

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* DENNIS R. GELARDEN

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Appeal No. 2002-0701  
Application 09/201,269

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ON BRIEF

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Before KIMLIN, OWENS and KRATZ, *Administrative Patent Judges*.  
OWENS, *Administrative Patent Judge*.

*DECISION ON APPEAL*

This appeal is from the third rejection (non-final) of claims 1-28, which are all of the claims in the application.<sup>1</sup>

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<sup>1</sup>In an appeal in which claims have been at least twice rejected, the board has jurisdiction as discussed in *Ex parte Lemoine*, 46 USPQ2d 1432 (Bd. Pat. App. & Int. 1995).

*THE INVENTION*

The appellant claims a printing ink composition and an overprint composition which include a branched vinyl resin having a polydispersity of at least about 15,<sup>2</sup> and claim a method for making the ink composition. Claims 1, 19, 23 and 26 are illustrative:

1. A printing ink composition comprising a solution of a branched vinyl resin having a polydispersity of at least about 15.

19. A method of making a printing ink, comprising the steps of:

(a) preparing a branched vinyl resin by polymerizing a monomer mixture that includes at least one monomer having at least about two ethylenically unsaturated polymerizable bonds per molecule in the presence of a free radical initiator at a temperature at which said free radical initiator has a half-life of less than about two minutes, wherein said polymerization results in less than about 0.5% residual monomer based on the total weight of the monomers being polymerized, and

(b) combining said branched vinyl resin with at least one other material to form a printing ink, wherein the branched vinyl resin is in solution in the printing ink.

23. A method of printing, comprising applying a printing ink composition to a substrate, wherein said printing ink composition includes at least a branched vinyl resin having a polydispersity of at least about 15 and a weight average molecular weight of at least about 100,000.

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<sup>2</sup> Polydispersity is the ratio of the weight average molecular weight to the number average molecular weight (specification, page 15, line 16).

Appeal No. 2002-0701  
Application 09/201,269

26. An overprint composition comprising a branched vinyl resin having a polydispersity of at least about 15, wherein said overprint varnish is transparent.<sup>[3]</sup>

*THE REFERENCES*

Carlick et al. (Carlick)	4,469,826	Sep. 4, 1984
Cleary et al. (Cleary)	5,616,364	Apr. 1, 1997
Oshima et al. (Oshima)	5,780,548	Jul. 14, 1998
Tutt et al. (Tutt)	5,847,738	Dec. 8, 1998 (filed Jul. 11, 1997)
Puschak et al. (Puschak)	5,849,833	Dec. 15, 1998 (provisional application filed Jul. 21, 1995)
Margotte et al. (Margotte)	5,973,107	Oct. 26, 1999 (filed Jul. 24, 1997)
Campbell et al. (Campbell)	5,986,020	Nov. 16, 1999 (filed Aug. 5, 1997)
Houser et al. (Houser)	6,020,401	Feb. 1, 2000 (effective filing date Jun. 17, 1996)

*THE REJECTIONS*

The claims stand rejected as follows: claims 1-7, 9-18, 25, 27 and 28 under 35 U.S.C. § 102(e) as anticipated by Campbell; claim 8 under 35 U.S.C. § 103 as obvious over Campbell in view of Carlick; claims 19-22 under 35 U.S.C. § 103 as obvious over Houser or Puschak, in view of Margotte or Oshima;<sup>4</sup> claims 23

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<sup>3</sup> In the event of further prosecution, the examiner and the appellant should address on the record whether there is adequate antecedent basis for "said overprint varnish" in claim 26.

<sup>4</sup> In this rejection the examiner no longer relies upon U.S. 3,865,772 to Hulyalkar (answer, page 10).

Appeal No. 2002-0701  
Application 09/201,269

and 24 under 35 U.S.C. § 103 as obvious over Puschak in view of Campbell; and claim 26 under 35 U.S.C. § 103 as obvious over Tutt or Cleary, in view of Campbell.

*OPINION*

We reverse the rejections of claims 1-22, 25, 27 and 28, and affirm the rejections of claims 23, 24 and 26.<sup>5</sup>

*Rejection of claims 1-7, 9-18, 25, 27 and 28  
under 35 U.S.C. § 102(e) over Campbell*

Campbell discloses a method for making a hyperbranched polymer by polymerizing a monomer mixture comprising at least one monoethylenically unsaturated monomer and at least one multiethylenically unsaturated monomer (col. 3, lines 6-23). Some of the exemplified polymers have polydispersities above 15, i.e., 25.75, 62.3, 68.26, 105.6 and 107.4 (col. 9, lines 11 and 43; col. 12, lines 55-58). Campbell's polymers "may be readily employed to form effective coating compositions" (col. 8, lines 43-44).

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<sup>5</sup> As stated in the remand mailed March 28, 2002 (paper no. 20), the examiner's comments on the merits in the notification that the reply brief has been entered (office action mailed February 22, 2002, paper no. 19) were improper. Hence, we do not consider these comments or the appellant's reply to them (filed March 22, 2002, paper no. 21) in reaching our decision.

The examiner argues that the preambles of the appellants' claims 1-7, 9-18, 27 and 28 ("A printing ink composition") and claim 25 ("A printing varnish") are merely intended use and are to be given little or no patentable weight because the claims do not depend on the preamble for completeness (answer, pages 5-6 and 13-14).

The effect preamble language is to be given is determined by reviewing the entirety of the appellant's disclosure to gain an understanding of what the appellant actually invented and intended to encompass by the claim. See *Corning Glass Works v. Sumitomo Electric*, 868 F.2d 1251, 1257, 9 USPQ2d 1962, 1966 (Fed. Cir. 1989).

The appellant's specification states that "[t]he present invention relates to printing ink compositions and methods using printing inks, especially lithographic printing inks" (page 1, lines 5-6), "[t]he invention provides a printing ink composition that includes a branched vinyl resin" (page 6, lines 10-11), "[t]he invention also provides a method of making an ink composition with the branched vinyl resin" (page 7, lines 9-10), "[t]he inks of the invention include a vinyl polymer that is branched but usefully soluble" (page 8, lines 8-9), and "[a]lternatively, the compositions of the invention may be used

Appeal No. 2002-0701  
Application 09/201,269

as overprint lacquers or varnishes. ... an overprint lacquer or varnish may be considered to be a printing ink composition of the invention that has no opaque pigments" (page 20, line 24 - page 21, line 1 and page 21, lines 4-6). The examiner does not point out, and we do not find, where the specification indicates that what the inventor invented and intended to encompass by the claims is a branched vinyl resin *per se*, rather than a printing ink, overprint lacquer or varnish composition.

In *Corning Glass* the preamble was: "An optical waveguide". *Corning Glass*, 868 F.2d at 1256, 9 USPQ2d at 1965. The court stated that "contrary to Sumitomo's argument, the core and cladding limitations specifically set out in paragraphs (a) and (b) are not the only limitations of the claim. [citation omitted] The claim requires, in addition, the particular structural relationship defined in the specification for the core and cladding to function as an optical waveguide." *Corning Glass*, 868 F.2d at 1257, 9 USPQ2d at 1966. Likewise, in the present case the claims require not only the branched vinyl resin recited in the body of the claims, but also that this resin be present in a printing ink, overprint lacquer or varnish composition as set forth in the claims' preambles.

Appeal No. 2002-0701  
Application 09/201,269

The examiner argues that "[t]he broad disclosure of coating composition encompasses the use of printing inks or printing varnishes which are merely specific types of coating. That is, for instance, an ink is a type of coating composition in that an ink is used to coat a substrate in order to produce an image" (answer, pages 14-15).

"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*, 868 F.2d at 1255-56, 9 USPQ2d at 1965. Even if "coating composition" were a genus encompassing "printing ink composition" or "printing varnish", which the examiner has not established, the examiner has not pointed out where Campbell discloses, either expressly or under principles of inherency, a printing ink composition or a printing varnish.

For the above reasons we find that the examiner has not established a *prima facie* case of anticipation over Campbell of the invention claimed in the appellant's claims 1-7, 9-18, 25, 27 and 28.

Appeal No. 2002-0701  
Application 09/201,269

*Rejection of claim 8 under 35 U.S.C. § 103  
over Campbell in view of Carlick*

The portion of Carlick relied upon by the examiner (answer, pages 6-7) is the following:

The hard or tackifying resins that are suitable for use in the lithographic ink vehicles are those resins that are well known in the art of ink making for their excellent [sic] lithographic properties and good pigment wetting capabilities. These include alkyd resins, urethane-modified alkyd resins, rosin-modified phenolic resins, hydrocarbon resins, rosin esters, polyketones, and the like.

The examiner argues that it would have been obvious to one of ordinary skill in the art to add Carlick's resin to Campbell's branched polymer to produce an ink having good wetting ability (answer, page 7).

The examiner's argument is not persuasive because the examiner has not established that Campbell's teaching that the branched vinyl resins can be used to form effective coating compositions (col. 8, lines 43-44) would have fairly suggested, to one of ordinary skill in the art, using the resins to form a printing ink composition, particularly a printing ink composition having a branched vinyl resin in solution,<sup>6</sup> as required by the

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<sup>6</sup> Campbell teaches that an increase in weight average molecular weight and polydispersity typically correlates with formation of insoluble gels (col. 10, lines 3-4). The examiner merely argues that Campbell does not disclose the minimum

Appeal No. 2002-0701  
Application 09/201,269

appellant's claim 1 from which claim 8 depends, in combination with pigment particles which must be present for the examiner's argued benefit of Carlick's tackifying resin to be obtained.

Thus, we conclude that the examiner has not established a *prima facie* case of obviousness of the printing ink composition claimed in the appellant's claim 8 over Campbell in view of Carlick.

*Rejection of claims 19-22 under 35 U.S.C. § 103 over Houser or Puschak, in view of Margotte or Oshima*

Houser discloses hydrocarbon-soluble resins which are useful as binders in gravure printing inks and are the solution polymerization reaction product of 1) an alkyl or cycloalkyl ester of acrylic or methacrylic acid, 2) styrene or alkylated styrene, 3) a carboxyl-containing monomer, and where desired, 4) up to about 2.0 wt% of a difunctional ethylenically unsaturated monomer (col. 2, lines 55-62; col. 3, lines 6-21). Houser teaches that "it is preferred to utilize a free-radical polymerization initiator. The type of free-radical polymerization initiator suitable for use in the reaction is

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molecular weight and polydispersity at which insoluble gel formation takes place (answer, page 17). The examiner does not explain how Campbell would have fairly suggested, to one of ordinary skill in the art, a solution of a branched vinyl polymer having a polydispersity of at least about 15.

known in the art to depend upon the desired temperature for the reaction" (col. 3, lines 49-52). One of Houser's exemplified free-radical polymerization initiators, di-tert-butyl peroxide (col. 3, line 54), is among the appellant's free-radical polymerization initiators (specification, page 13, line 10).

Puschak discloses a printing ink composition comprising a base and 1) a blend of a latex binder and a polyfunctional amine and/or 2) an amine modified latex binder (col. 2, lines 42-57). If desired, premature crosslinking or gelling of the latex binder is induced by including 0.1 wt% to 25 wt% of multiethylenically unsaturated monomers in the monomer mix used to form the binder (col. 5, lines 1-5). The polymerization reaction used to form the latex binder typically is initiated by conventional free radical initiators (col. 5, lines 21-26).

Margotte discloses a process for producing a polyacrylate resin having a residual acrylate monomer content of less than 0.1 wt%, based on resin solids, by preparing an initial polyacrylate resin having a residual monomer content of about 0.5 to 3 wt% using an initiator which preferably has a half-life between 0.5 minutes and 2 hours at the reaction temperature, and subsequently polymerizing this resin in the presence of a monomer

having a low vapor pressure, preferably maleic anhydride,<sup>7</sup> and a peroxide initiator to reduce the monomer content (col. 2, lines 10-16 and 28-29; col. 3, lines 38-39 and 52-58). Two disclosed initiators having a half-life between 0.5 minutes and 2 hours at the reaction temperature are tert-butylperoxyisopropyl carbonate (col. 3, line 45), which is one of the appellant's initiators (specification, page 13, line 22), and di-tert-butyl peroxide (col. 3, lines 45-46), which is one of the initiators of the appellant (specification, page 13, line 10) and Houser (col. 3, line 54).

Oshima discloses a resin composition comprising a polyphenylene ether resin, a thermoplastic polyester resin, and two components for compatibilizing these resins, one of which is an organic peroxide having a half life of one minute at temperatures ranging from 100° to 270°C (col. 2, lines 1-19; col. 7, lines 14-20). The resin composition is for use in making molded articles having high mechanical strength, especially high impact resistance (col. 1, lines 53-57).

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<sup>7</sup> Maleic anhydride is Margotte's only disclosed low vapor pressure monomer.

The examiner argues that Margotte "discloses the equivalence or interchangeability of t-butyl peroxide initiator, as disclosed by either Houser et al. or Puschak et al., with t-butyl peroxy isopropyl carbonate, as presently claimed (col. 3, lines 38-56)" (answer, page 8). Since Puschak discloses t-butyl hydroperoxide (col. 5, line 23) rather than Margotte's di-tert-butyl hydroperoxide (col. 3, lines 45-46), it appears that the examiner is arguing that Margotte teaches the equivalence of t-butyl peroxy isopropyl carbonate and t-butyl peroxides generally. This broad equivalence has not been established by the examiner. Moreover, even if such an equivalence existed for Margotte's polyacrylates which are used alone for non-high-duty industrial applications or are reacted with polyisocyanates to make polyurethane coatings for general industrial and automobile coatings (col. 3, line 66 - col. 4, line 2; col. 4, lines 27-30), the examiner has not established that such an equivalence would exist with respect to the preparation of the printing inks of Houser and Puschak.

The examiner points out that neither Houser nor Puschak explicitly discloses the amount of residual monomer resulting from the polymerization, and argues that it would have been obvious to one of ordinary skill in the art to use Margotte's

temperature, low vapor pressure monomer and peroxide initiator in Houser's and Puschak's polymerizations to produce a polymer having low residual monomer content and thereby to prevent, as taught by Margotte (col. 1, lines 37-40), toxic pollutants from being released into the environment (answer, pages 8-9). The use of Margotte's temperature and peroxide initiator, however, results in a residual monomer content of about 0.5 to 3 wt% (col. 3, lines 56-58). The lower residual monomer content is obtained by using a low vapor pressure monomer and peroxide initiator in a second radically-induced polymerization (col. 3, lines 59-62). The appellant's claim 19, in contrast, requires that the polymerization of the monomer mixture including at least one monomer having at least about two ethylenically unsaturated polymerizable bonds per molecule to form a branched vinyl resin results in less than about 0.5 wt% residual monomer. The examiner has not explained how Margotte would have fairly suggested, to one of ordinary skill in the art, obtaining the lower residual monomer content in this polymerization.

The examiner argues that Oshima discloses the equivalence and interchangeability of t-butyl peroxide initiators and t-butyl peroxy isopropyl carbonate initiators (answer, page 9). Apparently, by "t-butyl peroxide initiators" the examiner is

referring to all initiators that contain a t-butyl group. The examiner has not established that Oshima discloses equivalence and interchangeability of all such initiators and t-butyl peroxy isopropyl carbonate. Moreover, the examiner has not established that any equivalence and interchangeability of these initiators for Oshima's use, i.e., making high impact strength molded articles, would apply to Houser's or Puschak's polymerizations for making printing inks.

The examiner argues that in view of Oshima's teaching that using too much initiator compromises the mechanical and thermal properties of the composition (col. 7, lines 14-20), one of ordinary skill in the art would have used Oshima's initiators in Houser's and Puschak's polymerizations to control the mechanical and thermal properties of the polymer (answer, pages 9-10). The examiner, however, has not established that the mere teaching that too much initiator adversely affects the mechanical and thermal properties of Oshima's polymer for making a high mechanical strength molded article would have led one of ordinary skill in the art to use Oshima's initiators in Houser's and Puschak's polymerizations for making printing inks.

The examiner argues that "[a]lthough there is no disclosure of the amount of residual monomer, given that Oshima et al. disclose an initiator having half-life at polymerization temperature as presently claimed, it would have been obvious to one of ordinary skill in the art that such an initiator would intrinsically function so as to produce the amount of residual monomer as presently claimed" (answer, page 9). As discussed above, the examiner has not established that the applied references would have fairly suggested, to one of ordinary skill in the art, using Oshima's initiator in Houser's and Puschak's polymerizations. Moreover, the examiner has not established that even if that substitution were made, the mere fact that Oshima's organic peroxides have a half-life of 1 minute at a temperature between 100 and 270°C indicates that they necessarily would result in less than 0.5 wt% residual monomer in Houser's and Puschak's polymerizations. See *In re Oelrich*, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981) (An inherent characteristic must be inevitable, and not merely a possibility or probability).

For the above reasons we conclude that the examiner has not carried the burden of establishing a *prima facie* case of obviousness of the methods claimed in the appellant's claims 19-22 over Houser or Puschak, in view of Margotte or Oshima.

*Rejection of claims 23 and 24 under 35 U.S.C. § 103  
over Puschak in view of Campbell*

*Claim 23*

Puschak teaches that "[i]f desired, premature crosslinking or gelling of the copolymer is induced by adding to the monomer mix multi-ethylenically unsaturated monomers in the range of 0.1% to 25%, by weight based on the weight of the copolymer" (col. 5, lines 1-5). One of Puschak's multiethylenically unsaturated monomers is divinyl benzene (col. 5, line 8). The polymer in the latex binder has a molecular weight of 500 to 5,000,000, more preferably 3,000 to 500,000 (col. 5, lines 30-33).

Campbell teaches that "[p]olymerization of monomer mixtures containing diethylenically unsaturated monomers is frequently associated with formation of insoluble gels" (col. 7, lines 36-38), and that an increase in weight average molecular weight and polydispersity correlates with formation of insoluble gels (col. 10, lines 3-4). The weight average molecular weights at which there is gellation include values above 100,000 (col. 12, lines 56-58). The polydispersities corresponding to insoluble gel formation when the diethylenically unsaturated monomer is divinyl benzene in a high amount (21.16-22.93 wt%) are above 15, i.e., 25.75, 68.26 and 105.6 (col. 12, lines 55-67). In the

examples in which the polydispersities are 25.75, 68.26 and 105.6, divinyl benzene is reacted with two monoethylenically unsaturated monomers, i.e., styrene and butyl acrylate (col. 12, lines 21-22). Thus, Campbell's teaching that polymerizing the diethylenically unsaturated monomer with at least one monoethylenically unsaturated monomer produces a hyperbranched polymer (col. 3, lines 6-23) indicates that the polymers in these examples are hyperbranched.

The polymers of both Campbell (col. 3, lines 6-15; col. 12, lines 21-22) and Puschak (col. 4, line 33 - col. 4, line 8) are obtained by reacting divinyl benzene with at least one monoethylenically unsaturated monomer. Hence, Campbell's teaching that polymers having polydispersities of 25.75, 68.26 and 105.6 and insoluble gel formation are obtained when the diethylenically unsaturated monomer is divinyl benzene in an amount of 21.16-22.93 wt% would have fairly suggested, to one of ordinary skill in the art, obtaining Puschak's desired gelling by using Puschak's divinyl benzene in an amount at the upper end of Puschak's disclosed 0.1-25 wt% range (col. 5, line 4). As indicated by Campbell col. 3, lines 6-15), the polymer so produced would be branched.

The appellant argues that Campbell is nonanalogous art (brief, page 24). The test of whether a reference is from an analogous art is first, whether it is within the field of the inventor's endeavor, and second, if it is not, whether it is reasonably pertinent to the particular problem with which the inventor was involved. See *In re Wood*, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979). A reference is reasonably pertinent if, even though it may be in a different field of endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering the inventor's problem. See *In re Clay*, 966 F.2d 656, 659, 23 USPQ2d 1058, 1061 (Fed. Cir. 1992). Cleary's disclosure of a polymer that can be used as either a printing ink vehicle or a coating (col. 8, lines 48-56) indicates that 1) Campbell's polymer which is useful for making coatings (col. 8, lines 43-44) is within the appellant's field of endeavor of making printing ink vehicles and, 2) because of the matter with which Campbell deals, Campbell logically would have commended itself to the appellant's attention in considering the appellant's problem. Campbell, therefore, is analogous art.

Appeal No. 2002-0701  
Application 09/201,269

The appellant argues that the appellant claims inks in which the copolymers are in solution (reply brief, page 18). The appellant's claim 23, however, does not require that the printing ink composition is in solution form.

The appellant argues that the second Gelarden declaration and the Oberski declaration (both filed December 12, 2000, paper no. 12) show that the claimed invention produces unexpected results (brief, page 25). For the following reasons, we are not persuaded by this argument.

First, the appellant has not established that the relied-upon evidence provides a comparison of the claimed invention with the closest prior art. See *In re Baxter Travenol Labs.*, 952 F.2d 388, 392, 21 USPQ2d 1281, 1285 (Fed. Cir. 1991); *In re De Blauwe*, 736 F.2d 699, 705, 222 USPQ 191, 196 (Fed. Cir. 1984). The appellant has not identified what the appellant considers to be the closest prior art and compared the claimed invention to that prior art, or explained why the relied-upon comparative example is closer than the closest prior art to the claimed invention.

Second, it is not enough for the appellant to show that the results for the appellant's invention and the comparative examples differ. The difference must be shown to be an

Appeal No. 2002-0701  
Application 09/201,269

unexpected difference. See *In re Freeman*, 474 F.2d 1318, 1324, 177 USPQ 139, 143 (CCPA 1973); *In re Klosak*, 455 F.2d 1077, 1080, 173 USPQ 14, 16 (CCPA 1972). The declarants do not state that the comparison shows unexpected results. The appellant's counsel asserts that the results are unexpected, but arguments of counsel cannot take the place of evidence. *De Blauwe*, 736 F.2d at 705, 222 USPQ at 196; *In re Payne*, 606 F.2d 303, 315, 203 USPQ 245, 256 (CCPA 1979); *In re Greenfield*, 571 F.2d 1185, 1189, 197 USPQ 227, 230 (CCPA 1978); *In re Pearson*, 494 F.2d 1399, 1405, 181 USPQ 641, 646 (CCPA 1974).

Third, in the comparison relied upon by the appellant, many variables other than the polydispersity are varied, such as the type and amount of petroleum distillate fraction, the heating temperature, the amounts of styrene, stearyl methacrylate, methacrylic acid and tBICM75, and the time of addition of the monomers to the petroleum distillate fraction. Hence, the cause-and-effect relationship which the appellant desires to show between polydispersity and ink properties is lost in a welter of unfixed variables.<sup>8</sup> See *In re Heyna*, 360 F.2d 222, 228, 149 USPQ

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<sup>8</sup> Campbell teaches that the polydispersity increases as the divinylbenzene content increases from 0 to 22 wt% (table 7), and Puschak discloses reacting at least one monoethylenically unsaturated monomer with 0.1 to 25 wt% divinylbenzene (col. 4,

Appeal No. 2002-0701  
Application 09/201,269

692, 697 (CCPA 1966); *In re Dunn*, 349 F.2d 433, 439, 146 USPQ 479, 483 (CCPA 1965).

Fourth, the evidence presented in the declaration is not commensurate in scope with the claims. *See In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 778 (Fed. Cir. 1983); *In re Clemens*, 622 F.2d 1029, 1035, 206 USPQ 289, 296 (CCPA 1980). The appellant's claim 23 encompasses printing inks of any composition containing at least one branched vinyl resin having any composition, a polydispersity of at least about 15, and a weight average molecular weight of at least about 100,000. The example of the appellant's invention in the declarations, however, includes only one ink composition containing one polymer made using one branched vinyl resin. We find in the evidence of record no reasonable basis for concluding that the great number of materials encompassed by the appellant's claim would behave as a class in the same manner as the particular material tested. *See In re Lindner*, 457 F.2d 506, 508, 173 USPQ 356, 358 (CCPA 1972); *In re Susi*, 440 F.2d 442, 445-46, 169 USPQ 423, 426 (CCPA 1971).

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line 33 - col. 5, line 8). Hence, it reasonably appears that the only variable in the appellant's comparison should be the divinylbenzene content.

*Claim 24*

The appellant asserts that Puschak's ink is unsuitable for use in a one-fluid or two-fluid lithographic printing method (brief, page 25). This assertion is not convincing because Puschak teaches that the ink is useful in printing processes "such as" letter press, flexographic, and rotogravure (col. 10, lines 48-50). The "such as" indicates that the ink is suitable in printing processes generally, including lithographic printing, and the appellant has provided no evidence or reasoning to the contrary.

For the above reasons we conclude that the methods claimed in the appellant's claims 23 and 24 would have been obvious to one of ordinary skill in the art over the combined teachings of Puschak and Campbell.

*Rejection of claim 26 under 35 U.S.C. § 103  
over Tutt or Cleary, in view of Campbell*

Tutt discloses a colorless overprint composition and teaches that crosslinked or branched polymers can be included in the composition to increase the abrasion resistance of the overcoat layer (col. 2, lines 21-38; col. 3, lines 21-24 and 62-63). This teaching would have fairly suggested, to one of ordinary skill in the art, use of branched polymers which are known to be suitable

Appeal No. 2002-0701  
Application 09/201,269

in coating compositions, such as Campbell's branched polymers, some of which have polydispersities greater than 15 (abstract; col. 8, lines 43-44; tables 1, 3 and 7).

Cleary discloses aqueous dispersions of polymers which are made by reacting a monoethylenically unsaturated monomer with a multiethylenically unsaturated monomer and can be used to make printing ink binder resins or overprint varnishes as well as other coating compositions (abstract; col. 3, lines 57-60; col. 8, lines 48-56). This disclosure would have fairly suggested, to one of ordinary skill in the art, using monoethylenically unsaturated monomers and multiethylenically unsaturated monomers which were known to be suitable in making polymers for coating compositions, such as those of Campbell which produce branched polymers, some of which have polydispersities greater than 15 (abstract; col. 8, lines 43-44; tables 1, 3 and 7).

The appellant argues that Campbell is nonanalogous art and that the evidence in the second Gelarden declaration and the Oberski declaration overcomes any *prima facie* case of obviousness of claim 26 over Tutt or Cleary, in view of Campbell (brief, pages 25-26). These arguments are not convincing for the reasons given above regarding the rejection of claim 23.

Appeal No. 2002-0701  
Application 09/201,269

*DECISION*

The rejections of claims 1-7, 9-18, 25, 27 and 28 under 35 U.S.C. § 102(e) over Campbell, claim 8 under 35 U.S.C. § 103 over Campbell in view of Carlick, and claims 19-22 under 35 U.S.C. § 103 over Houser or Puschak, in view of Margotte or Oshima, are reversed. The rejections under 35 U.S.C. § 103 of claims 23 and 24 over Puschak in view of Campbell, and claim 26 over Tutt or Cleary, in view of Campbell, are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

*AFFIRMED-IN-PART*

	)	
EDWARD C. KIMLIN	)	
Administrative Patent Judge	)	
	)	
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	)	BOARD OF PATENT
TERRY J. OWENS	)	
Administrative Patent Judge	)	APPEALS AND
	)	
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Appeal No. 2002-0701  
Application 09/201,269

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