

The opinion in support of the decision being entered today was not written for publication is not binding precedent of the Board.

Paper No. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ANTHONY ALFRED VAN OSENBRUGGEN

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Appeal No. 2001-0111  
Application 09/077,376

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ON BRIEF

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Before ABRAMS, MCQUADE, and NASE, Administrative Patent Judges.

MCQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Anthony Alfred Van Osenbruggen appeals from the final rejection of claims 1, 3, 4, 6 through 8, 10 and 12 through 14. Claims 2, 5, 9 and 11, the only other claims pending in the application, stand withdrawn from consideration pursuant to 37 CFR § 1.142(b).

THE INVENTION

The invention relates to "backing plates for abrasive disks" (specification, page 1). Representative claim 1 reads as follows:

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1. An abrasive disk backing plate having a mounting aperture and an abrasive disk-bearing surface, said plate being made of a resilient material and being circular with at least three spaced and symmetrically disposed gaps in the circumference thereof.

THE PRIOR ART

The references relied on by the examiner as evidence of obviousness are:

Guidry	3,974,598	Aug. 17,
1976		
Robert	4,158,935	Jun. 26,
1979		
Goralski et al. (Goralski)	4,844,967	Jul. 4,
1989		

THE REJECTION

Claims 1, 3, 4, 6 through 8, 10 and 12 through 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Goralski in view of Guidry and Robert.

Attention is directed to the appellant's brief (Paper No. 10) and to the examiner's answer (Paper No. 11) for the respective positions of the appellant and the examiner with regard to the merits of this rejection.

DISCUSSION

Goralski, the examiner's primary reference, discloses a back-up pad 10 for an abrasive disk. The pad 10 includes a layer 11 of resiliently compressible foam having front and rear surfaces 12 and 13, a flexible sheet 14 fixed to the front surface 12 for attachment to the abrasive disk, a generally rigid backing plate 16 fixed to the rear surface 13, and a circular array of passageways 40 extending through the backing plate 16, foam layer 11 and flexible sheet 14. The passageways 40 define inlet openings 41 on the bottom of the pad corresponding to openings in the abrasive disk and outlet openings 42 on the top of the pad positioned to communicate with a vacuum system on a drive motor assembly. The vacuum system functions via the openings in the abrasive disk and the passageways in the back-up pad 10 to remove dust generated during an abrading operation. As shown in Figure 4, the passageways 40 lie completely within the circumferential periphery of the back-up pad 10.

In comparing the subject matter recited in claim 1 to the Goralski back-up pad, the examiner has determined that the "at least three spaced and symmetrically disposed gaps in the

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circumference" of the claimed backing plate are met by, or would have been obvious in view of, Goralski's passageways 40 and their inlet and outlet openings 41 and 42.

The appellant, on the other hand, argues that Goralski's passageways 40 do not constitute "gaps" as this term is defined in the underlying specification, to wit:

an indentation or invagination which is incompletely surrounded by the material of the object. It would include therefore configurations in which the circular periphery of a disk has had a segment . . . removed or the configuration obtained by (notionally) moving an "aperture" until a portion extended beyond the periphery of the disk [specification page 3].

To reinforce this point, the appellant, noting the definition on specification page 3 of the term "aperture" as meaning "a channel or hole passing completely through an object, and is surrounded on all sides by the material of the object," submits that Goralski's passageways 40 are "apertures" not "gaps." The appellant also contends that Goralski would not have suggested any modification of the passageways 40 which would transform them into "gaps."

Words which are defined in the specification must be given the same meaning when used in a claim. McGill, Inc. v. John Zink Co., 736 F.2d 666, 674, 221 USPQ 944, 949 (Fed.

Cir.), cert. denied, 469 U.S. 1037 (1984). Thus, the recitation of the "gaps" in claim 1 is limited to the definition set forth in the appellant's specification. Goralski's passageways 40, which lie completely within the circumferential periphery of back-up pad 10, do not meet this definition. Moreover, there is no factual support in Goralski, taken alone or further in view of Guidry and Robert, for the examiner's conclusion that changing the shape of Goralski's passageways 40 so as to extend them past the outer edge of the pad, thereby transforming them into "gaps," would have been an obvious matter of design. The examiner's proposition that this modification might optimize Goralski's objective of removing dust generated during the abrading process is completely conjectural.

Hence, the combined teachings of Goralski, Guidry and Robert do not justify the examiner's conclusion that the differences between the subject matter recited in claim 1 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. Accordingly, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of

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claim 1, or dependent claims 3, 4, 6 through 8, 10 and 12 through 14, as being unpatentable over Goralski in view of Guidry and Robert.

SUMMARY

The decision of the examiner to reject claims 1, 3, 4, 6 through 8, 10 and 12 through 14 is reversed.

REVERSED

