

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CINTEL S.A.S. DI FONTANA A. & C

Appeal No. 97-3084
Control No. 90/003,431¹

ON BRIEF

Before ABRAMS, GARRIS and WEIFFENBACH, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on an appeal from the refusal of the examiner to allow claims 1 through 5, 7 and 8 as amended

¹ Request filed May 12, 1994, Control No. 90/003,431, for the Reexamination of U.S. Patent No. 4,728,565, issued March 1, 1988, based on Application 06/932,722, filed November 19, 1986.

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subsequent to the final rejection.² These are all of the claims remaining in the above identified reexamination proceeding.

The subject matter on appeal relates to an elastic support member which is an elastic belt having rubber threads covered and retained by loops of chain stitches during elongation. This appealed subject matter is adequately illustrated by independent claim 1 which reads as follows:

1. An elastic support member for supporting the stuffing or upholstery of furniture pieces wherein said support member is an elastic belt including, spaced rubber threads in at least one of the transverse directions of the support member, and each of said rubber threads covered end to end and retained by loops of chain stitches formed by yarn during elongation.

The following references are relied upon in the rejections before us:

French Patent	7,200,862	Nov. 9, 1973
Italian Patent	955134	Sept. 29, 1973

Claims 1, 2, 4 and 5 are rejected under 35 U.S.C. § 102(b) as being anticipated by the French reference.

² As a consequence of this amendment after final rejection, the subject matter of claim 2/1 is directed to an elastic belt and therefore is indistinguishable from the elastic belt of claim 5 (or for that matter the elastic net of claim 4). This issue should be addressed and resolved in any further prosecution that may occur.

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Claims 1 through 5, 7 and 8, which are all of the claims on appeal, are rejected under 35 U.S.C. § 103 as being obvious over the French reference in view of the Italian reference or vice versa.

Although the appellant has indicated that certain claims should be separately considered (see page 8 of the brief), no reasonably specific arguments for these individual claims have been presented in the brief as required by 37 CFR § 1.192(c)(8) (1995). Accordingly, the appealed claims will stand or fall together. Ex parte Schier, 21 USPQ2d 1016, 1018 (Bd. Pat. App. & Int. 1991).

For the reasons set forth in the answer and below, we will sustain each of the above-noted rejections.

On page 10 of the brief, the appellant presents the following argument in support of his position that the examiner's § 102 rejection is improper:

The specific limitation of claim 1 above set forth namely that:

b. each of said rubber threads being covered end to end and retained by loops of chain-stitches formed by yarn during elongation. [sic]

is not disclosed by French Patent 7,200,862.

French Patent 7,200,862 describes the use of chain-stitches about a rubber thread but fails to recognize that in actual assembly into an elastic

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support member these chain stitches act to retain the rubber threads and to control substantially the maximum elongation that such rubber threads undergo during usage of the elastic support member. The wording in this limitation of --covered end to end and retained by the loops of chain-stitches-- must be read with the words --during elongation--.

This argument is unpersuasive. As properly indicated by the examiner in his answer, the elastic material of the French reference (e.g., see Figure 2) is indistinguishable from the appellant's elastic member (e.g., see Figure 1 of the patent here being reexamined). This being so, the French material and the appellant's member must be presumed to possess the same characteristics including the "retained . . . during elongation" feature recited in appealed claim 1. In any event, it is our perception that the French reference describes this claimed characteristic or feature albeit as, for example, "tensioning resistance" (e.g., see lines 5 through 19 on page 7 of the translation copy).

In light of the foregoing and for the reasons expressed in the answer, we will sustain the examiner's § 102 rejection of claims 1, 2, 4 and 5 as being anticipated by the French reference.

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As for the § 103 rejection, we cannot agree with the appellant's argument that the applied references contain no suggestion for the combination of their teachings proposed by the examiner. It would have been obvious to use the chain-stitch covered threads of the French reference in place of the spiral-winding covered threads of the Italian reference in order to obtain the advantages resulting from a chain-stitch versus a spiral-winding cover which are explicitly taught by the French reference (e.g., again see page 7 of the translation copy). It follows that we will also sustain the examiner's § 103 rejection of the appealed claims as being unpatentable over the French and Italian references.

The decision of the examiner is affirmed.

Further proceedings in this case may be taken in accordance with 35 U.S.C. § 141 to 145 and 306, and 37 CFR § 1.301 to 1.304. Note also 37 CFR § 1.197(b). If the patent owner fails to continue prosecution, the reexamination proceeding will be terminated, and a certificate under 35 U.S.C. § 307 and 37 CFR § 1.570 will be issued canceling the patent claims, the rejection of which has been affirmed.

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

AFFIRMED

NEAL E. ABRAMS)	
Administrative Patent Judge)	
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BRADLEY R. GARRIS)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
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