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Paper 32
Entered: August 11, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

OWENS CORNING,
Petitioner,

v.

FAST FELT CORPORATION,
Patent Owner.

Case IPR2015-00650
Patent 8,137,757 B2

Before JO-ANNE M. KOKOSKI, KRISTINA M. KALAN, and BRIAN P. MURPHY, *Administrative Patent Judges.*

KOKOSKI, *Administrative Patent Judge.*

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

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I. INTRODUCTION

Owens Corning ("Petitioner") filed a Petition ("Pet.") to institute an *inter partes* review of claims 1, 2, 4, 6, and 7 of U.S. Patent No. 8,137,757 B2 ("the '757 patent," Ex. 1001). Paper 1. On August 13, 2015, we instituted an *inter partes* review of claims 1, 2, 4, 6, and 7 on three grounds of unpatentability (Paper 9, "Dec. on Inst."). Fast Felt Corp. ("Patent Owner") filed a Patent Owner Response (Paper 16, "PO Resp."). Petitioner filed a Reply (Paper 20, "Reply").

An oral hearing was held on May 11, 2016. A transcript of the hearing is included in the record (Paper 31, "Tr.").

We have jurisdiction under 35 U.S.C. § 6(b). This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. For the reasons that follow, we determine that Petitioner has not shown by a preponderance of the evidence that claims 1, 2, 4, 6, and 7 of the '757 patent are unpatentable.

A. *The '757 Patent*

The '757 patent, titled "Print Methodology for Applying Polymer Materials to Roofing Materials to Form Nail Tabs or Reinforcing Strips," is directed to a method for applying nail tabs to roofing and building cover materials. Ex. 1001, Abstract. According to the '757 patent, the claimed print method is "a gravure, rotogravure or gravure-like transfer printing (the 'gravure process') or offset printing, of an appropriately viscous and substantially polymeric material onto roofing material, or onto a continuous transfer material and then transferred, including utilizing a laminating process, onto the roofing material, in a continuous process." *Id.* at 3:24–30. The '757 patent describes the gravure process as employing a print cylinder

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that "has etched or engraved cells of varying depth, width and shape and which cells can be varied to apply differing amounts of tab material as a means of controlling the pattern and other attributes of the resultant nail tab." *Id.* at 3:30–34.

Figure 1 of the '757 patent is reproduced below:

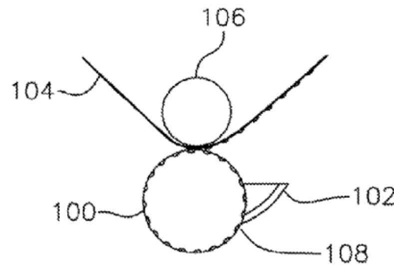

Fig. 1

Figure 1 is a schematic diagram of a print cylinder as described in the '757 patent. *Id.* at 4:65–67. Print cylinder 100 receives viscous tab material from print reservoir 102 into patterns etched on the face of print cylinder 100 and prints a corresponding pattern onto roofing material 104. *Id.* at 7:13–16. Doctor blade 108 removes excess tab material from print cylinder 100, such that tab material remains only in the engraved image area etched into print cylinder 100. *Id.* at 7:18–20. When print cylinder 100 makes contact with roofing material 104 and impression cylinder 106, the viscous tab material is deposited from print cylinder 100 onto roofing material 104. *Id.* at 7:24–27. Roofing material 104 "may be bonded with appropriate rows of nail tabs or continuous reinforcing strips, preferably substantially polymer materials," and can include at least one contrasting color to roofing material 104 and "one or more additives to tailor the polymer material." *Id.* at 7:32–40.

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Claims 1 and 7 are independent claims. Claims 2, 4, and 6 directly depend from claim 1, which is reproduced below:

> 1. A method of making a roofing or building cover material, which comprises treating an extended length of substrate, comprising the steps of:
>
> > depositing tab material onto the surface of said roofing or building cover material at a plurality of nail tabs from a lamination roll, said tab material bonding to the surface of said roofing or building cover material by pressure between said roll and said surface.

Ex. 1001, 13:13–20.

Independent claim 7 is reproduced below:

> 7. A method of making a roofing or building cover material, comprising the steps of first depositing nail tab material at a plurality of locations on said roofing or building cover material, said nail tab material is substantially made of a polymeric material, and subsequently pressure adhering said nail tab material into nail tabs on said roofing or building cover material with a pressure roll.

Id. at 14:11–17.

B. Prior Art

The pending grounds of unpatentability in this *inter partes* review are based on the following prior art:

Reference	Description	Date	Exhibit No.
Hefele	U.S. 5,101,759	April 7, 1992	1004
Bayer	U.S. 5,597,618	Jan. 28, 1997	1007
Lassiter	U.S. 6,451,409 B1	Sept. 17, 2002	1003
Eaton	U.S. 6,875,710 B2	April 5, 2005	1005

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C. Pending Grounds of Unpatentability

This *inter partes* review involves the following grounds of unpatentability:

References	Basis	Challenged Claims
Lassiter and Hefele	§ 103(a)	1, 2, 4, 6, 7
Lassiter and Bayer	§ 103(a)	1, 2, 4, 6
Lassiter and Eaton	§ 103(a)	1, 2, 4, 6, 7

Dec. on Inst. 26.

II. ANALYSIS

A. Claim Interpretation

We interpret claims of an unexpired patent using the "broadest reasonable construction in light of the specification of the patent in which [the claims] appear[]." 37 C.F.R. § 42.100(b); *see also Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016) ("We conclude that [37 C.F.R. § 42.100(b)] represents a reasonable exercise of the rulemaking authority that Congress delegated to the Patent Office."). The Board, however, may not "construe claims during IPR so broadly that its constructions are *unreasonable* under general claim construction principles. . . . '[T]he protocol of giving claims their broadest reasonable interpretation . . . does not include giving claims a legally incorrect interpretation.'" *Microsoft Corp. v. Proxyconn, Inc.*, 789 F.3d 1292, 1298 (Fed. Cir. 2015) (citation omitted). "Rather, 'claims should always be read in light of the specification and teachings in the underlying patent'" and "[e]ven under the broadest reasonable interpretation, the Board's construction 'cannot be

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