

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 28

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

Ex parte ROBERT C. KERR

---

Appeal No. 1999-0822  
Application No. 08/732,866

---

ON BRIEF

---

Before GARRIS, WARREN, and LIEBERMAN, Administrative Patent Judges.

LIEBERMAN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the decision of the examiner refusing to allow claims 1 through 7, which are all the claims pending in this application.

THE INVENTION

The invention is directed to a launderable floor covering mat comprising several layers of material wherein the mat has suitable flexibility to be laundered by an industrial washing machine. Additional limitations are described in the following illustrative claims.

Appeal No. 1999-0822  
Application No. 08/732,866

### THE CLAIMS

Claims 1 and 5 are illustrative of appellant's invention and are reproduced below:

1. A launderable floor covering mat, comprising:

a plurality of tufts disposed in a carrier layer;

a layer of thermoplastic adhesive disposed on the side of the carrier layer from which the tufts do not extend; and

at least a first layer of vulcanized thermoplastic elastomer including cross-linked rubber particles dispersed in a matrix of thermoplastic disposed over the layer of thermoplastic adhesive, wherein the thickness of the first layer of vulcanized thermoplastic elastomer is greater than about 20 mil and wherein the floor covering mat possesses suitable flexibility to be laundered by an industrial washing machine.

5. The floor covering mat of Claim 1, further including a reinforcing layer of thermoplastic material disposed across the layer of vulcanized thermoplastic elastomer; and a second layer of vulcanized thermoplastic elastomer disposed in sealing relation over the reinforcing layer of thermoplastic material wherein the second layer of vulcanized thermoplastic elastomer has a composition which is substantially the same as the first layer of vulcanized thermoplastic elastomer. <sup>1</sup>

### THE REFERENCE OF RECORD

As evidence of obviousness, the examiner relies upon the following reference:

Bistak et al. (Bistak)  
1988

4,746,688

May 24,

### THE REJECTIONS

Claims 1 through 7 stand rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to

---

<sup>1</sup>Claim 5 as presented in APPENDIX A is substantially incorrect. We review claim 5 as filed with the original specification.

reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 1 through 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bistak.

### OPINION

We have carefully considered all of the arguments advanced by the appellant and the examiner, and agree with the appellant that the rejection of claims 1 through 7 under 35 U.S.C. § 112, first paragraph and claims 5 through 7 on the grounds of obviousness are not well founded. Accordingly, we reverse these rejections. We agree with the examiner that the rejection of claims 1 through 4 on the grounds of obviousness is well founded. Accordingly, we sustain this rejection.

As an initial matter, the appellant states that, “[c]laims 1- 4 stand or fall together and separately from claims 5-7.” See Brief, page 3. Accordingly, we select claim 1 the sole independent article claim and dependent claim 5 as representative of the claimed subject matter and limit our consideration thereto. See 37 CFR § 1.192 (c)(7)(1997).

### The Rejection under § 112

It is well settled that a specification complies with the 35 U.S.C. § 112, first paragraph, written description requirement if it conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, the inventor was in possession of the invention. See Vas-Cath, Inc. v. Mahurkar, 935 F.2d 1555, 1563-64, 19 USPQ2d

1111, 1117 (Fed. Cir. 1991); In re Kaslow, 707 F.2d 1366, 1375, 217 USPO 1089, 1096 (Fed. Cir. 1983); In re Edwards, 568 F.2d 1349, 1351-52, 196 USPO 465, 467 (CCPA 1978); In re Wertheim, 541 F.2d 257, 262, 191 USPO 90, 96 (CCPA 1976).

In accordance with the instant rejection, it is the examiner's position that there is no support in the specification for the limitation of the phrase, "suitable flexibility to be laundered by an industrial washing machine." See Answer, page 3. We find that appellant discloses that the invention relates to launderable rubber backed floor mats. See specification, page 1, lines 5-6. Moreover, the appellant has stated that, "floor mats have conventionally consisted of a plurality of tufts in a primary backing adhered to a vulcanized thermoset rubber backing. Such a backing gives dimensional stability to the fabric surface while maintaining the mat's integrity during industrial wash processing." See specification, page 2, lines 4-9.

Ipsis verbis disclosure is not necessary to satisfy the written description requirement of 35 U.S.C. § 112. The disclosure need only reasonably convey to those of ordinary skill in the art that the inventor had possession of the subject matter in question. Fujikawa v. Wattanasin, 93 F.3d 1559, 1570, 39 USPO2d 1895, 1904 (Fed. Cir. 1996). We agree with the appellant that the disclosure reasonably conveys to one of ordinary skill in the art that appellant, did in fact disclose the advantage of a launderable and accordingly reasonably flexible characteristic of a floor mat, and thus had possession of the phrase "suitable flexibility" as recited in claim 1 on appeal.

The Rejection under § 103(a)

It is the position of the appellant that a prima facie case of obviousness has not been established. The appellant argues that, “Bistak et al. teach an article for placement in an automobile which is rigid, impact resistant, and sound-deadening (in particular, see col. 2, lines 54-68) and which utilizes thermoplastic adhesives to apply a carpet material to an extruded mixture of vulcanized thermoplastic elastomers, cellulose, and other admixed ingredients, including co-extruded (and not layered) polypropylene homopolymer.” See Brief, page 6. We disagree.

We find that the basic article required by the claimed subject matter is disclosed in Example 1. The example discloses an extrudable composition comprising polypropylene homopolymer, and a crosslinked EPDM containing 60/40 EPDM/polypropylene by weight among a limited number of other components. We find that the components are premixed and extruded. See column 9, lines 13-14. We find the extruded mixture has a thickness of 1.6 mm corresponding to more than 60 mils. Thereafter, “[a] thin (about 0.003 inch thick) polypropylene copolymer film was adhered to the surface of the sheet in the cooling stack to provide better adhesion for the carpet material to be applied during molding.” See column 9, lines 19-23. We find that polypropylene carpet is applied and the article is molded.

Applying these findings to the claimed subject matter, we conclude that the extruded mixture corresponds to at least one layer of thermoplastic rubber dispersed in a

matrix of thermoplastic. We further conclude that the thin polypropylene copolymer film corresponds to the layer of thermoplastic adhesive of the claimed subject matter. Finally, we conclude that the polypropylene carpet falls within the scope of a plurality of tufts in a carrier layer. In this respect we agree with and adopt the finding of the examiner that tufted carpets are conventional and well known in the art. See Answer, page 4.

Significantly, the appellant has not challenged the examiner's finding.

As to the flexibility of the articles prepared by Bistak, we find that patentee discloses varying degrees of flexibility in the articles prepared in the examples. We find that the article of Example 3 is more flexible than that of Example 1. See Example 3. We further find that the article prepared in Example 6 likewise has greater flexibility than that of Example 1. See Example 6. We conclude therefrom that Bistak likewise contains embodiments directed to sheets having varying degrees of flexibility. Accordingly, we find little distinction between the flexibility of Bistak and that of the claimed subject matter. Our position is further supported by the fact that Examples 1 through 4 and 6 of Bistak utilize crosslinked EPDM rubber. Similarly, the specification discloses that the vulcanized thermoplastic elastomer, "is preferably an EPDM based olefinic thermoplastic vulcanized elastomer." See specification, page 8, lines 17-18 and page 8, lines 1-2.

We note that a substantial portion of the Answer and appellant's argument in the Brief is directed to the "omission of the cellulose component." See Brief, pages 7 and 8 and Answer, Page 4 and 5. We find however, that the claimed subject matter contains

the transitional phrase, "comprising." Accordingly, the claimed subject matter is open to the inclusion of other components including each of the components disclosed by Bistak.

Moreover, contrary to the examiner's position, we find that Bistak expressly teaches that, "the composition of the present invention has excellent sound-deadening properties which result from the inclusion of particularly defined crosslinked elastomeric rubber particles dispersible in the extrudable composition." See column 5, lines 3-7. In addition, we find that the rigidity of the article likewise results from the inclusion of the same small crosslinked elastomeric rubber particles into a thermoplastic composition. Accordingly, we conclude that both the article disclosed by Bistak and the claimed subject matter share the same characteristics of rigidity and flexibility, particularly as the characteristics result from the introduction of crosslinked elastomer, and both appellant and patentee utilizes the same crosslinked elastomer.

We furthermore agree with the examiner's finding that the Bistak article could be washed by a carpet steam cleaner thereby meeting the requirement of the claimed subject matter that the "mat possesses suitable flexibility to be laundered." See Answer, page 7. We do not read into the limitation of claim 1, a requirement for the utilization of a rotary industrial cleaner as argued by the appellant as no basis for that limitation is found in the specification. We acknowledge that the appellant has submitted a Declaration by John H. Murray, filed as an attachment to Paper No. 21, executed May 12, 1997, stating that, "[w]ash processing at major industrial laundries involves aggressive rotary washing." See

page 1, paragraph 6 of the Murray Declaration. The claimed subject matter however does not contain a limitation directed to a rotary washing process. It requires only a limitation that the "covering mat possesses suitable flexibility to be laundered by an industrial washing machine." A carpet steam cleaner meets that requirement. Stated otherwise, appellant's argument fails from the outset because it is not based upon limitations appearing in the claimed subject matter. In re Self, 671 F.2d 1344, 1348, 213 USPQ 1, 5 (CCPA 1982).

As to the limitation of claim 5 requiring a second layer of a vulcanized thermoplastic elastomer, the claimed subject matter states that it is directed to a floor covering mat, "further including a reinforcing layer of thermoplastic material disposed across the layer of vulcanized thermoplastic elastomer; and a second layer of vulcanized thermoplastic elastomer disposed in sealing relation over the reinforcing layer of thermoplastic material." The claimed subject matter accordingly requires an additional layer of thermoplastic material between the first and second vulcanized thermoplastic elastomeric layers. The examiner argues that, "it would have been obvious to one of ordinary skill in the art to have used additional layers of the thermoplastic material, motivated by the expectation that the additional layers would further enhance the durability and strength of the material." See Answer, page 8. We previously found however that the purpose of the polypropylene copolymer film was to provide better adhesion for the carpet material. This rationale would not apply to nor suggest its

utilization between two layers of vulcanized thermoplastic elastomer. We therefore conclude that this additional thermoplastic layer required by claim 5 is neither disclosed nor taught by the reference to Bistak. Accordingly, the examiner has failed to establish a prima facie case of obviousness with respect to claims 5 through 7.

#### DECISION

The rejection of claims 1 through 7 under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention is reversed.

The rejection of claims 1 through 4 under 35 U.S.C. § 103(a) as being unpatentable over Bistak is affirmed.

The rejection of claims 5 through 7 under 35 U.S.C. § 103(a) as being unpatentable over Bistak is reversed.

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

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

BRADLEY R. GARRIS  
Administrative Patent Judge

CHARLES F. WARREN  
Administrative Patent Judge

)  
)  
)  
)  
)  
)  
)  
) BOARD OF PATENT  
) APPEALS  
) AND  
) INTERFERENCES  
)  
)  
)  
)



Appeal No. 1999-0822  
Application No. 08/732,866

13

MILLIKEN & COMPANY  
920 MILLIKEN ROAD  
P. O. BOX 1926  
SPARTANBURG, SC 29304