UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

REXNORD INDUSTRIES, LLC,
Requester and Cross-Appellant,

v.

HABASIT BELTING, INC.,
Patent Owner and Appellant.

Appeal 2010-012531
Reexamination Control 95/000,071
Patent 6,330,941 B1
Technology Center 3900

Before JOHN C. KERINS, JEFFREY B. ROBERTSON, and DANIEL S. SONG, *Administrative Patent Judges*.

ROBERTSON, *Administrative Patent Judge*.

DECISION ON APPEAL[1]

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[1] The one-month time period for filing a request for rehearing, as recited in 37 C.F.R. § 41.79, and the two-month time period for filing an appeal, as recited in 37 C.F.R. § 1.304 (*see* 37 C.F.R. § 1.983(b)(1)), both begin to run from the "MAIL DATE" shown on the PTOL-90A cover letter attached to this decision.

Patent Owner Habasit Belting, Inc.[2] (hereinafter "Habasit") appeals, under 35 U.S.C. §§ 134(b) and 315(a), the Examiner's decision to reject claims 1-25.[3] Third-Party Requester Rexnord Industries, LLC (hereinafter "Rexnord") urges that the Examiner's decision must be affirmed.[4] Rexnord also cross-appeals under 35 U.S.C. §§ 134(c) and 315(b) from the Examiner's refusal to reject claims 1-25 on various grounds.[5] We have jurisdiction under 35 U.S.C. §§ 134(b)-(c) and 315(a)-(b).

We AFFIRM-IN-PART.

STATEMENT OF THE CASE

United States Patent 6,330,941 B1 (hereinafter the "'941 Patent"), which is the subject of the current *inter partes* reexamination, issued to Dieter Guldenfels on December 18, 2001, based on Application 09/579,090 filed May 25, 2000, which is related to Application 09/874,589 filed on June 5, 2001, now United States Patent 6,523,680 B2, which is the subject of Reexamination Control 95/000,072 (Appeal No. 2009-012291).

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[2] *See* Patent Assignment Abstract of Title, Reel 010850 Frame 0152 which was entered into the record of this proceeding as "Title Report" on February 9, 2005.

[3] *See* Habasit's Appeal Brief 10 (filed December 21, 2007) [hereinafter PO App. Br.].

[4] *See* Rexnord's Respondent Brief (filed May 26, 2009) [hereinafter Req. Resp. Br.].

[5] *See* Rexnord's Appeal Brief 6-7 (filed May 26, 2009) [hereinafter Req. App. Br.]; Rexnord's Rebuttal Brief (filed October 27, 2008) [hereinafter Req. Reb. Br.]; Examiner's Answer 13-17 (mailed September 29, 2008) [hereinafter Ans.]; Right of Appeal Notice (mailed September 25, 2007) [hereinafter RAN].

We are also informed that the '941 Patent is the subject of litigation styled Hasbasit Belting, Inc. v. Rexnord Industries, Inc., Civil Action 03-185-JJF, United States District Court for the District of Delaware, the proceedings of which have been stayed pending the outcome of this reexamination. (Court Order dated September 25, 2005.)

The '941 Patent discloses modular conveyor belts interlinked by transverse pivot rods. (Col. 1, ll. 5-8.) Claims 1, 3, 6, 14, and 23, which are illustrative of the appealed subject matter, read as follows:

> 1. A belt module, which comprises:
> a) an intermediate section having opposed first and second walls, wherein the intermediate section has an intermediate width defined by the first and second walls and a thickness defined by an upper surface and a lower surface and wherein the intermediate section comprises a web portion extending across the intermediate width between the first and second walls and from one of the upper and lower surfaces to a portion of the way through the thickness of the intermediate section to form into a corrugated portion extending across the intermediate width between the first and second walls to the other of the upper and lower surfaces, wherein the corrugated portion has a sinusoidal shape comprising a series of regularly spaced ridges and valleys extending substantially across a lateral width of the module;
>
> b) a first plurality of link ends extending outwardly from the intermediate section including the web portion and being connected to the regularly spaced ridges of the first wall of the corrugated portion;
>
> c) a second plurality of link ends extending outwardly from the intermediate section including the web portion and being connected to the regularly spaced ridges of the second wall of the corrugated portion and in a direction opposite the first link ends; and

d) transverse openings provided in each of the first and second link ends.

3. The belt module of claim 2, wherein the first and second link ends each have a head portion that is wider than the leg portion, the head portion having a pair of substantially parallel head sidewalls and an endwall.

6. The belt module of claim 1, further comprising an opening disposed through the belt module from the upper surface to the lower surface.

14. A conveying system, comprising:

a) an endless radius conveyor belt, comprising a plurality of belt modules, each having a plurality of first link ends disposed in the direction of belt travel and provided with a first rounded endwall, a plurality of second link ends disposed in the opposite direction and provided with a second rounded endwall, and an intermediate section disposed between and connected to the first and second plurality of link ends, wherein at least some of the modules are provided with the intermediate section having an intermediate width defined by the first and second walls and a thickness defined by an upper surface and a lower surface, and wherein the intermediate section comprises a web portion extending across the intermediate width from the first wall to the second wall and from one of the upper and lower surfaces to a portion of the way through the thickness of the intermediate section to form into a corrugated portion extending across the intermediate width from the first wall to the second wall to the other of the upper and lower surfaces, wherein the corrugated portion has a sinusoidal shape comprising a series of regularly spaced ridges and valleys extending substantially across a lateral width of the module;

b) a first plurality of link ends extending outwardly from the intermediate section including the web portion and being connected to the regularly spaced ridges of the first wall of the corrugated portion;

c) a second plurality of link ends extending outwardly from the intermediate section including the web portion and being

connected to the regularly spaced ridges of the second wall of the corrugated portion and in a direction opposite the first link ends, the first and second link ends disposed such that a space capable of receiving a link end is formed between each adjacent link end, the space being open at one end and terminating in a rounded region at the opposite end, the plurality of first link ends being offset from the plurality of second link ends such that the first link ends align with the space between the second link ends such that adjacently positioned belt modules are capable of intercalating so that the first link ends of one belt module fit into the spaces defined between the second link ends of an adjacent belt module, wherein the plurality of first link ends each have a transverse slotted opening disposed transverse to the direction of belt travel and extending in the direction of belt travel, and wherein the plurality of second link ends have a transverse opening defined therein;

d) a pivot rod extending transverse to the direction of belt travel through the openings in the second link ends of one of the plurality of belt modules and extending through the slotted openings in the first link ends of an adjacent belt module such that the first and second link ends of the adjacent belt modules are intercalated and the adjacent belt modules are interlinked into adjacent hinged rows capable of following a curved path;

e) at least one middle belt module disposed in an interior position of the conveyor belt and comprising the intermediate section having an angled face; and

f) a drive sprocket having teeth disposed around the perimeter thereof, the teeth capable of engaging with the first and second rounded endwalls of the link ends and capable of engaging with the angled face on the intermediate section of the middle belt module to drive the endless conveyor belt around a conveying path.

23. The belt module of claim 1 wherein a first longitudinal axis of the transverse openings in the first link ends and a second longitudinal axis of the transverse openings in the

second link ends are spaced closer to the lower surface of the intermediate section than to the upper surface thereof.

(PO App. Br. 29, 30, 32-34, Claims App'x.)

The Examiner relied on the following as evidence of unpatentability:

Irwin	5,139,135	Aug. 18, 1992
Ensch	5,253,749	Oct. 19, 1993
Gruettner	5,303,818	Apr. 19, 1994
Horton	5,372,248	Dec. 13, 1994

Rexnord additionally relied on the following as evidence of unpatentability (Req. App. Br. 15-17):

Erik Oberg et al., Machinery's Handbook 604-607 (Robert E. Green and Christopher J McCauley, eds., Industrial Press, Inc. 1996) [hereinafter Machinery Handbook].

A. Anemaat and J.L. Spoormaker, Konstruktieleer Deel B: Konstrueren in Kunststoffen 209-211 (Technical University at Delft, The Netherlands 1992) [hereinafter Dutch Textbook].

We discuss the rejections on appeal in a slightly different order than as presented by the parties. Habasit contests the Examiner's decision to reject the claims as follows:

I. Claims 1, 2, 7, 8, 13, 21, 22, 24, and 25 under 35 U.S.C. § 102(b) as being anticipated by Gruettner;

II. Claims 1, 2, 6, 23, and 25 under 35 U.S.C. § 102(b) as being anticipated by Ensch; and

III. Claims 1-22 and 25 under 35 U.S.C. § 103(a) as being unpatentable over Horton in view of Ensch and Irwin.

Rexnord contests the Examiner's refusal to reject claims 1-25 as follows:

I. Claims 6, 12, 19, and 23 under 35 U.S.C. § 103(a) as being unpatentable over Gruettner in view of Ensch;

II. Claims 11, 14, 15, and 20 under 35 U.S.C. § 102(b) as being anticipated by Gruettner;

III. Claims 1-22, 24, and 25 under 35 U.S.C. § 103(a) as being unpatentable over Horton in view of Irwin;

IV. Claims 1-25 under 35 U.S.C. § 103(a) as being unpatentable over Horton in view of Ensch;

V. Claims 1-22 and 25 under 35 U.S.C. § 103(a) as being unpatentable over Horton in view of Machinery Handbook;

VI. Claims 1-22 and 25 under 35 U.S.C. § 103(a) as being unpatentable over Horton in view of Dutch Textbook; and

VII. Claims 3-5, 9, 10, 16, and 17 under 35 U.S.C. § 103(a) as being unpatentable over Gruettner in view of Horton.

ISSUES

Rejection I

The Examiner found that Gruettner discloses a conveyor belt including a belt module with a corrugated portion having a sinusoidal shape comprising a series of regularly spaced ridges and valleys. (Ans. 7-8.)

Habasit contends that Gruettner does not disclose a corrugated portion as claimed. (PO App. Br. 20.) Rather, Habasit argues that Gruettner discloses a plurality of adjacent rectangular shaped portions. (*Id.*)

Rexnord contends that Habasit's definition of "corrugated" and "sinusoidal shape" is contrary to the definitions applied by the District Court in concurrent litigation. (Req. Resp. Br. 11.) Rexnord additionally argues that Gruettner discloses a corrugated structure of ridges and valleys in a regular amplitude and frequency. (Req. Resp. Br. 11-12.)

Therefore, a first issue on appeal is:

When the claims on appeal are accorded their broadest reasonable interpretation, does Gruettner disclose the recited corrugated portion?

Rejections II and III

The Examiner found that Ensch discloses a conveyor belt module having an intermediate section including a web portion and a corrugated portion as recited in independent claims 1 and 25. (Ans. 6-7.)

The Examiner found that Horton discloses a conveyor belt module having a corrugated portion with a sinusoidal shape, but that Horton does not disclose a web portion as recited in the claims. (Ans. 10, 12.)

The Examiner found that Ensch discloses a web portion in conveyor belt modules and that Irwin discloses that adding web portions to a conveyor module increases the strength and tension bearing capability of the module. (Ans. 12.) The Examiner concluded that it would have been obvious to have employed a web portion as taught by Ensch in Horton to increase the

strength and tension bearing capability of the conveyor belt module as suggested by Irwin. (*Id.*)

Habasit contends, *inter alia*, that Ensch fails to disclose an intermediate section where the web portion forms into a corrugated portion. (PO App. Br. 17-18.) Habasit contends that there is a missing link in the Examiner's logic in that one would have used the solid rib of Irwin, not the web portion of Ensch, in Horton's conveyor belt module. (PO App. Br. 22.) Habasit argues that it is the combination of the transverse rib along with the longitudinal fingers disclosed in Irwin that imparts increased strength and tension, not the transverse rib alone. (*Id.*) Habasit contends that the Examiner has failed to provide a sufficient rationale in combining Horton, Ensch, and Irwin. (PO App. Br. 23.)

Rexnord contends that Habasit's interpretation of "formed into" is not supported by the Specification. (Req. Resp. Br. 9-10.) Rexnord also argues that because Ensch forms the belt module as a single piece, the limitations of the independent claims must be met. (Req. Resp. Br. 10-11.) Rexnord contends that the support rib in Ensch performs the same function disclosed in the '941 Patent and articulated in Irwin, that is, to increase strength and tension. (Req. Resp. Br. 13.)

Therefore, additional issues on appeal are:

Does Ensch disclose a web portion that forms into a corrugated portion as recited in the claims?

Did the Examiner err in determining that incorporating a web portion as disclosed in Ensch into the conveyor belt module disclosed in Horton satisfies the "intermediate section" recitation of the claims?

FINDINGS OF FACT ("FF")

1. The '941 Patent discloses that modular plastic conveyor belts are made up of molded plastic belt modules. (Col. 1, ll. 14-16.)
2. The '941 Patent discloses: "[t]he intermediate section is formed in part by a web and in part by a thin, corrugated strip having a pair of essentially parallel walls. The corrugated strip forms a series of regularly spaced alternating ridges and valleys along each wall." (Col. 2, ll. 17-21.) The '941 Patent also discloses "[t]he corrugated portion 50 forms a series of ridges 53 and valleys 56 in a sinusoidal manner." (Col. 3, ll. 50-52.)
3. The '941 Patent discloses an intermediate section "comprised of an upper, transverse stiffening web 47 forming into a lower corrugated portion 50." (Col. 3, ll. 47-50.)
4. Figure 5 of the '941 Patent is reproduced below:

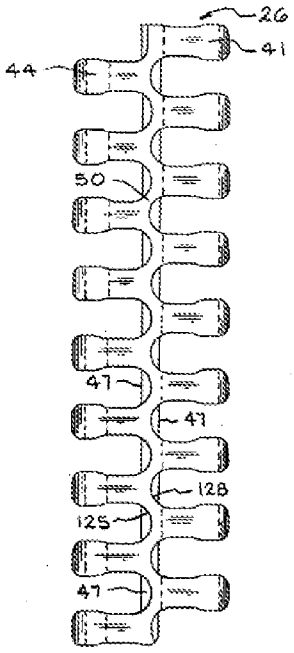

Figure 5 depicts a bottom plan view of a belt module including corrugated portion 50 and web portion 47. (Col. 3; ll. 1-2, 46-50.)

5. Figure 7 of the '941 Patent is reproduced below:

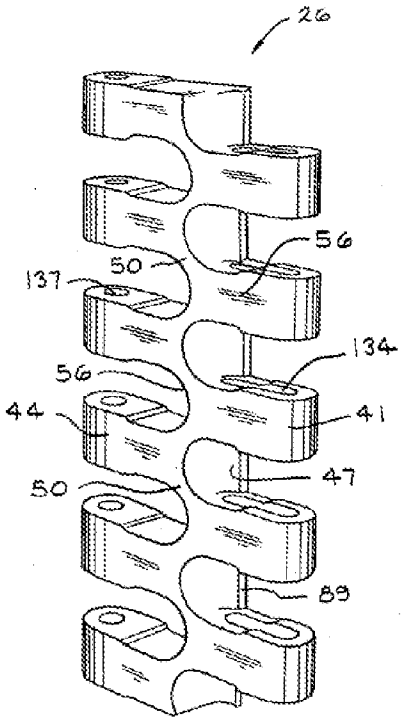

Figure 7 depicts a bottom view of a belt module again showing corrugated portion 50 and web portion 47. (Col. 3, ll. 5-6.)

6. Figure 12 of the '941 Patent is reproduced below:

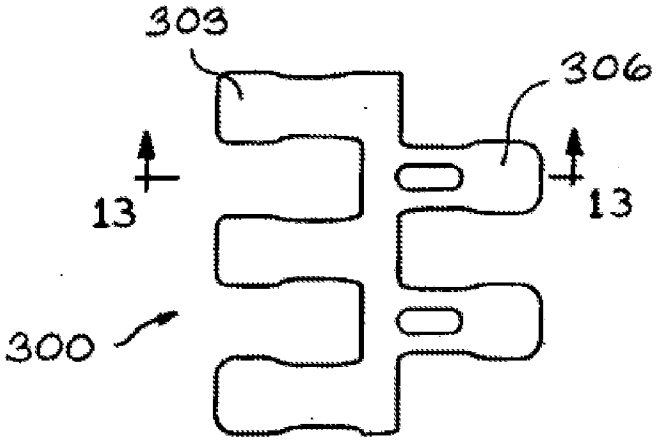

Figure 12 is a top plan view of a belt module 300 including vertical openings 331 (reference number not shown in drawing) in link ends 306, which reduce the weight and material cost for the belt and provide open areas for cleaning the belt. (Col. 3, ll. 18-19; col. 6, ll. 1-8.)

7. Figure 2 of Ensch is reproduced below:

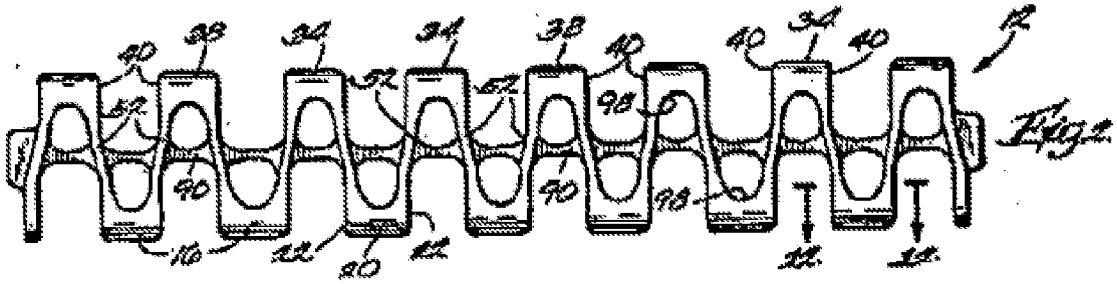

Figure 2 depicts a bottom plan view of a conveyor belt module 12 including a plurality of reach bars 52 that extend between link ends 16 and 34, and support rib 90 that extends between upper edges of the reach bars 52 intermediate link ends 16 and 34. (Col. 3, ll. 40-41; col. 5, ll. 40-43; col. 7, ll. 19-21.)

8. Figure 5 of Ensch is reproduced below:

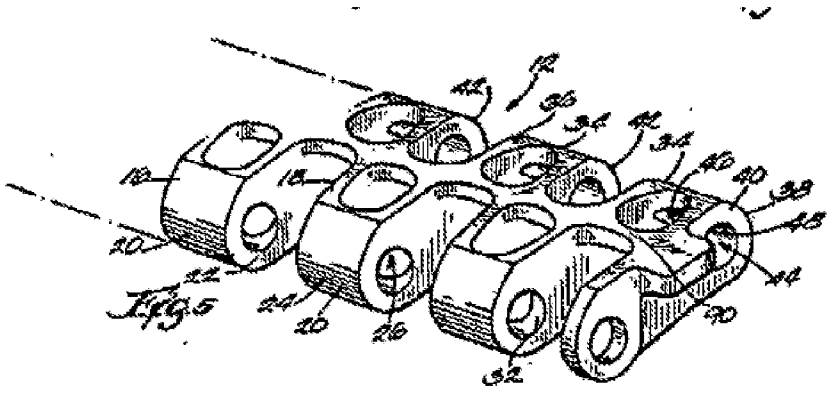

Figure 5 depicts a perspective view of a portion of a conveyor belt module. (Col. 3, ll. 44-45.)

9. Figure 1 of Gruettner is reproduced below:

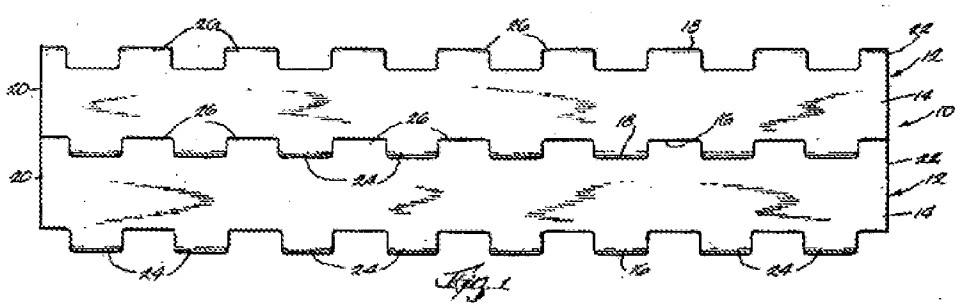

Figure 1 depicts a top plan view of a modular conveyor belt including a substantially flat upper conveying surface 14 of each module 12, where each hinge barrel 26 has an axial length substantially equal to the width of the spaces between the barrels 26. (Col. 3; ll. 11-13, 50-65.)

10. Figure 5 of Gruettner is reproduced below:

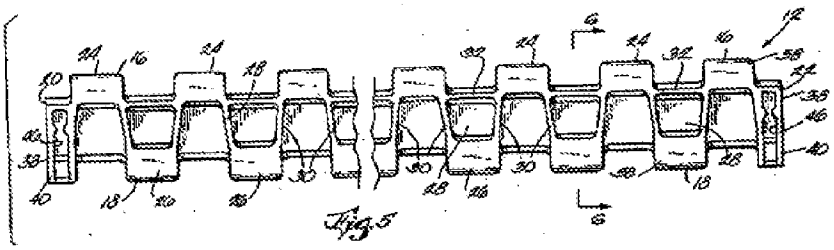

Figure 5 is a bottom plan view of a conveyor belt module including hinge barrels 24 and 26, crossribs 30, and a substantially flat conveying surface 14 (not shown). (Col. 3, ll. 14-15; col. 3, l. 50 to col. 4, l. 33.)

11. Figure 6 of Gruettner is reproduced below:

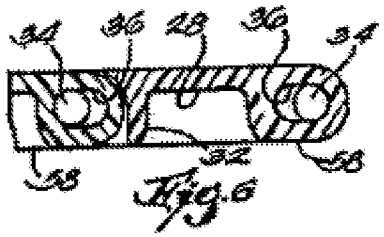

Figure 6 depicts a cross-sectional view of the module shown in Figure 5 including drive pocket 28 having back wall or web 32, pivot rod or pin 34,

cylindrical bores 36, and lower surface 58. (Col. 3, ll. 16-17; col. 4, ll. 12-50; col. 5, ll. 27-39.)

12. Figure 2A of Horton is reproduced below:

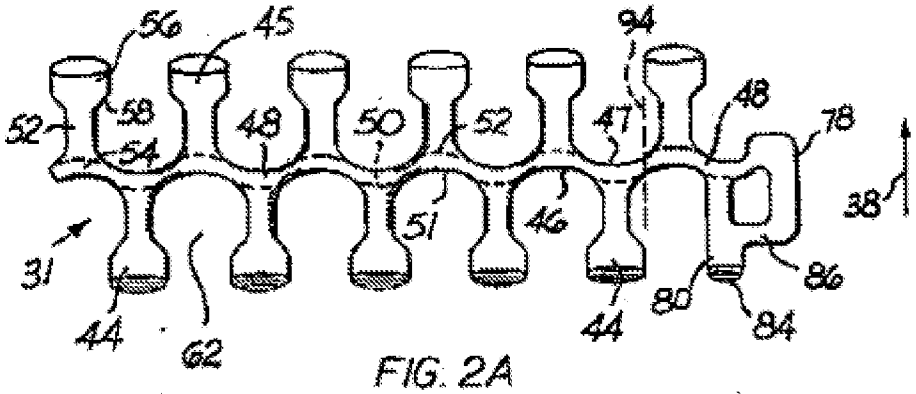

FIG. 2A

Figure 2A depicts a plan view of a conveyor belt module including corrugated strip 48. (Col. 4, ll. 46-48; col. 5, l. 34.)

13. Figure 6 of Irwin is reproduced below:

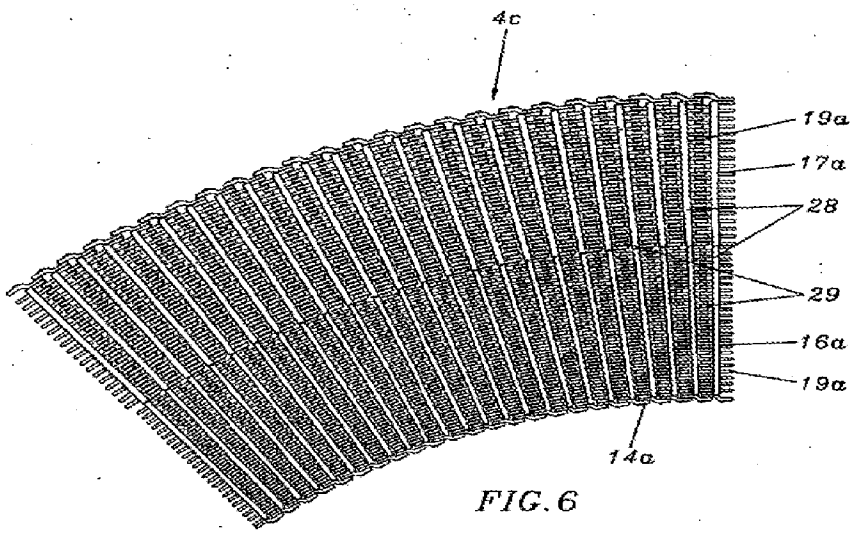

FIG. 6

Figure 6 depicts a plastic conveyor belt including a solid transverse rib 28 and longitudinal fingers 29. (Col. 3, ll. 49-51; col. 6, ll. 6-9.)

14. Irwin discloses that in Figure 6, "conveyor belt 4c is constructed of plastic links 19a and 19a' solid transverse ribs 28

that support longitudinal fingers 29." (Col. 5, ll. 60-64.) Irwin discloses a conveyor belt module where the major advantage offered is "increased strength and tension bearing capability that results from solid transverse rib 28 and longitudinal fingers 29." (Col. 6, ll. 6-9.)

15. The Machinery Handbook discloses "[i]f the plastics part is to carry loads, load-bearing areas should be analyzed for stress and deflection. When stress or deflection is too high, solutions are to use ribs or contours to increase section modulus . . . . Where space allows, adding or thickening ribs can increase structural integrity without thickening walls. (P. 605.)

16. The Dutch Textbook states that attention should be paid to the stiffening of plastic articles and that a general solution to stiffening problems is "flangeing" rather than increasing only the wall thickness of the plastic. (English translation of paragraph 6.3.1.)

PRINCIPLES OF LAW

Unlike a district court in patent litigation,[6] "[d]uring reexamination, as with original examination, the PTO must give claims their broadest reasonable construction consistent with the specification . . . . Therefore, we look to the specification to see if it provides a definition for claim terms, but

[6] *See*, *e.g.*, *In re Swanson.*, 540 F.3d 1368, 1377-78 (Fed. Cir. 2008) (explaining that, relative to district court litigation, reexamination is conducted under different standards including standard of proof, absence of a presumption of validity, and claim construction).

otherwise apply a broad interpretation." *In re ICON Health and Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007). "[A]s applicants may amend claims to narrow their scope, a broad construction during prosecution creates no unfairness to the applicant or patentee." *ICON Health*, 496 F.3d at 1379. In addition, our reviewing court has held that the PTO, in a reexamination proceeding, is not bound by a claim construction rendered in an earlier infringement proceeding in which the PTO was not a party. *In re Trans Texas Holdings Corp.*, 498 F.3d 1290, 1297, 1300 (Fed. Cir. 2007.)

The specification of a patent is the single best guide in claim construction and is usually dispositive. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 (Fed. Cir. 2005). "[E]xtrinsic evidence may be useful to the [factfinder], but it is unlikely to result in a reliable interpretation of patent claim scope unless considered in the context of the intrinsic evidence." *Phillips*, 415 F.3d at 1319.

"Anticipation requires that every limitation of the claim in issue be disclosed, either expressly or under principles of inherency, in a single prior art reference." *Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251, 1255-56 (Fed. Cir. 1989).

In *KSR,* the Supreme Court explained, "[w]hen a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007). "A person of ordinary skill is also a person of ordinary creativity, not an automaton." *Id.* at 421.

"'[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.'" *KSR*, 550 U.S. at 418 (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

ANALYSIS

Claim Interpretation

We begin by interpreting the claim terms in dispute.

"Corrugated Portion has a Sinusoidal Shape"

The '941 Patent Specification describes the corrugated strip as forming "a series of regularly spaced alternating ridges and valleys along each wall," where the ridges and valleys of the corrugated portion are formed in a "sinusoidal manner." (FF 2.) The '941 Patent Specification thus does not describe a particular shape for the ridges and valleys that define the corrugated strip having a sinusoidal shape.

Thus, when accorded its broadest reasonable interpretation, the phrase "corrugated portion has a sinusoidal shape" means a series of alternating ridges and valleys having a regular frequency and the same size, but does not impart a particular shape to the ridges and valleys to where the ridges and valleys are limited to those having round edges.[7] In this regard, the

[7] We are also mindful that the District Court, while applying a different standard of claim construction, adopted Habasit's definition that corrugated means "formed into or having a series of either straight or rounded ridges and valleys." (*Habasit Belting, Inc. v. Rexnord Indus., Inc.*, 340 F. Supp.

embodiment described in the '941 patent as having ridges and valleys formed in a "sinusoidal manner" is not in the shape of an exact sine wave. Hence, we decline to adopt a narrow construction which would limit the claim term "sinusoidal shape" to an exact sine wave. The express language used in the '941 Patent Specification and claims is inconsistent with such an interpretation.

"A web portion extending across the intermediate width between the first and second walls and from one of the upper and lower surfaces to a portion of the way through the thickness of the intermediate section to form into a corrugated portion"

Claim 1 requires that the web portion extends from one of the upper and lower surface to some portion of the way through the thickness of the intermediate section to form into a corrugated portion, the corrugated portion then extending to the other of the upper and lower surfaces. The '941 Patent Specification states that in the belt module, an upper web portion forms into a lower corrugated portion. (FF 3.) The express claim language is consistent with the '941 Patent Specification and Habasit's proposed definition that the web portion meets with and starts the corrugated portion. (PO App. Br. 17-18.)

Specifically, the claims recite that both the web portion and corrugated portion extend across the intermediate width. The claims also recite that the web portion extends from one of the upper and lower surfaces

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518, 523 (D. Del. 2004) (Claim Construction Order).) The District Court also adopted Habasit's definition of sinusoidal shape as "having a regular amplitude and frequency." (*Habasit Belting*, 340 F. Supp. at 524 (Claim Construction Order).)

of the intermediate section, and forms into the corrugated portion, where the corrugated portion extends to the other of the upper and lower surfaces of the intermediate section. Thus, it is clear from the claims that the web portion begins either from the upper surface or the lower surface of the intermediate section and ends by forming into or starting the corrugated portion at a portion of the way through the thickness of the intermediate section, the corrugated portion ending at the opposite upper or lower surface of the intermediate section for the entire intermediate width.

Rejection I

In its brief, Habasit has argued the claims subject to Rejection I together. Accordingly, we confine our discussion to claim 1. *See* 37 C.F.R. § 41.67(c)(1)(vii).

Initially, Habasit contends that the Examiner failed to identify where all of the limitations recited in the claims are disclosed in Gruettner. The only limitations discussed with specificity include "wherein the intermediate section has an intermediate width defined by the first and second walls and a thickness defined by an upper surface and a lower surface" and "extending across the intermediate width between the first and second walls to the other of the upper and lower surfaces." (PO App. Br. 19.) However, the Examiner expressly addressed these limitations with references to the corresponding figures and reference numbers in Gruettner. (Ans. 7-8.) Accordingly, Habasit's argument is not persuasive.

We are also not persuaded by Habasit's argument that Gruettner fails to disclose an intermediate section with a corrugated portion having a

sinusoidal shape. Specifically, in accordance with the claim interpretation discussed above, Gruettner discloses a corrugated portion forming a series of regularly spaced alternating ridges and valleys having a regular amplitude and frequency as shown in Figure 5. (FF 10.) As discussed above, ridges and valleys having a rectangular shape would still fall within the term "corrugated" because there is no requirement that the peaks and valleys have a rounded shape. Therefore, Habasit's arguments are not persuasive.

Rejections II and III

In rejecting the claims as being anticipated by Ensch, the Examiner expressly points to Figures 1-5 and states that the web portion recited in the claims corresponds to the support rib 90 of Ensch, which forms into a corrugated portion that the Examiner identifies as element 12 in Figure 2 of Ensch. (Ans. 6; FF 7.) The Examiner also states, without any further explanation, that Figure 5 of Ensch clearly shows that the web portion is formed into a corrugated portion. (Ans. 20; FF 8.)

However, the Examiner's construction of the claims so as to read on element 12 as merely a corrugated portion appears unreasonable in view of the fact that element 12 is defined by Ensch as corresponding to the belt module. In this regard, if the entirety of the belt module 12 of Ensch corresponds to the recited corrugated portion and the support rib 90 corresponds to the recited web portion, there is no remaining structure which corresponds to the recited first plurality of link ends, second plurality of link ends, and transverse openings in the first and second link ends.

In view of the above, we fail to see how the support rib 90 extending between upper edges of the reach bars 52 intermediate link ends 16 and 34 (FF 7.) corresponds to the web portion extending from one of the upper and lower surfaces and forms into the corrugated portion, which then extends to the other of the upper and lower surfaces as required in the present claims. Although Ensch discloses that the support rib 90 extends between and meets the upper edge of the reach bars 52, Ensch does not disclose any structure that would correspond to the corrugated portion either below or above and meeting the support rib 90, which is required in the claims as discussed in the claim interpretation section above.

Rexnord argues that because Ensch discloses a molded module formed as a single piece, the web portion must form into the corrugated portion (Req. Resp. Br. 10-11). However, Rexnord does not identify the web portion and corrugated portion present in the intermediate section with the structural relationships recited in the claims. Therefore, we reverse the Examiner's decision to reject the claims as being anticipated by Ensch in Rejection II.

With respect to Rejection III, in light of our discussion of the deficiencies of Ensch, we agree with Habasit, that the Examiner fails to provide a sufficient rationale as to how, by adding the support rib 90 disclosed by Ensch to the conveyor belt module of Horton, one of ordinary skill in the art would have arrived at the conveyor belt module recited in the claims. Specifically, the Examiner fails to sufficiently explain how one of ordinary skill in the art would incorporate support rib 90 of Ensch into the particular structure of Horton when the purpose of the support rib 90 is to

extend between the reach bars 52 to provide support thereto, when Horton already contains a central corrugated strip 48 that supports the link ends 44 and 45. (FF 12.) Therefore, we reverse the Examiner's rejection of the claims over the combination of Horton in view of Ensch and Irwin.

PROPOSED REJECTIONS

Proposed Rejection I

Rexnord contends that Ensch discloses holes that extend through the conveyor belt module from the upper surface to the lower surface in order to provide free flow of fluid through the conveyor belt modules. (Req. App. Br. 20-21.) Rexnord also contends that Ensch discloses transverse openings that are closer to the lower surface than the upper surface as required in claim 23, and that it is known to one skilled in the art that providing openings in the link ends closer to the lower surface than to the upper surface hold the module within the conveyor track. (Req. App. Br. 21-22.)

The Examiner contends that the openings in Ensch are not the same openings recited in claim 6. (Ans. 27.)

Therefore, additional issues on appeal are:

Did the Examiner err in determining that Ensch fails to disclose the openings recited in claim 6?

Is there sufficient reasoning to incorporate transverse openings in the link ends closer to the lower surface than to the upper surface as disclosed in Ensch into the belt modules disclosed in Gruettner?

We disagree with the Examiner that the combination of Horton with Ensch would not result in the device recited in claim 6. The Examiner's

rationale appears to be based on the position that the openings recited in claim 6 refer to the openings 107 (Fig. 2 of '941 Patent), the openings between adjacent link ends in the recited belt module, which are not the same as the openings of Ensch referred to by Rexnord in its proposed rejection. (Ans. 27.) However, under the principle of claim differentiation, we do not understand claim 6 to be referring to the opening between the adjacent link ends, but instead, as referring to the openings on the link ends. In this regard, the '941 Patent Specification refers to openings 331 in an alternative form of the belt module, which are imparted in the belt module to provide for reduced weight and belt cleaning, these openings 331 corresponding to the openings of Ensch referred to by Rexnord. (FF 6.)

In the above regard, claims 6 and 12 depend from claims 1 and 7, respectively. Both claims 1 and 7 recite the presence of openings corresponding to the openings 107 in the form of the "valleys" and "regularly spaced ridges" of the corrugated portion. Claims 6 and 12 both recite that the belt module "further" comprises openings through the belt module from the upper surface to the lower surface. If the openings referred to in claims 6 and 12 referred to openings 107, their recitation would be superfluous. Therefore, because we do not subscribe to the Examiner's interpretation of the openings in the claims and application of Ensch, we are not persuaded that Rexnord's proposed rejection is unfounded. In this respect, we also note that the Examiner does not address Rexnord's proposed motivation that one would incorporate the openings of Ensch to provide for the free flow of liquid. (Ans. 17 and 27; Req. App. Br. 20.)

Accordingly, we reverse the Examiner's decision to not adopt the rejection of claims 6 and 12.

Regarding claim 23, Rexnord asserts that the motivation for providing the transverse openings of the link ends closer to the lower surface as shown by Ensch is "to more securely retain the modules in a track" because "it is known in the art that providing the transverse openings in the link ends closer to the lower surface than to the upper surface of the module holds the module within a conveyor track." (Req. App. Br. 22.) However, Rexnord fails to direct our attention to any persuasive evidence in the record to support this assertion. Therefore, Rexnord has not identified a sufficient rationale for combining Gruettner and Ensch in the manner proposed. Thus, we affirm the Examiner's decision not to reject claim 23 over Gruettner in view of Ensch.

Regarding claim 19, because claim 19 depends from claim 14, which we find not to be anticipated by Gruettner as discussed below, we also affirm the Examiner's decision not to reject claim 19 over Gruettner in view of Ensch.

Proposed Rejection II

Rexnord contends that Gruettner discloses an intermediate section having an angled face, link ends having first and second rounded endwalls, parallel leg sidewalls, and an intermediate section where the web and corrugated portion form a multilevel surface. (Req. App. Br. 8-9.)

The Examiner counters that the rounded endwalls and angled face disclosed in Gruettner are different than the rounded endwalls and angled face disclosed in the claims. (Ans. 24-25.)

Thus, an additional issue on appeal is:

Did the Examiner err in finding that the angled face and link ends having rounded endwalls recited in the claims do not read on the angled face and rounded link ends disclosed in Gruettner?

Claim 14 is directed to a conveying system having at least one middle belt module with an intermediate section having an angled face; and a drive sprocket having teeth capable of engaging with the first and second rounded endwalls of the link ends and capable of engaging with the angled face on the intermediate section of the middle belt module. Rexnord argues that Gruettner discloses the required structure, identifying an angled face within the drive pocket 28 and a link with a rounded endwall in Figure 6 of Gruettner. (Req. App. Br. 8; FF 11.)

However, we agree with the Examiner that the module disclosed in Gruettner fails to anticipate the structure of the module recited in claim 14. (Ans. 24-25.) Specifically, claim 14 requires that the sprocket having teeth is capable of engaging with the rounded endwalls and the angled face of the intermediate section. There is no persuasive evidence in the record that in Gruettner's module, the sprocket having teeth would be capable of engaging both the rounded endwall and angled face. While the sprocket of Gruettner engages with the drive pocket 28 and the angled face, the sprocket does not also engage with the rounded endwalls of the first and second links. This is because in Gruettner, the rounded endwalls of the link ends are on the

opposite side of the back wall/web 32 to where the sprocket teeth engage the drive pocket 28. (FF 11.) Accordingly, Gruettner fails to disclose the structure recited in claim 14.

Rexnord does not present any arguments regarding the Examiner's refusal to adopt the rejection of claim 11 as being anticipated by Gruettner. The Examiner points out that claim 11 depends from claim 9, which is not anticipated by Gruettner. (Ans. 14.) Accordingly, we affirm the Examiner's decision not to reject claim 11 as being anticipated by Gruettner. We also affirm the Examiner's decision not to reject claims 15 and 20, by virtue of their dependency from claim 14.

Proposed Rejection III

Both Rexnord and the Examiner acknowledge that Horton does not disclose a web portion transversing a corrugated portion. (Req. App. Br. 9-10.) Rexnord contends that Irwin provides evidence that it was known in the art to use a stiffening web to increase strength and tension bearing capabilities of conveyor belt modules. (Req. App. Br. 13-14.)

The Examiner states that a combination of Horton and Irwin would not produce the recited module because Irwin does not teach a web portion extending from one of the upper and lower surfaces to a portion of the way through the thickness of the intermediate section to form a corrugated portion. (Ans. 25-26.)

Therefore, an additional issue on appeal is: did the Examiner err in determining that adding the rib of Irwin to Horton's conveyor belt module would fail to result in a web portion extending from one of the upper and

lower surfaces to a portion of the way through the thickness of the intermediate section to form a corrugated portion as recited in the claims?

We are unpersuaded that the Examiner's decision not to reject the claims over Horton in view of Irwin was in error. Rexnord has not provided sufficient evidentiary basis to support the position that, due to integrally molding the plastic belt module, providing the transverse web as suggested by Irwin into the molded plastic belt module disclosed in Horton would result in the web portion extending from one of the upper and lower surfaces to a portion of the way through the thickness of the intermediate section and forming into the corrugated portion. (Req. App. Br. 14.) Specifically, Horton is silent as to the presence of a web portion, and Irwin does not expressly disclose in what manner the transverse rib 28 and longitudinal fingers 29 are joined, or the extent to which the web extends through the thickness of any intermediate section. (FF 13, 14.) Thus, the prior art is silent as to how the web portion of Irwin would be incorporated into the belt module of Horton. That the belt module resulting from some combination of Horton and Irwin may result in an integrally molded article as advocated by Rexnord, does not provide a sufficient basis to conclude that the resulting structure would meet the recitation of a web portion only a portion of the way through the thickness, and forming into a corrugated portion as recited in the claims. Therefore, the Examiner did not err in failing to reject claims 1-22, 24, and 25 as being obvious over Horton in view of Irwin.

Proposed Rejections IV-VI

Rexnord and the Examiner acknowledge that Horton does not disclose a web portion transversing a corrugated portion. (Req. App. Br. 9-10.) Rexnord contends that Ensch, the Machinery Handbook, and the Dutch Textbook each provide evidence that it was known in the art to use a stiffening web to increase strength and tension bearing capabilities of conveyor belt modules. (Req. App. Br. 11, 16, 17.)

The Examiner counters that Ensch does not disclose that the web is for increasing strength and tension bearing capability of a conveyor belt module. (Ans. 25.) The Examiner also determined that the Machinery Handbook and the Dutch Textbook do not specifically teach applying a stiffening web to a conveyor belt structure. (Ans. 26.)

Therefore, an additional issue on appeal is: did the Examiner err in determining that Ensch, the Machinery Handbook, and the Dutch Textbook fail to provide a reason to modify Horton's conveyor belt module to arrive at the conveyor belt structure recited in the claims?

Ensch

Rexnord contends that Ensch provides motivation to incorporate a transverse web into the conveyor belt module of Horton because Ensch discloses that the support rib provides part of an article support surface. (Req. App. Br. 11.) However, as we explained above, the proposed ground of rejection does not sufficiently suggest how the support rib 90 of Ensch would be incorporated into Horton to arrive at the intermediate structure including a web portion and corrugated portion in the claimed structural

relationship. Accordingly, we agree with the Examiner's decision not to reject claims 1-25 over Horton in view of Ensch.

Machinery Handbook and Dutch Textbook

Both the Machinery Handbook and the Dutch textbook describe that the structural integrity of molded plastic parts can be improved by employing ribs in the plastic part. (FF 15, 16.) The Examiner contends that because both the Machinery Handbook the Dutch Textbook fail to disclose specific application to conveyor belt modules, sufficient motivation to add a structural rib to Horton's belt module is not present. (Ans. 26.) We agree with the Examiner.

Specifically, while the Machinery Handbook and the Dutch Textbook provide evidence that the problem of structural integrity of plastic molded parts is a known problem for which providing a structural rib is a known solution, neither the Machinery Handbook nor the Dutch Textbook describe that the rib is employed with the structural requirements recited in the claims. (FF 15, 16.) That is, the Machinery Handbook and the Dutch Textbook fail to disclose a rib that extends from one of the upper and lower surfaces to a portion of the way through the thickness of the intermediate section to form into a corrugated portion extending across the intermediate width between the first and second walls to the other of the upper and lower surfaces, as recited for the web portion in the present claims. Rexnord fails to provide any other sufficient rationale to account for the deficiencies of the Machinery Handbook or the Dutch Textbook. Accordingly, the Examiner did not err in not rejecting the claims over Horton in view of the Machinery Handbook or the Dutch Textbook.

Proposed Rejection VII

Rexnord contends that Horton discloses motivation to provide link ends with wider head portions and substantially parallel sidewalls in Gruettner to form a strong wear bearing surface as required in claims 3 and 9. (Req. App. Br. 18.)

The Examiner states on the other hand that Horton does not disclose a head portion that is wider than the leg portion in the link ends. (Ans. 26.)

Accordingly, an additional issue on appeal is:

Did the Examiner err in not rejecting claims 3 and 9 over Gruettner in view of Horton?

The Examiner's position appears to be that while Horton discloses a *thicker* head portion than a leg portion, Horton does not disclose a head portion that is *wider* than the leg portion. (Ans. 26.) The Examiner does not explain how the "thickness" disclosed in Horton and the "width" recited in the claims is different. Indeed, it appears that Horton's link end heads are wider than the leg portion as seen in Figure 2A. (FF 12.)

However, Rexnord's contention that one of ordinary skill in the art would modify the conveyor belt modules of Gruettner by providing a wider head portion in order to form a strong wear bearing surface as disclosed by Horton (Req. App. Br. 18.) is not based on sufficient rational underpinnings. Gruettner discloses conveyor belt modules where the link ends of one module fully interlock within the spaces between the link ends of an adjacent module and vice-versa, to provide a bearing surface that encompasses substantially the entire sides of the link ends. (FF 9 and 10.) There is no indication that the link ends disclosed in Gruettner do not form a

"strong wear bearing surface." The modification proposed by Rexnord would reduce Gruettner's continuous bearing surface by narrowing the width of the link ends along the proximal ends thereof so as to result in open space between the leg portions in one module and the leg portions in the adjacent module. Hence, the articulated reason for combining the references as proposed is not rational in that the result of such combination appears to weaken the bearing surface. Therefore, we agree with the Examiner's decision not to reject claims 3-5, 9, and 10, as being obvious over Gruettner in view of Horton. Regarding claims 16 and 17, these claims are dependent from claim 14, which was correctly not rejected by the Examiner as being anticipated by Gruettner as discussed above. Thus, we affirm the Examiner's decision not to reject claims 16 and 17 for this reason.

CONCLUSIONS

On this record, Habasit has failed to demonstrate any error in the Examiner's factual finding and conclusions that when the claims on appeal are accorded their broadest reasonable interpretation, Gruettner discloses the recited corrugated portion with a sinusoidal shape of claim 1.

On the other hand, Habasit has demonstrated error in the Examiner's factual findings and conclusions that Ensch discloses a web portion that forms into a corrugated portion as recited in the claims and that incorporating a web portion as disclosed in Ensch to the conveyor belt module disclosed in Horton corresponds to the intermediate section recited in the claims.

On this record, Rexnord has demonstrated error in the Examiner's factual findings and conclusions that Ensch fails to disclose the openings recited in claim 6.

On the other hand, Rexnord has failed to demonstrate any error in the Examiner's factual findings and conclusions that: there is insufficient reasoning to incorporate transverse openings in the link ends closer to the lower surface than to the upper surface as disclosed in Ensch into the belt modules disclosed in Gruettner; the angled face and link ends having rounded endwalls recited in the claims do not read on the angled face and rounded link ends disclosed in Gruettner; adding the rib of Irwin to Horton's conveyor belt module would not result in a web portion extending from one of the upper and lower surfaces to a portion of the way through the thickness of the intermediate section to form a corrugated portion as recited in the claims; Ensch, the Machinery Handbook, and the Dutch Textbook fail to provide a reason to modify Horton's conveyor belt module to arrive at the conveyor belt structure recited in the claims; and claims 3 and 9 would not have been obvious over Gruettner in view of Horton.

DECISION

In sum, we affirm the Examiner's decision to reject:

Claims 1, 2, 7, 8, 13, 21, 22, 24, and 25 under 35 U.S.C. § 102(b) as being anticipated by Gruettner.

We reverse the Examiner's decision to reject:

Claims 1, 2, 6, 23, and 25 under 35 U.S.C. § 102(b) as being anticipated by Ensch; and

Claims 1-22 and 25 under 35 U.S.C. § 103(a) as being unpatentable over Horton in view of Ensch and Irwin.

We reverse the Examiner's refusal to reject:

Claims 6 and 12 under 35 U.S.C. § 103(a) as being unpatentable over Gruettner in view of Ensch.

We affirm Examiner's refusal to reject:

Claim 19 and 23 under 35 U.S.C. § 103(a) as being unpatentable over Gruettner in view of Ensch;

Claims 11, 14, 15, and 20 under 35 U.S.C. § 102(b) as being anticipated by Gruettner;

Claims 1-22, 24, and 25 under 35 U.S.C. § 103(a) as being unpatentable over Horton in view of Irwin;

Claims 1-25 under 35 U.S.C. § 103(a) as being unpatentable over Horton in view of Ensch;

Claims 1-22 and 25 under 35 U.S.C. § 103(a) as being unpatentable over Horton in view of Machinery Handbook;

Claims 1-22 and 25 under 35 U.S.C. § 103(a) as being unpatentable over Horton in view of Dutch Textbook; and

Claims 3-5, 9, 10, 16, and 17 under 35 U.S.C. § 103(a) as being unpatentable over Gruettner in view of Horton.

NEW GROUND OF REJECTION

37 C.F.R. § 41.77(a) states that "[t]he reversal of the examiner's determination not to make a rejection proposed by the third party requester constitutes a decision adverse to the patentability of the claims which are subject to that proposed rejection which will be set forth in the decision of the Board of Patent Appeals and Interferences as a new ground of rejection . . . ."

37 C.F.R. § 41.77(b) states:

> (b) Should the Board reverse the examiner's determination not to make a rejection proposed by a requester, the Board shall set forth in the opinion in support of its decision a new ground of rejection; or should the Board have knowledge of any grounds not raised in the appeal for rejecting any pending claim, it may include in its opinion a statement to that effect with its reasons for so holding, which statement shall constitute a new ground of rejection of the claim. Any decision which includes a new ground of rejection pursuant to this paragraph shall not be considered final for judicial review. When the Board makes a new ground of rejection, the owner, within one month from the date of the decision, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal proceeding as to the rejected claim:
>
> (1) *Reopen prosecution.* The owner may file a response requesting reopening of prosecution before the examiner. Such a response must be either an amendment of the claims so rejected or new evidence relating to the claims so rejected, or both.
>
> (2) *Request rehearing*. The owner may request that the proceeding be reheard under § 41.79 by the Board upon the same record. The request for rehearing must address any new ground of rejection and state with particularity the points believed to have been misapprehended or overlooked in

entering the new ground of rejection and also state all other grounds upon which rehearing is sought.

Requests for extensions of time in this *inter partes* reexamination proceeding are governed by 37 C.F.R. § 1.956. *See* 37 C.F.R. § 41.79.

AFFIRMED-IN-PART; NEW GROUND OF REJECTION

KMF

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

REXNORD INDUSTRIES, LLC,
Requester and Cross-Appellant,

v.

HABASIT BELTING, INC.,
Patent Owner and Appellant.

Appeal 2009-012531
Reexamination Control 95/000,071
Patent 6,330,941 B1
Technology Center 3900

Before JOHN C. KERINS, JEFFREY B. ROBERTSON, and DANIEL S. SONG, *Administrative Patent Judges*.

ROBERTSON, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appeal 2009-012531
Reexamination Control 95/000,071
Patent 6,330,941 B1

Third-Party Requester Rexnord Industries, LLC (hereinafter "Rexnord") requests rehearing under 37 C.F.R. § 41.79 of the following portions of our decision mailed August 5, 2010 (hereinafter "Decision") in the appeal of the reexamination of United States Patent 6,330,941 B1 (hereinafter the "'941 Patent") (Request for Rehearing filed September 29 2010, hereinafter "Request," at 1-2.):

1. Our decision to reverse the Examiner's rejection of: claims 1, 2, 6, 23, and 25 under 35 U.S.C. § 102(b) as being anticipated by Ensch;[1] and claims 1-22, and 25 under 35 U.S.C. §103(a) as obvious over Horton,[2] Ensch, and Irwin;[3] and

2. Our decision to affirm the Examiner's refusal to adopt the proposed rejections of: claims 19 and 23 under 35 U.S.C. § 103(a) as obvious over Gruettner[4] in view of Ensch; claims 11, 14, 15, and 20 under 35 U.S.C. § 102(b) as anticipated by Gruettner; claims 1-22, 24, and 25 under 35 U.S.C. § 103(a) as obvious over Horton in view of Irwin; claims 1-25 under 35 U.S.C. § 103(a) as obvious over Horton in view of Ensch; claims 1-22, and 25 under 35 U.S.C. § 103(a) as obvious over Horton in view of Machinery Handbook;[5] claims 1-22, and 25 under 35 U.S.C.

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[1] Ensch, U.S. 5,253,749, issued Oct. 19, 1993

[2] Horton, U.S. 5,372,248, issued Dec. 13, 1994
[3] Irwin, U.S. 5,139,135, issued Aug. 18, 1992
[4] Gruettner, U.S. 5,303,818, issued Apr. 19, 1994
[5] Erik Oberg et al., Machinery's Handbook 604-607 (Robert E. Green and Christopher J McCauley, eds., Industrial Press, Inc. 1996) [hereinafter Machinery Handbook].

§ 103(a) as obvious over Horton in view of Dutch Textbook;[6] and claims 3-5, 9, 10, 16, and 17 under 35 U.S.C. § 103(a) as obvious over Gruettner in view of Horton.

Specifically, Requester contends that the Board misapprehended the following points: (A) what is disclosed by Ensch; (B) the combination of Horton, Ensch, and Irwin; (C) the combination of Ensch and Gruettner; (D) what is disclosed by Gruettner, Horton, and Ensch; (E) the combination of Horton and Irwin; (F) the combination of Horton with Ensch, Machinery Handbook, or Dutch Textbook; and (G) the combination of Gruettner and Horton. (Request 2.)

Patent Owner Habasit Belting, Inc. (hereinafter "Habasit") urges that the Request should be denied. (Comments in Opposition to Respondent's Request for Rehearing under 37 C.F.R. § 41.79(c) filed October 4, 2010, hereinafter "PO Response," at 1.)

Initially, we agree with Habasit that in the Request, Rexnord presents several new arguments without a showing of good cause or that the arguments are in response to a new ground of rejection,[7] such new arguments being beyond the scope of a Request for Rehearing under 37 C.F.R. § 41.79. (PO Response 2-4.) Accordingly, we only address Rexnord's Request to the extent it complies with 37 C.F.R. § 41.79 (b).

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[6] A. Anemaat and J.L. Spoormaker, Konstruktieleer Deel B: Konstrueren in Kunststoffen 209-211 (Technical University at Delft, The Netherlands 1992) [hereinafter Dutch Textbook].

[7] The Decision, in reversing the Examiner's decision not to adopt certain rejections, did set forth new grounds of rejection by operation of rule 37 C.F.R. § 41.77(a), Rexnord's Request does not challenge the portions of the Decision designated as such.

(A) Ensch

Regarding Ensch, Rexnord contends that we misapprehended whether Ensch discloses a web portion forming into a corrugated portion. (Request 3-4.)

However, we addressed whether Ensch disclosed a web portion forming into a corrugated portion in the Decision, where we stated: "Although Ensch discloses that the support rib 90 extends between and meets the upper edge of the reach bars 52, Ensch does not disclose any structure that would correspond to the corrugated portion either below or above and meeting the support rib 90, which is required in the claims as discussed in the claim interpretation section." (Decision 21.)

In the claim interpretation section of the Decision, we interpreted claim 1, stating "Claim 1 requires that the web portion extends from one of the upper and lower surface to some portion of the way through the thickness of the intermediate section to form into a corrugated portion, the corrugated portion then extending to the other of the upper and lower surfaces" and "it is clear from the claims that the web portion begins either from the upper surface or the lower surface of the intermediate section and ends by forming into or starting the corrugated portion at a portion of the way through the thickness of the intermediate section, the corrugated portion ending at the opposite upper or lower surface of the intermediate section for the entire intermediate width." (Decision 18, 19.)

Thus, to be clear, because Ensch only discloses that support rib 90 extends between and meets the upper end of the reach bars 52, Ensch does

not disclose the "formed into" limitation recited in the claims, as the corrugated portion in Ensch does not extend below or above support rib 90.[8] (*See* Decision, FF 7, 8.)

In addition, Rexnord's argument that because Ensch discloses a unitary molded form, Ensch discloses the arrangement recited in the claims is deficient for the reasons expressed in the Decision and further elaborated above. (Request 4; Decision 21.)

(B) Horton, Ensch, & Irwin

In the Decision, we reversed the Examiner's rejection based on the combination of Horton, Ensch, and Irwin, in view of the deficiencies of Ensch, which have been addressed above. (Decision 21-22.) Rexnord's arguments in the Request are directed to other reasons why the combination of Horton, Ensch and Irwin would have rendered the present claims obvious, Rexnord additionally arguing that Irwin is not necessary to reach the instant claims. (Request 5-6.) However, Requester did not previously present these arguments in the Respondent Brief. (Req. Resp. Br. 12-14.) Additionally, Rexnord does not present a showing of good cause as to why the new arguments should be considered. Accordingly, Requester's arguments in this regard are beyond the scope of rehearing and have not been considered.

[8] In this regard, Rexnord's argument that the Examiner's rejection should not be discounted due to the presence of imprecise reference numbers is also unpersuasive, in view of our analysis of Ensch in the Decision. (Request 4, 5.)

(C) Gruettner & Ensch

We declined to reverse the Examiner's decision not to reject claim 23 as obvious over Gruettner and Ensch, because Rexnord's asserted reasoning, that by providing transverse openings in the link ends closer to the lower surface more securely retains the modules in a track, was not supported by the record. (Decision 24; Req. App. Br. 22.) We also declined to reverse the Examiner's refusal to reject claim 19, because of the deficiencies of Gruettner discussed in the Decision. (Decision, 24-26.) In the Request, Rexnord attempts to set forth alternative rationales as to why one of ordinary skill in the art would have combined Gruettner and Ensch to render claims 19 and 23 obvious. (Request 6-7.) As discussed above, such arguments are beyond the scope of rehearing and have not been considered.

(D) Gruettner

In the Decision, we found that Rexnord had not produced "persuasive evidence in the record that in Gruettner's module, the sprocket having teeth would be capable of engaging both the rounded endwall and angled face." (Decision 25.) In the Request, Rexnord again states that a tooth is capable of entering to engage the rounded endwall disclosed by Gruettner. (Request 8-9.) We are not persuaded for the reasons set forth in the Decision. Requester's additional arguments regarding Horton and Ensch are beyond the scope of rehearing as they propose new arguments and/or new grounds of rejection. (Request 8-9.)

(E) Horton & Irwin

We agreed with the Examiner's decision not to adopt the proposed rejection of the claims over Horton in view of Irwin because it was unclear as to how the two references would have been combined to arrive at the instant claims. (Decision 26-27.) Requester contends that the transverse rib of Irwin would have been added to the top side of Horton because at any other location, the functionality of the openings and spaces in Horton would be eliminated. (Request 9, 10.) However, even if this were the case, as we stated in the Decision, "the prior art is silent as to how the web portion of Irwin would be incorporated into the belt module of Horton. That the belt module resulting from some combination of Horton and Irwin may result in an integrally molded article as advocated by Rexnord, does not provide a sufficient basis to conclude that the resulting structure would meet the recitation of a web portion only a portion of the way through the thickness, and forming into a corrugated portion as recited in the claims." (Decision 27.) Accordingly, we are not persuaded that we misapprehended or overlooked any aspects of the combination of Horton in view of Irwin.

(F) Horton, Ensch, Machinery Handbook, & Dutch Textbook

With respect to the combination of Horton and Ensch, Requester sets forth a similar argument as in (E) above, stating that Horton in view of Ensch would inevitably lead to the claimed web portion that forms into the corrugated portion due to the functionality required in the resulting belt module. (Request 11-12.) Again, we fail to see how we misapprehended the teachings of Horton and Ensch in the Decision. (Decision 28-29.)

Requester's position that one of ordinary skill in the art would have been able to fit together Horton and Ensch like the pieces of a puzzle (Request 12.), still fails to provide a sufficient rational basis for arriving at the structure recited in the claims. Accordingly, Requester's arguments are not persuasive.

For similar reasons, Requester's arguments pertaining to the Machinery Handbook and the Dutch Textbook are also unpersuasive for the reasons stated in the Decision. (Request 12-13; Decision, 28-29.)

(G) Gruettner & Horton

Requester contends that in modifying the hinge barrels 24, 26 of Gruettner in view of Horton, to make the hinge barrels wider, there would not be an "open space between the leg portions in one module and the leg portions in the adjacent module" as upper conveying surface 14 will continue to cover the narrow leg portion. (Decision 31; Request 13-14.) However, we further stated, "[t]here is no indication that the link ends disclosed in Gruettner do not form a 'strong wear bearing surface.'" (Decision 30-31). In addition, we also stated that "[t]he modification proposed by Rexnord would reduce Gruettner's continuous bearing surface by narrowing the width of the link ends along the proximal ends[,]" (Decision 31) considering the fully interlocked construction of the modules of Gruettner. Moreover, the Requester's assertion that if barrels are simply made wider, the bearing surface is made stronger, ignores the function of these conveyor modules. If the link ends of one module are "made wider," this requires the link ends of the adjacent module to be made narrower in

order for the modules to interlock. Such reduction in size of the link end weakens its strength resulting in a weaker conveyor belt. In view of the above, the Requester's suggested combination not only appears to be based on hindsight, but also not supported by rational underpinnings. Accordingly, we are not persuaded that we misapprehended or overlooked the combined teachings of Gruettner and Horton.

In light of the above, Requester's argument that if the barrels 24, 26 of Gruettner are made wider, the resulting barrier surface would be made stronger due to additional material is not persuasive. (Request 14.)

Therefore, we decline to make any changes in the Decision mailed August 5, 2010. Accordingly, the Request for Rehearing is denied.

DENIED

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Reexamination Control 95/000,071
Patent 6,330,941 B1

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