

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Owens Corning,  
Petitioner

v.

Fast Felt Corporation,  
Patent Owner

Patent No. 8,137,757

Issued: March 20, 2012

Filed: February 12, 2010

Inventors: David Allan Collins, George William Jackson  
and Miguel E. Madero O'Brien

Title: PRINT METHODOLOGY FOR APPLYING POLYMER MATERIALS TO  
ROOFING MATERIALS TO FORM NAIL TABS  
OR REINFORCING STRIPS

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*Inter Partes* Review No. IPR2015-00650

**PETITIONER'S REPLY UNDER 37 C.F.R. 42.23**

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## I. Introduction

Patent Owner's Response completely misses the mark. There is no dispute the prior art teaches polymers can be printed by a variety of methods and on a variety of substrates or surfaces. There is also no dispute the prior art teaches polymers can be printed interchangeably via nozzles or via rolls (including a transfer or lamination roll) on a variety of substrates--including roofing or building cover materials. These roll-based systems are commonly referred to as gravure and offset printing and are old and well-known. There is also no dispute gravure or offset printing methods offer many advantages, *e.g.*, ability to print on a wide range of substrates (including difficult surfaces) and with high quality and speed.

Faced with overwhelming evidence of unpatentability, Patent Owner argues limitations not recited in the claims. These include "heavily asphalt coated substrates," "asphalt saturated felt," "heavy asphalt coating" and other related terms. Further yet, Patent Owner attacks the individual secondary references as not being able to make "nail" tabs or nail tabs of proper "thickness," "volume," and reinforcing function including nail "pullout" and "pull-through" function. None of these arguments have merit because unclaimed limitations are not germane to patentability and, even if claimed, these limitations are all old and taught by the prior art of record (*i.e.*, Lassiter (Ex. 1003)). Still further, the arguments based on asphalt saturated substrates are contradicted by the '757 Patent (Ex. 1001), which

discloses nail tabs can be printed on unsaturated/uncoated substrates (*i.e.*, “roofing material prior to its saturation or coating ...” (7:24-32)).

Patent Owner further argues the explicit content of Hefele, Bayer, and Eaton *prevents their bodily incorporation* into the structure of the Lassiter (Ex. 1003). However, the law does not require “the inventions of the references be physically combinable to render obvious the invention under review.” *In re Sneed*, 710 F.2d 1544, 1550 (Fed. Cir. 1983). Rather, the Supreme Court has held the obviousness analysis should not be confined to “the explicit content of issued patents” because that improperly makes the obviousness analysis too rigid and limiting. *KSR v. Teleflex*, 550 U.S. 398, 402 (2007). One of ordinary skill is not an automaton who is relegated to only incorporating the explicit content of the prior art, but rather, is a person of ordinary skill and creativity who would consider the prior art for its technical teaching and not just its explicit content. *See KSR*, 550 U.S. at 416, 421; *EWP Corp. v. Reliance Universal Inc.*, 755 F.2d 898, 907 (Fed. Cir. 1985).

Patent Owner further attempts misdirection by arguing the prior art's disclosure of *specific embodiments* teaches away from the claims. For example, Patent Owner argues Lassiter's (Ex. 1003) nozzle-based system teaches away from a gravure-based system because nozzles are non-contact and gravure is contact. However, the law is clear that the mere disclosure of preferred embodiments in the prior art is not a teaching away. *In re Mouttet*, 686 F. 3d 1322 (Fed. Cir. 2012).

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