of the guides of both guide bars are so threaded. The use of a plurality of elastic strands in each guide bar has the advantage of producing at higher rates and at lower costs a more compact fabric with more ends for feeding to the next operation. A further advantage from such threading is obtained especially when fine elastic strands (e.g., 22 dtex to 310 dtex) are used. The fine strands can be combined to correspond to a much thicker yarn (e.g., 1800 dtex) and consequently the same ease of unravelling and good splittability of the supply packages of the invention made with heavier elastic monofilaments are obtained with the fine thread. In addition, the unravelled fine threads are readily separable into individual strands which can be readily supplied to the subsequent fabric-making operations. [Emphasis added.]

[1] The examiner determined (answer, p. 3), and the appellants do not dispute, that "spandex" is an "elastane."

Upon consideration of the applied prior art as a whole, we must agree with the appellants that Regenstein's disclosure at column 4, line 33, et seq. "refers to the separability of the individual threads (each of which could consist of a plurality of filaments) from each other, as they are unwound from the 'package', and does not have anything at all to do with splitting the threads into their individual filaments." (Substitute appeal brief filed Oct. 20, 1999, paper 19, page 8.) While Regenstein teaches that "the unravelled fine threads are readily separable into individual strands..." (column 4, lines 33-35), the only material that is said to be "unravelled" in Regenstein is the "elastic yarn supply package of the type that is in the form of a double-face, two thread-system, warp-knit tape" (column 2, lines 6-9). Thus, we determine that the descriptive phrase "readily separable" at Regenstein's column 4, lines 33-34 must necessarily be a reference to the readily separable nature of the fine threads as they are being "unravelled" into individual strands from the yarn supply package.

For these reasons and those set forth in the substitute appeal brief, we reverse the examiner's rejection under 35 U.S.C. § 102(b) of appealed claims 9 and 10 as anticipated by Regenstein.

The decision of the examiner is reversed.

REVERSED

Terry J. Owens	)	
Administrative Patent Judge	)	
	)	
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	)	BOARD OF PATENT
Paul Lieberman	)	
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
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	)	
Romulo H. Delmendo	)	
Administrative Patent Judge	)	

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