

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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***Ex parte*** PETER SWOBODA  
and PETER KRIX

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Appeal No. 95-3828  
Application 07/868,037<sup>1</sup>

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ON BRIEF

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Before GARRIS, OWENS and WALTZ, ***Administrative Patent Judges.***

WALTZ, ***Administrative Patent Judge.***

***DECISION ON APPEAL***

This is an appeal under 35 U.S.C. § 134 from the examiner's refusal to allow claims 16 through 25, as presented in the amendment after final rejection dated Nov. 29, 1993 (Paper No. 8) and entered as per the advisory action dated

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<sup>1</sup> Application for patent filed April 13, 1992.

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Dec. 9, 1993 (Paper No. 10). Claims 11 through 15, the only other claims remaining in this application, stand withdrawn from consideration by the examiner (brief, page 2).

According to appellants, the invention is directed to an uncoated gas-permeable fabric with the desired strength, extensibility, and thickness needed for the gas-releasing part of an airbag (brief, page 4). Claim 16 is illustrative of the subject matter on appeal and is reproduced below:

16. An uncoated gas-permeable fabric having sufficient gas-permeability, flatness, fabric strength, fabric extensibility, and tongue tear resistance for use, without modification, as the gas-releasing part of an airbag, said uncoated gas-permeable fabric comprising: a synthetic multifilament yarn with a tenacity of more than 60 cN/tex having a filament linear density of 4 dtex or less and a yarn count within the range from 250 to 550 dtex in an uncoated, gas-permeable crepe or modified huckaback weave, the gas-permeable, modified huckaback weave having warp-weft crossings with essentially the same number of warp-weft crossing points, said gas-permeable fabric having a thickness not exceeding 0.35 mm.

The examiner has relied upon the following references as evidence of obviousness:

Belitsin et al. (Belitsin) 18, 1977	4,054,709	Oct.
Krummheuer et al. (Krummheuer I) 3, 1992	5,093,163	Mar.



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huckaback" does not describe how the fabric differs from "normal" huckaback thus rendering the claims vague and indefinite (answer, page 3).

The legal standard for definiteness under paragraph two of 35 U.S.C. § 112 is whether a claim reasonably appraises those of skill in the art of its scope. *See In re Warmerdam*, 33 F.3d 1354, 1361, 31 USPQ2d 1754, 1759 (Fed. Cir. 1994). Even imprecise terms can be definite if they are defined properly in the specification. *See Seattle Box Co. v. Industrial Crating and Packing, Inc.*, 731 F.2d 818, 826, 221 USPQ 568, 574 (Fed. Cir. 1984).

Appellants' specification discloses that huckaback weaves are "known to the person skilled in the art" (page 3, lines 15-16). The specification then discloses the characteristics of a normal huckaback weave (page 3, lines 17-21) and defines a modified huckaback weave (page 3, lines 22-27).

As stated by our reviewing court in *In re Oetiker*<sup>4</sup>, "the examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of

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<sup>4</sup> 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

unpatentability." Here the examiner has not met the initial burden of explaining why, given the definition of "modified huckaback" in the specification, one of ordinary skill in the art would not be apprised of the scope of the claim.

Accordingly, the rejection of claims 16 through 25 under 35 U.S.C. § 112, second paragraph, is reversed.

***B. The Rejection Under 35 U.S.C. § 103***

The fabric of claim 16 is required to be gas-permeable and useful, without modification, as the gas-releasing part of an airbag (see also claims 20, 21, 24 and 25). Krummheuer I, the examiner's primary reference, is directed to yarn and fabric for the production of a one-part airbag of low air permeability (column 3, lines 5-21, 49-51, 67-68, and column 4, lines 1-2).

The examiner attempts to combine the dense, low air permeability yarn and fabric of Krummheuer I with the teachings of Krummheuer II (answer, page 4). However, Krummheuer II is directed to a two-part airbag with a low air permeability fabric being used for the contact part of the airbag and a high air permeability fabric being used for the

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filter part of the airbag (column 7, lines 31-37). A huckaback weave is disclosed for the "windows" or zones in the **filter** part of the airbag of Krummheuer II in order to produce various air permeabilities (column 4, lines 30-52). There is no disclosure, suggestion or teaching in the Krummheuer references to use the yarn and fabric of Krummheuer I, with its specified properties and low air permeability, in the high air permeability filter part of the airbag of Krummheuer II that would have led the artisan to appellants' claimed gas-permeable, gas-releasing fabric part of an airbag in a crepe or modified huckaback weave. "It is well established that before a conclusion of obviousness may be made based on a combination of references, there must have been a reason, suggestion, or motivation to lead an inventor to combine those references." *Pro-Mold and Tool Co. v. Great Lakes Plastics, Inc.*, 75 F.3d 1568, 1573, 37 USPQ2d 1626, 1629 (Fed. Cir. 1996).

Belitsin teaches the use of a huckaback weave for yarns in dress and shirt manufacture (see Example 5) but does not provide any reasons or suggestions for combining the two

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Krummheuer references. It is further noted that the filament linear density and a modified huckaback weave, as recited in appealed claim 16, are not found in the applied prior art (see the answer, pages 4 and 5). On this record, appellants and the examiner have not established whether a "modified" huckaback weave is known in the art (see the specification, page 3, lines 15-27).

For the foregoing reasons, we find that the examiner has failed to meet the initial burden of establishing a *prima facie* case of obviousness. See *In re Oetiker, supra*. Accordingly, the rejection of claims 16-25 under 35 U.S.C. § 103 as unpatentable over Krummheuer I in view of Krummheuer II and Belitsin is reversed.

**C. Summary**

The rejection of claims 16-25 under 35 U.S.C. § 112, second paragraph, is reversed. The rejection of claims 16-25 under 35 U.S.C. § 103 as unpatentable over Krummheuer I in

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view of Krummheuer II and Belitsin is reversed.

**REVERSED**

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BRADLEY R. GARRIS	)	
Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
TERRY J. OWENS	)	)
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
	)	
THOMAS A. WALTZ	)	
Administrative Patent Judge	)	

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