

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN H. DWIGGINS
and
DINESH M. BHAT

Appeal No. 1997-0855
Application No. 08/248,543

HEARD: April 19, 2000

Before KIMLIN, WALTZ and KRATZ, Administrative Patent Judges.
KIMLIN, Administrative Patent Judge.

REQUEST FOR REHEARING

Appellants request reconsideration (rehearing) of our decision of May 18, 2000, wherein we affirmed the examiner's rejection of the appealed claims under 35 U.S.C. §§ 102 and 103.

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Appellants submit at page 2 of the Request that we inexplicably adopted the examiner's reasoning that element (d) of claim 22 is "met by water supplied by conduit 45 to adjust the consistency in mix tank 32" (page 4 of Answer). Appellants maintain that "the means of element (d) must supply 'a *slurry of fiber* in liquid water,'" whereas "[p]ure water supplied through conduit 45 of Cheshire '156 cannot satisfy element (d)." Appellants contend that "mix tank 32, conduit 35 and pump 34 are not capable of supplying a slurry of fiber in 'liquid water' as mix tank 32 contains a 'foam-fiber' mixture - not a 'slurry of fiber in liquid water'" (page 2 of Request).

We are not persuaded by this argument because Cheshire '956 expressly discloses that pump 34 is activated to supply foamable liquid from silo 26 and mix tank 32 to the headbox. Hence, the material delivered to the headbox through line 35 is a liquid that is capable of generating a foam.

Appellants also contend at page 2 of the Request that "Cheshire fails to disclose a 'means for combining said water slurry of fibers with said foamed liquid' as required by element (e)." In our view, it is clear from reading the

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entirety of the Cheshire patents, e.g., '956 at column 5, lines 11 et seq., that lines 35 and 24 carry both liquid and foam and are combined at the T in a mixture of foamed liquid and a water slurry of fibers.

Appellants also submit at page 3 of the Request that we erroneously concluded that claims 23-25 fall together with claim 22. Appellants point out that the Brief states at page 9 that "[c]laims 23, 24 and 25 contain additional features which make each of them separately patentable." However, such a conclusory statement falls far short of the requisite presentation of substantive arguments which explain why each of claims 23, 24 and 25 would have been nonobvious to one of ordinary skill in the art. See 37 CFR § 1.192(c)(7) and (c)(8) (1995). In the opening sentence of the paragraph at page 9 of the Brief, referred to by appellants, appellants treat all the appealed claims as a group. In particular, appellants state that "[e]ach appealed claim in this application (22-25) contains a limitation requiring: means for mixing an aqueous slurry of fibers with foam to form a foamed fiber furnish." Although appellants maintain at page 3 of the Request that "much of Applicants [sic, Applicants']

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oral argument focused on the patentability of claim 24 as a result of the novel incorporation of a positive displacement pump" (emphasis added), it is well settled that arguments not contained in the Brief are considered abandoned, and that such abandonment cannot be resurrected at oral hearing.

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We note that appellants point to no argument in the Brief that is specific to claim 24. Accordingly, we find no error in our holding that claims 23-25 stand or fall together.

In conclusion, based on the foregoing, appellants' request is granted to the extent we have reconsidered our decision, but we decline to make any change therein.

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

DENIED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
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THOMAS A. WALTZ)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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)	
PETER F. KRATZ)	
Administrative Patent Judge)	

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