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2013 WL 8595307 (Patent Tr. & App. Bd.)

Patent Trial and Appeal Board
Patent and Trademark Office (P.T.O.)

*1 SCHOTT GEMTRON CORP. PETITIONER

v.

SSW HOLDING CO., INC. PATENT OWNER

Case IPR2013-00358

Patent 8,286,561 B2

November 4, 2013

For PETITIONER:

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Before JUSTIN T. ARBES, GEORGIANNA W. BRADEN, and MIRIAM L. QUINN

Administrative Patent Judges

BRADEN

Administrative Patent Judge

DECISION

Institution of *Inter Partes* Review

[37 C.F.R. § 42.108](#)

I. INTRODUCTION

SCHOTT Gemtron Corporation (“Schott”) filed an Amended Petition (Paper 5, ““Pet.”) requesting *inter partes* review of claims 1, 13, and 25 of [U.S. Patent No. 8,286,561 B2 \(Ex. 1001, “the '561 Patent”\)](#) pursuant to [35 U.S.C. §§ 311 et seq.](#)

WOLCRAFT EXHIBIT 0000 1

In response, Patent Owner SSW Holding Company, Inc. (“SSW Holding”) filed a preliminary response (Paper 12, “Prelim. Resp.”). We have jurisdiction under [35 U.S.C. § 314](#).

The standard for instituting an *inter partes* review is set forth in [35 U.S.C. § 314\(a\)](#), which provides as follows:

THRESHOLD -- The Director may not authorize an inter partes review to be instituted unless the Director determines that the information presented in the petition filed under [section 311](#) and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.

Upon consideration of the Petition and Patent Owner's preliminary response, we conclude that Schott has established a reasonable likelihood that it would prevail on showing unpatentability with respect to at least one of the challenged claims. Accordingly, we authorize an *inter partes* review to be instituted as to claims 1, 13, and 25 of the '561 Patent.

A. Related Proceedings

Schott indicates that the '561 Patent is involved in an action captioned *SSW Holding Co., Inc. v. Schott Gemtron Corp.*, No. 3:12-cv-00661 (W.D. Ky.). Pet. 52.

B. The '561 Patent

*2 The '561 Patent describes shelving, such as shelving adapted for use in refrigerators and having a top surface with a hydrophobic surface arranged in a spill containment pattern. Ex. 1001, col. 1, ll. 15-18, col. 2, ll. 1-4. The spill containment pattern is intended to act as a barrier to prevent spilled liquid from spilling onto other surfaces. *Id.* at col. 11, ll. 28-37. An example of a spill containment pattern is shown in Figure 3 of the '561 Patent, reproduced below:

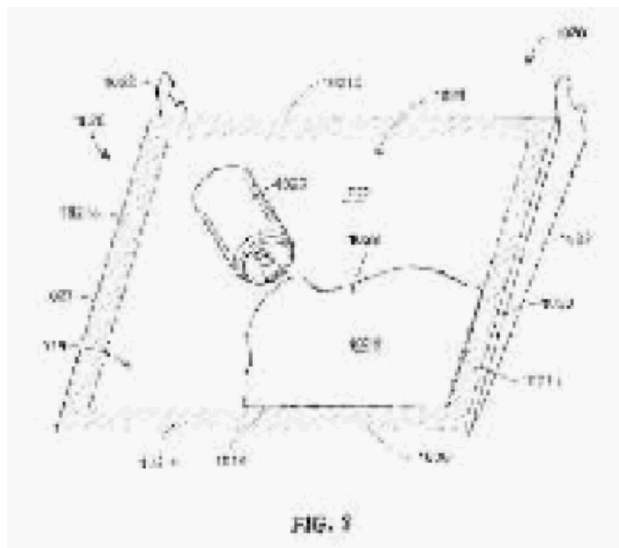


Figure 3 illustrates a preferred embodiment that includes shelving with a spill containment pattern consisting of a hydrophobic surface in the pattern of a frame-like border. *Id.* at col. 2, ll. 26-30, col. 3, ll. 43-45. The border defines the boundaries of a single non-hydrophobic spill containment area therein. *Id.* at 3, ll. 39-46.

C. Exemplary Claim

Challenged claims 1, 13, and 25 are reproduced as follows:

1. A shelf assembly comprising:

a shelf panel having a generally flat top surface which is capable of supporting articles which may be placed on said shelf panel;

a hydrophobic surface applied in a spill containment pattern on the said top surface;

wherein the majority of the surface area of said top surface of the shelf panel is not hydrophobic, thereby providing one or more non-hydrophobic central portions bounded by said spill containment pattern of said hydrophobic surface.

13. The shelf assembly of claim 1, wherein the hydrophobic surface comprises:

a ceramic frit layer adjacent to and bonded to the top surface of said shelf panel; and

a hydrophobic compound coated over the ceramic frit layer.

25. A method of manufacturing a shelf capable of containing liquid spills thereon comprising:

providing a panel having a generally flat top surface which is capable of supporting articles which may be placed on said panel;

applying a hydrophobic surface arranged in a spill containment pattern generally in the plane of said top surface;

leaving the majority of the surface area of said top surface of the panel non-hydrophobic, thereby providing one or more non-hydrophobic central portions bounded by the spill containment pattern of the hydrophobic surface.

D. Prior Art Relied Upon

Schott relies upon the following references:

Angros	U.S. 5,948,685	Sept. 7, 1999	Ex. 1005
Huang	U.S. 6,352,758 B1	Mar. 5, 2002	Ex. 1006
Baumann	U.S. 6,872,441 B2	Mar. 29, 2005	Ex. 1007
Sikka	U.S. 2012/0009396 A1	Jan. 12, 2012	Ex. 1008
Picken	WO 2006/044641 A2	Apr. 27, 2006	Ex. 1009

E. Alleged Grounds of Unpatentability

*3 Schott alleges the following grounds of unpatentability (*see* Pet. 51):

Reference(s)	Basis	Claims Challenged
Angros	§ 102(a)	1, 25
Sikka	§ 102(e)	1, 25
Angros and Picken	§ 103(a)	1, 25
Picken and Sikka	§ 103(a)	1, 25
Picken and Huang	§ 103(a)	1, 25
Angros and Baumann	§ 103(a)	13
Sikka and Baumann	§ 103(a)	13
Picken, Huang, and Baumann	§ 103(a)	13
Picken and Baumann	§ 103(a)	1, 13, 25

II. ANALYSIS

A. Claim Interpretation

In an *inter partes* review, claim terms in an unexpired patent are given their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); see *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48756, 48766 (Aug. 14, 2012). Also, claim terms are given their ordinary and customary meaning as would be understood by one of ordinary skill in the art at the time of the invention and in the context of the entire patent disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). An inventor may rebut that presumption by providing a definition of the term in the specification with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

*4 Neither Schott nor SSW Holding contends that any special definition has been provided in the specification for any claim term. We conclude the same. Schott provides its interpretations for two claim elements: “shelf panel” (Pet. 14) and “generally in the plane of said top surface” (*id.* at 14-15). SSW Holding provides its interpretations for those two claim elements, as well as for the following claim elements: “spill containment pattern,” “shelf assembly,” “method of manufacturing a shelf,” “shelf panel having a generally flat top surface,” and “majority of the surface area of said top surface of the shelf panel is not hydrophobic.” Prelim. Resp. 7-22.

1. “Shelf Panel”

Schott contends that “shelf panel,” in the context of the '561 Patent, should be construed as a “piece of material with a top surface intended to be positioned horizontally.” Pet. 14. SSW Holding contends that Schott’s proposed construction is unreasonable because it is much broader than that contemplated by the '561 Patent specification. Prelim. Resp. 7. SSW Holding reasons that the broadest reasonable construction standard cannot be applied in a vacuum, but rather must be applied through the eyes of a person having ordinary skill in the art and in light of the specification. Prelim. Resp. 8-9. According to SSW Holding, “the specification of the '561 Patent only refers to types of shelves that are configured to support articles of a particular size and weight such as conventional household or commercial goods.” *Id.* at 12.

The specification of the '561 Patent never defines “shelf panel,” but does give several examples of shelf panels or shelving, stating:

The invention relates to shelving and the like, e.g., countertops and table tops, including shelving which may be adapted for use with refrigerators.

Ex. 1001, col. 1, ll. 15-18.

In the preferred embodiments, the term ‘shelving and/or the like,’ ‘shelving,’ ‘shelf,’ or ‘shelf and/or the like’ encompasses shelves and articles whose top surfaces [sic] such as pantry shelves, countertops, stovetops, cook-tops, and table tops. Certain embodiments are especially advantageous for use in refrigerator and freezer shelving.

Id. at col. 3, ll. 33-38.

A preferred embodiment shelf may be incorporated into a shelving assembly with a shelf-supporting mechanism, such as a bracket, and a shelf, which is capable of supporting articles on its top surface.

*5 *Id.* at col. 3, ll. 53-56.

The shelves described herein can be adapted for use as refrigerator or freezer shelves, for example.

Id. at col. 4, ll. 5-7.

SSW Holding argues that “[t]he specification does not at all refer to any other structures outside of this field such as, for

example, small analytic plates, microscope slides, etc. that include no weight-bearing function whatsoever and have no connection to shelving applications.”Prelim. Resp. 12.

SSW Holding then relies on a dictionary definition of “shelf,” purportedly to reflect the ordinary meaning of the term at the time of the invention (i.e., at least as early as June 27, 2008 according to SSW Holding).*Id.* at 11. Merriam-Webster's Collegiate Dictionary defines “shelf” as “a thin flat usu[ally] long and narrow piece of material (as wood) fastened horizontally (as on a wall) at a distance from the floor to hold objects.”Ex. 2002.

SSW Holding contends that in light of (i) the specification, (ii) the view of one of ordinary skill in the art, and (iii) the proffered dictionary definition, the claim term “shelf panel” should be construed as “a piece of material with a top surface intended to be positioned horizontally and of sufficient size and integrity to support articles conventionally stored in pantries, on counters, on stovetops, on cook-tops, on table tops, in refrigerators and freezers, and the like.”Prelim. Resp. 13. SSW Holding argues that such a construction does not import limitations from the specification. *Id.*

We decline to adopt Schott's proposed construction due to it being overly broad. However, we also decline to adopt SSW Holding's proposed construction, because it improperly imports several limitations from the specification. Rather, considering the dictionary definition of “shelf” and the usage of “shelf” and “shelving” in the specification, as discussed above, we determine for the purposes of this decision that the broadest reasonable interpretation of “shelf panel” is “a piece of material positioned horizontally at a distance above some other surface to hold objects.”

2. “Generally in the Plane of Said Top Surface”

According to Schott, “generally in the plane of said top surface” should be construed as “all or a portion of the hydrophobic surface extending a small distance above the level of the top surface of the shelf panel that is not readily noticeable to the naked eye.”Pet. 14-15.

SSW Holding contends that the plain meaning of the phrase “generally in the plane of said top surface” is supported by and described in the specification, which states that “[t]he reference to the fact that the hydrophobic surface is generally in the plane of the top surface of the shelf is intended to include surfaces and surface treatments, all or a portion of which may extend a small distance above the level of the top surface of the shelf which is not readily noticeable to the naked eye.”Prelim. Resp. 21 (citing Ex. 1001, col. 9, ll. 54-59). However, SSW Holding then contends that the proper construction for the disputed phrase is “a thin hydrophobic layer that is disposed generally coplanar with the top surface such that any variation in height with the top surface is not readily noticeable to the naked eye.”*Id.*

*6 We decline to adopt SSW Holding's proposed construction. Instead, for the purposes of this decision the Board adopts Schott's proposed construction, which is supported by the specification.

3. “Majority of the Surface Area of Said Top Surface of the Shelf Panel is Not Hydrophobic”

According to SSW Holding, the phrase “majority of the surface area of said top surface of the shelf panel is not hydrophobic” should be given its plain meaning, and that the plain meaning is “the surface area of the non-hydrophobic portion is greater than the surface area of the hydrophobic portion.”Prelim. Resp. 20. Schott does not address this claim limitation. For the purposes of this decision, the Board agrees with and adopts SSW Holding's proposed construction.

4. Remaining Claim Terms

All other terms in the challenged claims are given their ordinary and customary meaning and need not be further construed at this time.

B. Claims 1 and 25- Obviousness over Angros and Picken

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