

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 37

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte TONY M. POKORZYNSKI  
and  
TIMOTHY J. THEISEN

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Appeal No. 2003-1176  
Application No. 09/074,288

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ON BRIEF

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Before WARREN, DELMENDO, and POTEATE, 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 refusal to allow claims 1 through 4 and 6 through 10 in the above-identified application.<sup>1</sup> Claims 11

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<sup>1</sup> In reply to the final Office action mailed Jun. 3, 2002 (paper 28), the appellants submitted an amendment pursuant to 37 CFR § 1.116 (2001) on Aug. 13, 2002 (paper 29), proposing changes to claims 1 and 6. The examiner indicated in the

through 33, the only other pending claims, stand withdrawn from further consideration pursuant to 37 CFR § 1.142(b) (1959).

The subject matter on appeal relates to an integrated trim member for a vehicle (e.g., an automotive vehicle fiber-reinforced interior trim). (Specification, page 1, lines 4-5.) Further details of this appealed subject matter are recited in representative claims 1 and 2 reproduced below:

1. An integrated interior trim member for a vehicle comprising:
  - a porous substrate;
  - an upholstery skin material, said upholstery skin material being substantially coextensive with said substrate; and
  - a molded foam material extending between said upholstery skin material and said substrate, said molded foam material bonding said skin material to said porous substrate, whereby said porous substrate is held to a backside of the trim member that is opposite of the upholstery skin material.

2. The interior trim piece as defined in Claim 1, wherein said substrate comprises a porous fibrous [sic] material having openings therein, where and [sic] said moldable foam material penetrates said openings and bonds to said porous material through said openings.

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

Rohrlach et al. (Rohrlach)	5,082,609	Jan. 21, 1992
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advisory action mailed Aug. 29, 2002 (paper 30) that the amendment will be entered for purposes of this appeal.



application are to be given their broadest reasonable interpretation, taking into account the written description found in the specification. In re Morris, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997); In re Zletz, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) ("During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow."); In re Yamamoto, 740 F.2d 1569, 1571, 222 USPQ 934, 936 (Fed. Cir. 1984) ("The PTO broadly interprets claims during examination of a patent application since the applicant may 'amend his claim to obtain protection commensurate with his actual contribution to the art.'") (quoting In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550 (CCPA 1969)).

Here, appealed claim 1 recites the term "upholstery skin material." While the specification lists several examples of this material, it does not place any limitations on the specific identity or on the thickness of the material. (Page 4, lines 12-13.) Under these circumstances, we construe the term "upholstery skin material" as encompassing any skin material, including laminated structures of any thickness.

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group II and confine our discussion to these representative claims. 37 CFR § 1.192(c)(7) (1995).

Rohrlach describes a molded panel (e.g., a vehicle door inner panel) constructed of a substrate 11 of a continuous filament glass reinforcement penetrated by a crosslinked rigid polyurethane, which overlies a partly cellular (i.e., foamy) high density lamina 12 of polyurethane, which in turn is adhered to a finish face 13. (Figure 1a and 1b; column 1, lines 4-8 and 37-55; column 2, line 44 to column 3, line 20.) According to Rohrlach, the crosslinked rigid polyurethane that penetrates or embodies the filament glass substrate 13 is a foam material. (Column 1, lines 36-49.)

Given these teachings, we agree with the examiner that Rohrlach describes each and every limitation of the invention recited in appealed claims 1 and 2. Specifically, we determine that Rohrlach's rigid foam material penetrating or embodying the filament glass substrate 11 bonds (1) the partly cellular high density lamina 12/finish face 13 structure, which corresponds to the here recited "upholstery skin material," to (2) the substrate 11, which corresponds to the here recited "porous substrate." As in the appellants' claimed invention, Rohrlach's substrate 11 "is held to a backside of the trim member that is opposite of the upholstery skin material." Accordingly, we hold that Rohrlach describes every limitation of the claimed invention within the meaning of 35 U.S.C. § 102(b). In re

Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997).

The appellants argue: "[B]efore impregnation with the moldable polyurethane, the partly cellular high density lamina 12 does not bond finish face 13 to the sheet of glass fibre 24." (Appeal brief, page 6.) The appellants, however, have not identified any evidence to support the conclusion that "the partly cellular high density lamina 12 does not bond finish face 13 to the sheet of glass fibre." Neither the appealed claims nor the specification places any limitation on the degree of "bonding" required. In any event, we find that the rigid foam polyurethane penetrating or embodying the filament glass substrate 11 bonds the partly cellular high density lamina 12/finish face 13 structure to the substrate 11.

The appellants urge that "after impregnation of the sheet of glass fibres 24 with the moldable polyurethane, there is provided a resulting substrate that fails to meet the requirement for a porous substrate." (Appeal brief, page 6.) Further, the appellants allege: "The facts that the foam material partially penetrates the pore structure to bond to the substrate does not mean that the substrate is fully impregnated or encompassed by the foam." (Reply brief, page 1.) As pointed out by the examiner (answer, page 6), the appellants' position

lacks merit. Like Rohrlach's panel, the claimed invention encompasses structures in which the "porous substrate" is completely penetrated by and embodied within a foam.

(Specification, page 9, lines 7-15; Figure 7.) Nothing in the language of the appealed claims or the description in the specification limits the claimed invention to those structures in which the "porous substrate" must retain its porosity after the foam penetrates the openings of the "porous substrate."

The appellants contend that Rohrlach's "sheet of glass fibre 24 is never actually bonded *directly* to the foam layer..." (italics added). (Appeal brief, page 6.) We note, however, that appealed claims 1 and 2 do not recite any requirement for a direct bond between the porous substrate and the skin material. In this regard, we note that the appealed claims recite the term "comprising." In claim drafting, the term "comprising" not only alerts potential infringers that the recited components are essential, but that other unrecited components may be present and still form a construct within the scope of the claim. See, e.g., In re Baxter, 656 F.2d 679, 686, 210 USPQ 795, 802 (CCPA 1981).

Regarding appealed claim 2, the appellants allege:  
"[B]ecause the foam layer (partly cellular high density lamina 12) is 'at least partially set' before placement of the sheet of

the glass fibres 24 onto lamina 12, the material of lamina 12 cannot penetrate openings in the sheet of glass 24, since a thermoset material cannot flow." (Appeal brief, page 7.) We note, however, that the lamina 12 does not have to be fully thermoset as the reference teaches that it is "at least partially set." But more importantly, Rohrlach teaches that the rigid foam polyurethane penetrates or embodies the substrate 11. (Column 1, lines 46-49; column 2, lines 46-48; column 3, lines 10-16.)

For these reasons, we uphold the examiner's rejection on this ground.

#### Takeuchi

Takeuchi describes a vehicle door trim A comprising, inter alia, a mat-shaped glass fiber reinforcing material 1 within a foam base material 3 that is molded integrally on the back side of a facing material 5. (Column 3, lines 23-31; Figures 1-3.) Takeuchi, therefore, describes every limitation of the invention recited in appealed claims 1 and 2.

The appellants argue that "neither the fiber-reinforcing material nor the porous sheet material 9 are [sic, is] held to a backside of the trim member." (Appeal brief, pages 9-10.) This argument fails, because Takeuchi's mat-shaped fiber reinforcing

material 1 is in fact "held to a backside of the trim member that is opposite of the upholstery skin material."

The appellants' position that Takeuchi's mat-shaped fiber reinforcing material 1 is "no longer porous" after impregnation with the foam base material 3 is unavailing for the same reasons discussed above with respect to the rejection based on Rohrlach.

Because none of the appellants' arguments are persuasive, we affirm the examiner's rejection under 35 U.S.C. § 102(b).

As to the examiner's rejection under 35 U.S.C. § 103(a), we affirm this rejection as well because a prior art disclosure that anticipates under 35 U.S.C. § 102 also renders the claim obvious under 35 U.S.C. § 103, for anticipation is the epitome of obviousness. In re Baxter Travenol Laboratories, 952 F.2d 388, 391, 21 USPQ2d 1281, 1284-85 (Fed. Cir. 1991); In re Fracalossi, 681 F.2d 792, 794, 215 USPQ 569, 571 (CCPA 1982); In re May, 574 F.2d 1082, 1089, 197 USPQ 601, 607 (CCPA 1978).

#### Summary

In summary, we affirm: (i) the rejection under 35 U.S.C. § 102(b) of appealed claims 1 through 4 and 6 through 10 as anticipated by Rohrlach; (ii) the rejection under 35 U.S.C. § 102(b) of appealed claims 1 through 4 and 6 through 10 as anticipated by Takeuchi; and (iii) the rejection under 35 U.S.C.

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§ 103(a) of appealed claims 1 through 4 and 6 through 10 as unpatentable over Takeuchi.

The decision of the examiner 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

Charles F. Warren	)	
Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
Romulo H. Delmendo	)	
Administrative Patent Judge	)	APPEALS AND
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	)	INTERFERENCES
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	)	
Linda R. Poteate	)	
Administrative Patent Judge	)	

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