

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GUARDIAN BUILDING PRODUCTS, INC.,
Petitioner,

v.

JOHNS MANVILLE,
Patent Owner.

Case IPR2017-00633
Patent 6,245,282 B1

Before CHRISTOPHER L. CRUMBLEY, KRISTINA M. KALAN, and
ELIZABETH M. ROESEL, *Administrative Patent Judges*.

KALAN, *Administrative Patent Judge*.

DECISION

Denying Institution of *Inter Partes* Review
35 U.S.C. §§ 314(a), 325(d); 37 C.F.R. § 42.108

I. INTRODUCTION

Guardian Building Products, Inc. (“Petitioner”) requests an *inter partes* review of claims 6–29 of U.S. Patent No. 6,245,282 B1 (“the ’282 patent,” Ex. 1001). Paper 2 (“Pet.”). Johns Manville (“Patent Owner”) filed a Preliminary Response. Paper 9 (“Prelim. Resp.”).

Based upon the particular circumstances of this case, we exercise our discretion under 35 U.S.C. § 314(a) and § 325(d) and do not institute an *inter partes* review of the challenged claims.

II. BACKGROUND

A. Related Proceedings

The parties identify Reissue Application No. 15/062,755 (the “’755 reissue application”), which concerns the ’282 patent. Pet. 2; Paper 4, 1. The ’755 reissue application was filed by Patent Owner on March 7, 2016, before the filing of the instant Petition, and is currently pending. In the reissue proceeding, a final Office action was issued on May 8, 2017, rejecting claims 6–29 and 31—all claims pending in the application. Patent Owner filed a notice of appeal to the Board on June 28, 2017.¹

The parties also identify the following district court litigation involving the ’282 patent: *Johns Mansville Corp. v. Knauf Insulation, Inc.*, COD-1-15-cv-02671 (D. Colo., filed Dec. 9, 2015). Pet. 1; Paper 4, 2. On October 27, 2016, the District Court granted Patent Owner’s motion to stay pending completion of reissue proceedings, and the case has been

¹ The May 8, 2017 final Office action, a June 1, 2017 Patent Owner response, a June 14, 2017 advisory action, and the June 28, 2017 notice of appeal were entered in the reissue application after Patent Owner filed its Preliminary Response and were not filed as exhibits in this proceeding.

administratively closed, subject to reopening for good cause. Ex. 2001, 346 (district court docket entry 67, Order and Recommendation of United States Magistrate Judge, included in the file history for the '755 reissue application).

B. The '282 Patent

The '282 patent, titled “Apparatus and Method for Forming Fibers from Thermoplastic Fiberizable Materials,” issued on June 12, 2001. The '282 patent relates to fibers “produced [] from molten thermoplastic fiberizable material in a rotary fiberizing process by passing the fiberizable material through rows of fiberizing holes in an annular sidewall of a fiberizing disk.” Ex. 1001, Abstract. More particularly, the invention claimed in the '282 patent is “an apparatus and method for forming fibers from molten thermoplastic fiberizable materials which improves the physical characteristics of the fibers produced and the integrity of blankets formed from the fibers.” *Id.* at 1:8–12.

C. Illustrative Claim

As issued, the '282 patent included 29 claims. The Petition challenges claims 6–29,² of which only claim 6 is independent. Claims 7–29 depend, directly or indirectly, from claim 6, which is reproduced below:

6. A method for producing fibers from a molten thermo-plastic fiberizable material comprising:

providing a fiberizing disk having a bottom wall and an annular peripheral sidewall integral with and extending upward from a periphery of the bottom wall; the annular sidewall having a plurality of annular, horizontally extending rows of fiberizing holes therein through which a molten thermoplastic fiberizable

² As discussed below, prior to the filing of the instant Petition, Patent Owner canceled claims 1–5 in the reissue proceeding. Ex. 1017, 2; Ex. 2001, 211.

material is passed to fiberize the molten thermoplastic fiberizable material; the plurality of annular rows of fiberizing holes having an uppermost row of fiberizing holes and a lowermost row of fiberizing holes;

supplying a molten thermoplastic fiberizable material to the bottom wall of the fiberizing disk radially inward of the annular peripheral sidewall;

rotating the fiberizing disk to cause the molten thermoplastic fiberizable material supplied to the bottom wall of the fiberizing disk to flow outward to the annular sidewall, up the annular sidewall, and outward through the fiberizing holes in the annular sidewall in a generally horizontal direction to form fibers;

supplying a combustible gas or gaseous mixture through a first manifold to the fiberizing disk internally of the annular sidewall; burning the combustible gas or gaseous mixture externally of the first manifold and within the fiberizing disk; forming products of combustion through the burning of the combustible gas or gaseous mixture; and helping maintain the fiberizing disk and the molten thermoplastic fiberizable material supplied to the fiberizing disk within a desired temperature range for fiberization through the burning of the combustible gas or gaseous mixture;

supplying a second combustible gas or gaseous mixture through a second manifold; burning the combustible gas or gaseous mixture from the second manifold externally of the second manifold and the fiberizing disk; forming products of combustion from the burning of the combustible gas or gaseous mixture from the second manifold; heating an annular fiber attenuation zone which is concentrically located relative to and extends outward from the annular sidewall of the fiberizing disk from a height of the uppermost row of fiberizing holes to a height of the lowermost row of fiberizing holes with the products of combustion from the burning of the combustible gases or gaseous mixtures from the first and second manifolds; and attenuating within the annular fiber attenuation zone, with the products of combustion from the burning of the combustible gases or gaseous mixtures from the first and second manifolds, fibers formed by the fiberizing disk; and

positioning a gaseous fluid discharge ring concentrically relative the fiberizing disk and spaced outwardly from the annular sidewall of the fiberizing disk; discharging a high velocity annular curtain of gaseous fluid in a downward direction from the gaseous fluid discharge ring at a height equal to or above the uppermost row of fiberizing holes to help attenuate fibers in the heated annular fiber attenuation zone and redirect, downward for collection, the fibers formed by the fiberizing disk that have passed through the heated annular fiber attenuation zone.

Ex. 1001, 10:4–11:4.

D. The Asserted Grounds of Unpatentability

Petitioner asserts that the challenged claims of the '282 patent are unpatentable based upon the following grounds:

Reference(s)	Statutory Basis	Claim(s) Challenged
McCoppin ³	§102/§103	6, 10
Firnhaber ⁴	§102	6, 10
Firnhaber and Snyder ⁵	§103	6, 10
McCoppin and Charpentier ⁶	§103	7, 8
McCoppin and Snyder	§103	9
McCoppin and Admitted Prior Art	§103	11, 12
McCoppin, Admitted Prior Art, and Blandin ⁷	§103	13–16, 24–29
McCoppin, Charpentier, Admitted Prior Art, and Blandin	§103	17–23

³ U.S. Patent No. 3,265,477 (“McCoppin,” Ex. 1005).

⁴ U.S. Patent No. 3,227,536 (“Firnhaber,” Ex. 1006).

⁵ U.S. Patent No. 5,785,996 (“Snyder,” Ex. 1007).

⁶ U.S. Patent No. 3,304,164 (“Charpentier,” Ex. 1008).

⁷ U.S. Patent No. 5,277,706 (“Blandin,” Ex. 1009).

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