

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HANS O. CEDERBLAD
and
JAN D. SEPPALA

Appeal No. 1996-3939
Application 08/295,635¹

ON BRIEF

Before WINTERS, WILLIAM F. SMITH, and ROBINSON, Administrative Patent Judges.
WILLIAM F. SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the final rejection of claims
1 through 25.

¹ Application for patent filed August 26, 1994. According to appellants, this application is a 371 of PCT/US92/01663, filed February 28, 1992.

Claims 1 and 16 are representative of the subject matter on appeal and read as follows:

1. A bicomponent elastomeric extruded netting having unidirectional elasticity, said bicomponent elastomeric extruded netting comprising extruded strands consisting essentially of a relatively inelastic resin component and transverse extruded strands consisting essentially of a relatively elastic resin component.

16. A bicomponent elastomeric extruded netting having unidirectional elasticity, said bicomponent elastomeric extruded netting comprising a first set of extruded strands extending in a first direction and a second set of extruded strands extending in the opposite transverse direction, one of said strand sets comprising a polypropylene resin and the other said strand set comprising a styrenic block copolymer resin composition.

The references relied upon by the examiner are:

Lilley	2,197,188	April 16, 1940
Emi et al. (Emi)	4,296,163	Oct. 20, 1981
Madsen et al. (Madsen)	4,636,419	Jan. 13, 1987
Sipinen et al. (Sipinen)	5,232,777	Aug. 3, 1993

The claims on appeal stand rejected as follows:

- I. Claims 1, 3, 4, 6, 11 and 13 under 35 U.S.C. § 102(b) as anticipated by Madsen,
- II. Claims 1 and 11 are rejected under 35 U.S.C. § 102(b) as anticipated by Lilley,
- III. Claims 1, 3, 6 through 9 and 11 and 13 through 15 are rejected under 35 U.S.C. § 103 on the basis of Lilley and Sipinen,
- IV. Claims 1, 2, 4, 5 and 11 are rejected under 35 U.S.C. § 103 as unpatentable on the basis of Lilley and Emi, and

V. Claims 1 through 25 are rejected under 35 U.S.C. § 103 as unpatentable on the basis of Lilley, Emi and Sipinen.

We affirm the rejection based upon Madsen and reverse all rejections based upon Lilley.

DISCUSSION

In determining issues raised under 35 U.S.C. § 102 “the first inquiry must be into exactly what the claims define.” In re Wilder, 429 F.2d 447, 450, 166 USPQ 545, 548 (CCPA 1970). Here, the claims on appeal are directed to “extruded netting.” We believe that a proper construction or interpretation of this phrase disposes of the issues on appeal.

In reading the paragraph bridging pages 4-5 of the specification, it is apparent that one feature of an extruded netting according to the present invention is that the resin strands which form the netting should show or possess “good joint bond strength.” By this we take it that an “extruded netting” according to the present invention must have bonded strands. For reasons which follow, it is our view that the netting described in Lilley does not have bonded strands while that described in Madsen does.

The netting described in Lilley may be “woven, knitted, netted or the like.” (Lilley, page 1, column 2, lines 10-14.) We find no disclosure in Lilley which suggests that elastic strands (10) are bonded in any manner to nonelastic strands (12). Nor does the examiner

urge that Lilley describes such a construction. Rather, the examiner's position is that “the claims only require that individual strands of the claim net be extruded strands”

(Examiner's Answer, page 8). This is incorrect. As set forth above, the claims on appeal are directed to “extruded netting.” The examiner has not taken this portion of the claimed subject matter into account in rejecting the claims on the basis of Lilley. Accordingly, we reverse all rejections pending which are based upon Lilley.

The net described in Madsen does contain strands which are bonded. See, e.g., the netting illustrated in Figures 10 and 11 of Madsen and the accompanying description in the specification of that patent. Appellants argue at page 7 of the Appeal Brief that Madsen does not contain integral joints and points to column 2, lines 43-51 of the reference in support. That portion of the reference only indicates that “in a preferred embodiment” the filaments may be embedded in slipping relation with the matrix material. Clearly, in expressing a “preference” for a slipping relationship, Madsen is also disclosing a non-slipping relationship which meets the terms of claim 1 on appeal.

Since appellants have argued the claims rejected on the basis of Madsen together as a group, and we have determined that claim 1 is anticipated by Madsen, we affirm the rejection of claims 1, 3, 4, 6, 11 and 13 as anticipated by Madsen.

The decision of the examiner is affirmed-in-part.

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

AFFIRMED-IN-PART

Sherman D. Winters)	
Administrative Patent Judge)	
)	
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William F. Smith)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
Douglas W. Robinson)	
Administrative Patent Judge)	

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Vidas Arrett & Steinkraus, P.A.
6109 Blue Circle Drive, Suite 2000
Minnetonka, MN 55343-9131