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2014 WL 4181969 (Patent Tr. & App. Bd.)

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

*1 SCHOTT GEMTRON CORPORATION, PETITIONER,
v.
SSW HOLDING COMPANY, INC., PATENT OWNER.

Case IPR2013-00358
Patent 8,286,561 B2

August 20, 2014

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Before JUSTIN T. ARBES, PHILIP J. HOFFMANN, and GEORGIANNA W. BRADEN

Administrative Patent Judges

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COLGRAFT EXHIBIT 0007 1

FINAL WRITTEN DECISION

35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

A. Background

SCHOTT Gemtron Corporation (“Petitioner”) 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. §§ 311-19. SSW Holding Company, Inc. (“Patent Owner”) filed a Preliminary Response (Paper 12, “Prelim. Resp.”). On November 4, 2013, we instituted this *inter partes* review of claims 1, 13, and 25 on two grounds of unpatentability alleged in the Petition. Paper 14 (“Dec. to Inst.”). After institution of review, Patent Owner filed a Response (Paper 46, “PO Resp.”) to the Petition. Petitioner filed a Reply (Paper 62 (confidential); Paper 63 (public)) (“Reply”) to Patent Owner's Response.

Counsel for both Petitioner and Patent Owner were present and presented argument at an oral hearing held on June 23, 2014. [FN1]

The Board has jurisdiction under 35 U.S.C. § 6(c). In this final written decision, issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73, we determine Petitioner has not proven by a preponderance of the evidence that claims 1, 13, and 25 of the ‘561 patent are unpatentable.

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:

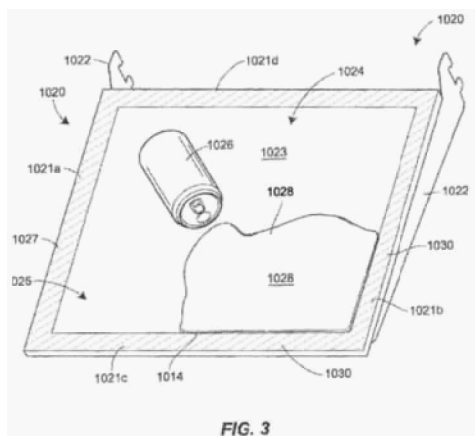


Figure 3 illustrates a preferred embodiment that includes shelving with a spill containment pattern consisting of a hydrophobic surface in the pattern of a frame-like border. *Id.* at col. 2, ll. 26-30; col. 3, ll. 43-45. The border defines the boundaries of a single non-hydrophobic spill containment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

C. Challenged Claims

Challenged claims 1, 13, and 25 are reproduced below.

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 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 References Alleged to Support Unpatentability

The following table summarizes the prior art references asserted in the instituted grounds:

Name	Description	Date	Exhibit
Angros	US 5,948,685	Sept. 7, 1999	Ex. 1005
Baumann	US 6,872,441 B2	Mar. 29, 2005	Ex. 1007
Picken	International Publ. No. WO 2006/044641 A2	Apr. 27, 2006	Ex. 1009

E. Alleged Grounds of Unpatentability Instituted for Trial

*3 The following table summarizes the challenges to patentability that were instituted for *inter partes* review:

Reference(s)	Basis	Claim(s) Challenged
Angros and Picken	§ 103(a)	1, 25
Angros, Picken, and Baumann	§ 103(a)	13

II. ANALYSIS

A. Claim Interpretation

1. Prior Construed Claim Terms

In the Decision to Institute, we interpreted various claim terms of the ' 561 patent as follows:

Term(s)	Interpretation
“shelf panel”	“a piece of material positioned horizontally at a distance above some other surface to hold objects”

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“generally in the plane of said top surface”	“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”
“majority of the surface area of said top surface of the shelf panel is not hydrophobic”	“the surface area of the non-hydrophobic portion is greater than the surface area of the hydrophobic portion”
“leaving the majority of the surface area of said top surface of the panel non-hydrophobic”	“the surface area of the non-hydrophobic portion is greater than the surface area of the hydrophobic portion”

*4 See Dec. to Inst. 6-9. During the course of the trial, neither party challenged our construction of the claim terms. Thus, we see no reason to alter the constructions set forth in the Decision to Institute and we incorporate our previous analysis for purposes of this decision.

2. Presently Construed Claim Term: “spill”

Claim 1 recites a “hydrophobic surface applied in a spill containment pattern.” Claim 25 recites a “method of manufacturing a shelf capable of containing liquid spills thereon,” comprising “applying a hydrophobic surface arranged in a spill containment pattern.” Although the Petition and Patent Owner’s Response do not set forth a formal construction for the claim term “spill,” given the arguments presented by the parties, we now determine that a construction is necessary. In its Preliminary Response, Patent Owner argued that the plain meaning of “spill” is “an accidental or unintentional release of liquid.” Prelim. Resp. 15. According to Patent Owner, its position is supported by a dictionary definition of “spill,” which is “to cause or allow esp[ecially] accidentally or unintentionally to fall, flow, or run so as to be lost or wasted.” *Id.* at 15 (citing Merriam-Webster’s Collegiate Dictionary 1202 (11th ed. 2006)) (Ex. 2003). Patent Owner contends that its proffered “plain meaning is also consistent with the ‘561 Patent specification, which describes with reference to Fig. 3, for example, one type of spill occurring when an open soda can is turned over onto its side on the top surface of the shelf panel.” *Id.* at 15 (citing Ex. 1001, col. 11, ll. 28-49). As Patent Owner explains, “[a] person of ordinary skill in the art would understand that this orientation of the opened soda can would be unintentional because it is not generally desirable to spill soda in a refrigerator.” *Id.*

Petitioner, however, argued at the oral hearing that the term “spill” is not limited by the ‘561 patent to encompass only unintended, sudden, unexpected, or violent releases of liquid on a surface. Trans. 10:14-24, 18:9-12. Rather, according to Petitioner, “spill” in the context of the ‘561 patent has a “very specific meaning,” which is merely “liquid being placed on the surface.” *Id.* at 10:20-21. According to Petitioner, such an interpretation of “spill” is supported by Examples 1-29 in the ‘561 patent, which describes the intentional and methodical pouring of liquid onto a surface bounded by hydrophobic material. *Id.* at 11:1-11; Reply 1-2.

*5 Petitioner’s position is unpersuasive. Contrary to Petitioner’s characterization, Example 1 in the ‘561 patent discloses only a demonstration of water retention by a shelf with a hydrophobic border. See Ex. 1001, col. 20, ll. 1-9. The patent recounts, in Example 1, a test to determine the amount of water retainable on a shelf, within a hydrophobic border, without leakage. *Id.* Thus, Example 1 does not show that the term “spill” merely means liquid placed on a surface. Therefore, we construe “spill,” in accordance with its plain meaning and consistent with the specification of the ‘561 patent, to mean “an accidental or unintentional release of liquid.” See Ex. 2003; Ex. 1001, col. 11, ll. 28-49 (describing Figure 3 as illustrating “the concept that the hydrophobic surface 1030 will form a spill containment barrier,” and using soda can 1026 turned on its side as an example for “spilled liquid”).

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

Petitioner alleges that claims 1 and 25 of the '561 patent are unpatentable under 35 U.S.C. § 103(a) over Angros and Picken. Pet. 22-23, 33-34. Patent Owner disputes Petitioner's position, arguing that Angros is not analogous art and that a person of ordinary skill in the art would not have had reason to combine the references in the manner proposed by Petitioner. PO Resp. 9-10.

As discussed below, we are persuaded by Patent Owner's arguments. Thus, we determine that Petitioner has not shown by a preponderance of the evidence that claims 1 and 25 are unpatentable as obvious over Angros and Picken.

1. Angros's Disclosure

Angros describes an analytic plate, such as a microscope slide or a diagnostic plate, having a containment border for containing a liquid. Ex. 1005, Abstract. Angros discloses that the containment border can be a hydrophobic material applied to the plate surface in a bordered pattern to confine liquid that is applied to the plate within the area surrounded by the border. *Id.* at col. 1, ll. 45-48. According to Angros, the hydrophobic containment border “is substantially transparent and is substantially flush with the surface of the slide or plate[,] and [] covers only a portion of the surface of the slide or plate.”*Id.* at col. 1, l. 67-col. 2, l. 3. Figure 1A of Angros is reproduced below:

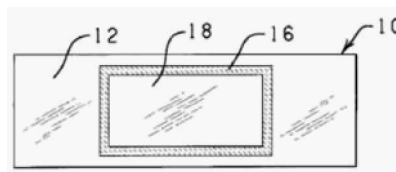
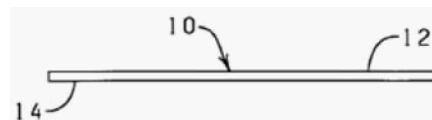


Figure 1A illustrates microscope slide 10 with containment border 16. *Id.* at col. 2, ll. 39-45. Containment border 16 surrounds containment area 18 of the upper surface 12 of slide 10, and prevents spreading, leakage, or migration of liquid from containment area 18. *Id.* at col. 2, ll. 49-58. Figure 1B of Angros is reproduced below:



*6 Figure 1B illustrates a side view of an analytic plate with a containment border, top surface 12, and lower surface 14. Angros discloses that “border 16 forms a molecular layer when dry and therefore is substantially flush (level) with the upper surface 12 of the slide 10. The border 16 is, therefore, not raised above the upper surface 12 to a degree that is visible to the naked eye.”Ex. 1005, col. 3, ll. 3-7.

2. Picken's Disclosure

Picken describes a shelf assembly for use in a refrigerator. Ex. 1009, Abstract. Figure 1 of Picken is reproduced below:

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