

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTERBULK USA, LLC d/b/a INTERBULK EXPRESS,
Petitioner,

v.

GLOBAL STRATEGIES, INC.,
Patent Owner.

Case IPR2018-01197
Patent 7,510,327 B2

Before NEIL T. POWELL, GEORGE R. HOSKINS, and
JAMES A. WORTH, *Administrative Patent Judges*.

WORTH, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314(a)

I. INTRODUCTION

On June 5, 2018, InterBulk USA, LLC d/b/a InterBulk Express (“InterBulk” or “Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting an *inter partes* review of claims 1–20 (the “challenged claims”) of U.S. Patent No. 7,510,327 B2 (Ex. 1001, “the ’327 patent”). On October 18, 2018,

Global Strategies, Inc. (“GSI” or “Patent Owner”) filed a Preliminary Response (Paper 6, “Prelim. Resp.”).

Institution of an *inter partes* review is authorized by statute when “the information presented in the petition filed under [35 U.S.C. §] 311 and any response filed under [35 U.S.C. §] 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a). For the reasons set forth below, we determine that Petitioner has not met its burden for instituting review.

A. *Related Matters*

The parties note as related the following district court litigation: *Global Strategies, Inc. v. InterBulk USA, LLC d/b/a InterBulk Express*, No. 1:17-cv-12166-RGS (D. Mass., filed Nov. 3, 2017). Pet. 1; Paper 3, 1; Prelim. Resp. 3.

B. *The ’327 Patent (Ex. 1001)*

The ’327 patent is titled “High Strength Ribbon-Woven Disposable Bag for Containing Refuse” and relates to “disposable bags and more particularly to a polypropylene ribbon-woven bag of sufficient strength to contain heavy refuse having pointed or sharp edges without rupture, tearing or disintegration.” Ex. 1001, [54], 1:6–10. The ’327 patent describes a problem with prior art refuse bags, involving 3-mil polyethylene films, which were limited in the weight of the contents to normally 20–25 pounds, leaving a large majority of the bag unfilled. *Id.* at 1:14–22. Further, such bags were liable to fail by stretching or rupture, puncturing, slicing, or piercing, when used on construction sites. *Id.* at 1:22–33. The ’327 patent describes a problem with alternatives such as rubberized barrels, which were

expensive, heavy, required storage between use, and could become stuck or temporarily stuck together if nested when stored. *See id.* at 1:34–45.

The Specification describes the subject invention as an improved high strength bag composed of woven material where the woven material is ribbon, as opposed to woven cord or strand. *Id.* at 1:53–58. According to the Specification, bags so composed will safely contain refuse weighing in excess of 125 pounds for 40"x29" bags. *Id.* at 1:59–61. The Specification discloses that such bags are tear resistant and cut resistant, and a piercing of the woven structure does not creep or travel due to the woven nature of the material. *Id.* at 1:61–64. The tear strength or modulus in one embodiment is 35 warp pounds or 32 filling pounds according to ASTM 5587. *Id.* at 1:64–66.

The disposable bags are typically made of polypropylene but other materials may be used. *See id.* at 3:13–22. In one embodiment, the bag is made by heating and melting polypropylene pellets, extruding a web that is relatively flat, cutting the web longitudinally to make ribbons, winding the ribbons onto spools, and then weaving the ribbons using a loom or weaving machine such that an under/over weave is produced, in which flat ribbons are clearly visible. *Id.* at 2:5–11, 4:54–57. The structure is woven cylindrical, then flattened, cut along a transverse line, and stitched to form the bottom of the bag. *Id.* at 2:24–30. In one embodiment, the ribbons are 3–6 mm wide with a stitch count of 100 per inch. *Id.* at 2:12–14. In one embodiment a liquid-tight bag is provided by laminating a polypropylene film to the outside of the bag. *Id.* at 2:15–23.

C. Illustrative Claim

Claims 1 and 17 are the independent claims contested in the Petition.

Claim 1, reproduced below, is illustrative of the subject matter at issue:

1. An ultra strong, tear-resistant, puncture-resistant bag having a high tear strength, comprising:
a ribbon-woven bag having crossed woven ribbons of flat polypropylene sheet devoid of low melting temperature bonding layers between the crossed ribbons, said bag formed in a cylinder and stitched at one end to complete the bag, wherein the stitch count for said bag is 100 per inch.

Ex. 1001, 5:30–37.

D. The Prior Art

Petitioner relies on the following prior art:

U.S. Patent No. 4,205,611, iss. June 3, 1980 (Ex. 1004, “Slawinski”);

U.S. Patent No. 4,373,979, iss. Feb. 15, 1983 (Ex. 1008, “Planeta ’979”);

U.S. Patent No. 4,505,201, iss. Mar. 19, 1985 (Ex. 1007, “Abele”);

U.S. Patent No. 5,830,119, iss. Nov. 3, 1998 (Ex. 1005, “Chen”);

U.S. Patent No. 5,251,761, iss. Oct. 12, 1993 (Ex. 1009, “Hansen”);

U.S. Patent No. 5,395,665, iss. Mar. 7, 1995 (Ex. 1006, “Planeta ’665”).

E. The Alleged Grounds of Unpatentability

Petitioner challenges claims 1–20 of the '327 patent as unpatentable under 35 U.S.C. § 103(a):

References	Basis	Claims challenged
Slawinski, Chen, Planeta '665, Abele	§ 103(a)	1–12, 14, 16
Slawinski, Chen, Planeta '665, Abele, Planeta '979	§ 103(a)	13, 15
Slawinski, Chen, Hansen, Planeta '665	§ 103(a)	17–20

II. ANALYSIS

A. Claim Construction

In this *inter partes* review, filed June 5, 2018,¹ a claim in an unexpired patent shall be given its broadest reasonable construction in light of the specification of the patent in which it appears. 37 C.F.R. § 42.100(b) (2016); *see also* *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2142 (2016) (affirming that USPTO has statutory authority to construe claims according to 37 C.F.R. § 42.100(b)). Under that standard, and absent any special definitions, we give claim terms their ordinary and customary meaning, as would be understood by one of ordinary skill in the art at the time of the invention. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). Any special definitions for claim terms must be set forth

¹ The claim construction standard to be employed in *inter partes* reviews has changed for proceedings in which the petition was filed on or after November 13, 2018. *See* Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board, 83 Fed. Reg. 51,340 (Nov. 13, 2018) (to be codified at 37 C.F.R. pt. 42).

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