

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FITESA SIMPSONVILLE, INC.,
Petitioner

v.

THE PROCTER & GAMBLE COMPANY,
Patent Owner.

Case IPR2023-01451
Patent 11,326,276

PATENT OWNER PRELIMINARY SUR-REPLY

The Board should exercise its discretion to deny the petitioned review.

I. The Relevant Prosecution History Does Not Support Petitioner’s Reply

As explained in the Patent Owner Preliminary Response (POPR), the challenged claims were allowed after an amendment to the independent claims specifying a die having “three or more rows of three or more filament forming holes,” and an accompanying argument that the claims are nonobvious over the examiner’s combination of Pomplun (Ex. 2006) and Schwarz ’616 (Ex. 1005). POPR (Paper 7) at 15–17. P&G argued that “Pomplun teaches the importance of the converging gas streams to entrain and attenuate its threads [filaments],” whereas Schwarz ’616 teaches away from this. *Id.* at 16 (quoting P&G’s October 2012 PTO Response). P&G argued those teachings “cannot properly be combined ... to achieve the claimed invention.” *Id.*

Petitioner’s Reply does not acknowledge this history, focusing instead on an earlier obviousness rejection based on Anderson (Ex. 1007). Reply (Paper 9) at 2. Each page of the Reply then focuses on a characterization that Anderson involves producing *discontinuous* fibers, whereas the prior art applied in the petitioned Grounds involves producing *continuous* fibers. *Id.* at 1–10. But Anderson was not part of the withdrawn (final) rejection that led to allowance, Pomplun was. Ex. 1028 at 37–43 (¶¶ 4 and 10). And Pomplun discloses a co-form process involving producing *continuous* fibers:

- (1) “The fibrous nonwoven structure ... includes a meltspun reinforcing fiber made from a water-degradable polymer and one or more other components which are intermixed with the reinforcing fiber to form a fibrous nonwoven composite structure.” Ex. 2006 at 4:8–12.
- (2) “By ‘meltspun’ it is meant a fiber which is formed by a fiber-forming process which yields longer, more continuous fibers ... such as are made by the meltblown and spunbond processes.” *Id.* at 4:13–17.
- (3) “The most common form of the fibrous nonwoven composite structure ... is commonly referred to as a ‘coform’ material which includes longer more continuous melt-spun reinforcing fibers intermixed with shorter absorbent fibers.” *Id.* at 4:24–29.

The examiner understood Pomplun’s disclosure of continuous fibers, *see* Ex. 1028 at 71–82 (¶¶ 5 and 11 citing passage (3)), despite the claims’ silence on fiber type.

II. The Petition Presents Substantially the Same Art and Arguments

Despite this prosecution history, petitioner’s Reply repeatedly asserts the examiner allowed the claims of the ’276 patent because P&G distinguished a co-form disclosure of discontinuous fibers (in Anderson). Reply at 2–10. Petitioner characterizes this as the examiner’s error. *Id.* at 10. Respectfully, however, the error here is petitioner’s assertion of why the claims were allowed. Relying on that erroneous

assertion, petitioner's Reply argues that the petition does not present substantially the same art and arguments the examiner already considered.

A. McDowall Is Cumulative. Only Ground 4 concerns the application of McDowall (Ex. 1003) to argue the '276 patent's independent claims are obvious. Ground 4 relies on McDowall's disclosure of "combining the filaments with solid additives (wood pulp) to form a mixture." Pet. at 54. Petitioner's Reply emphasizes McDowall is different from Pomplun because McDowall discloses a continuous filament. Reply at 4. But Pomplun also discloses this. *See* Section I, *supra*. Regardless, the challenged claims are not limited to a type of filament. McDowall remedies no disclosure deficiency in the prior art the examiner considered in allowing the claims. *See* POPR at 29–31. Further still, regardless of what type of die McDowall suggests, Ground 4 relies on McDowall's disclosure of a co-form process, which disclosure is substantively indistinguishable from *both* Pomplun's and Anderson's co-form disclosure the examiner considered. *Id.* at 29–30 (Table G).

B. Fabbicante Is Cumulative. Only Ground 6 concerns the application of Fabbicante (Ex. 1018) to the '276 patent's independent claims. Ground 6 applies Fabbicante in the same way the examiner applied Schwarz '616 during prosecution. POPR at 38–40. Petitioner's Reply ignores that, asserting instead that Fabbicante offers "strong motivational factors for use of Fabbicante's process for the preparation of absorbent articles" and teaches an angle between air streams and

filaments of 0° to 60°. Reply at 9–10. The '276 patent's independent claims do not recite absorbent articles or angles. The assertions therefore are inapposite and, importantly, do not explain what disclosure deficiency in Schwarz '616 Fabbriante remedies.

C. Schwarz '616 Was Previously Considered. Ground 3 concerns the application of Schwarz '616 (Ex. 1005) to the '276 patent's independent claims. The examiner repeatedly applied Schwarz '616 during prosecution. *See, e.g.*, POPR at 20, 38 (Table J). Petitioner's Reply argues that when Schwarz '616 is *reconsidered* in combination with prior art co-form processes directed to continuous filaments (Keck, Ex. 1004), the claims are obvious. This argument relies on the assertion that the examiner allowed the claims *because* the prior art co-form process applied in prosecution was limited to discontinuous filaments. Reply at 5–6. But that assertion is incorrect. *See* Section I (discussing Pomplun), *supra*.

D. Schwarz '223 Is Cumulative to Schwarz '616. Grounds 2, 4, 5, and 7 concern the application of Schwarz '223 (Ex. 1002) to all claims. The Petition identifies no material differences in Schwarz '223 and Schwarz '616. POPR at 24. The Petition relies on the same disclosure in Schwarz '223 that is present in Schwarz '616. *Id.* at 24–28. Petitioner's Reply offers no rebuttal, arguing instead that Schwarz '223 offers “strong motivational basis for using the Schwarz dies in a coform process.” Reply at 5. Sufficient motivation apparently was present in the

examiner's combination of the same disclosure of the Schwarz die with the Pomplun coform process. Petitioner's Reply explains no deficiency in Schwarz '616 remedied by Schwarz '223.

E. Keck Was Previously Considered. Grounds 2, 3, and 5–7 concern the application of Keck to all claims. Keck was presented to the Patent Office. POPR at 20–21. The Petition relies on Keck for its disclosure of a co-form process. *Id.* at 29–31. Petitioner's Reply offers no rebuttal besides arguing that Keck involves a co-form process directed to continuous filaments whereas Anderson, applied earlier during prosecution, involved a co-form process directed to discontinuous filaments. Reply at 6–8. The claims do not recite a filament type; regardless, Pomplun, applied in the final action, discloses a co-form process producing continuous filaments. *See* Section I, *supra*. Keck's application in these Grounds is therefore also cumulative to the examiner's application of prior art.

In view of the foregoing and the POPR, the Board should deny the petitioned review.

Respectfully submitted,

February 16, 2024

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this paper complies with the 5-pages limit the Board set in its authorizing email (Exhibit 3001). The undersigned also certifies that this paper complies with the typeface requirements of 37 C.F.R.

§ 42.6(a)(2)(ii), because this paper was prepared using 14-point, Times New Roman proportional font, and complies with the spacing requirements of 37 C.F.R.

§ 42.6(a)(2)(iii).

CERTIFICATE OF FILING AND SERVICE

The undersigned certifies that, pursuant to 37 CFR § 42.6(e), a copy of the foregoing “PATENT OWNER PRELIMINARY SUR-REPLY” is being electronically filed and served via the Patent Trial and Appeal Case Tracking System and redundantly served via email today, February 16, 2024, on Petitioner’s counsel:

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February 16, 2024

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