

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ELIZABETH OGREN,
CARLA SANTOS, ALAN KUNTZ
and GEORGE RIEHLE

Appeal No. 2003-1893
Application 09/770,018

ON BRIEF

Before PAK, KRATZ, and PAWLIKOWSKI, Administrative Patent Judges.
PAK, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1 through 18, which are all of the claims pending in the present application.

APPEALED SUBJECT MATTER

According to the appellants (Brief, page 3),

For convenience in handling of this appeal, all of the claims will be grouped and argued together. Thus, . . . , the rejected claims stand or fall together.

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Therefore, for purposes of this appeal, we select claim 1 from all of the claims on appeal and decide the propriety of the examiner's rejection based on this claim alone consistent with 37 CFR § 1.192(c)(7)(2001). Claim 1 is reproduced below:

1. A method of curing a fuser member suitable for use in an image forming system, comprising the steps of:

providing a fuser member having a substrate, a silicone rubber base coating disposed about the substrate, and an outer cross-linkable fluoropolymer coating:

exposing the polymer coating to infrared radiation for a selected curing time to stimulate specific bonds in the cross-linkable fluoropolymer coating to generate a cross-linked fluoropolymer.

PRIOR ART

The examiner relies on the following sole prior art reference:

Marvil et al. (Marvil) 5,998,034 Dec. 7, 1999

Alger, Polymer Science Dictionary, p. 97 (1st ed., New York, Elsevier Science Publishing Co., Inc., 1989)¹

REJECTIONS

Claims 1 through 18 stand rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103 as

¹The examiner is relying on this dictionary to explain the meaning of the term "cure" used in Marvil. **See In re Baxter Travenol Labs.**, 952 F.2d 388, 390, 21 USPQ2d 1281, 1284 (Fed. Cir. 1991) ("Extrinsic evidence may be considered when it is used to explain, but not to expand, the meaning of a reference.")

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unpatentable over the disclosure of Marvil.²

OPINION

We have carefully reviewed the claims, Specification and applied prior art, including all of the arguments advanced by both the examiner and the appellants in support of their respective positions. This review leads us to conclude that the examiner's Sections 102 and 103 rejections are well founded. Accordingly, we affirm these rejections for essentially those reasons set forth in the Answer. We add the following primarily for emphasis and completeness.

To establish anticipation under Section 102, a single prior art reference must disclose, either expressly or under the principles of inherency, each and every element of a claimed invention. **See *In re Spada***, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990); ***RCA Corp. v. Applied Digital Data Sys., Inc.***, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). This does not mean that additional extrinsic evidence cannot be relied upon to explain the meaning of that reference. **See *Baxter Travenol Labs***, 952 F.2d at 390, 21 USPQ2d at 1284; ***Scripps Clinic***

²The examiner has withdrawn the rejection of claims 1 through 18 under 35 U.S.C. § 103 as unpatentable over Chen, U.S. Patent No. 6113,830 issued on September 5, 2000.

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& Research Found. v. Genentech Inc., 927 F.2d 1565, 1576-77,
18 USPQ2d 1001, 1010 (Fed. Cir. 1991).

The appellants do not dispute the examiner's finding that Marvil discloses forming "a fuser member having a fluoropolymer coating on a compliant silicon rubber base layer bonded to a metallic insert" Compare the Answer, page 3, with the Brief, page 5 and the Reply Brief, page 1. We find that Marvil teaches that its fluoropolymer coating is made from the same fluoropolymer embraced by claim 1 on appeal. Compare Marvil, column 1, lines 32-35 and column 5, lines 10-60, with the appellants' Specification, page 7. Specifically, we find that Marvil teaches using fluoroelastomers, such as poly(propylene-tetrafluoroethylene) (PTFE), disclosed at page 7 of the appellants' Specification. See Marvil, column 1, lines 32-35 and column 5, lines 10-60. We, like the examiner, find that Marvil also teaches subjecting an outer fluoropolymer coating in an infrared oven for a selected period after it is sprayed on the primed pre-baked silicone rubber layer. Compare column 4, lines 1-22 with claim 1 on appeal and the appellants' Specification, page 8.

Although Marvil does not mention that its cured fluoropolymer is "cross-linked", see, e.g., column 4, lines 20-21

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and 47-48, we find that such cross-linking necessary or inherently occurs in Marvil's fluoropolymer since Marvil's fluoropolymer embraced by claim 1 on appeal is subjected to the same condition as that claimed as indicated *supra*. As the court in *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433-34 (CCPA 1977) stated:

Where, as here, the claimed prior art products are identical or substantially identical, or are produced by identical or substantially identical processes, the PTO can require an applicant to prove that the prior art products do not necessarily or inherently possess the characteristics of his claimed product. . . . Whether the rejection is based on "inherency" under 35 USC 102, on "prima facie obviousness" under 35 USC 103, jointly or alternatively, the burden of proof is the same, and its fairness is evidenced by the PTO's inability to manufacture products or to obtain and compare prior art products.

However, the appellants have not demonstrated that the cured fluoropolymer of Marvil is not cross-linked. It follows that Marvil would have rendered the claimed subject matter anticipatory within meaning of 35 U.S.C. § 102.

Even if we were to determine that Marvil does not provide sufficient teachings for inherency, our conclusion would not be altered. As indicated *supra*, Marvil does not expressly mention that its outer fluoropolymer coating is a "cross-linked" fluoropolymer coating. Marvil, however, teaches "curing" the

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outer fluoropolymer coating. See column 4, lines 21-22 and 45-48. As pointed out by the examiner (the Answer, page 4) and not disputed by the appellants (the Brief and the Reply Brief in their entirety), "cure is well known in the art to mean crosslinking of a polymer. . . ." Indeed, the Polymer Science Dictionary referred to by the examiner defines the term "cure" as follows (page 97):

Cure (1) The process of deliberately crosslinking a polymer to improve its properties, especially the mechanical properties such as stiffness

Thus, we concur with the examiner that Marvil, as explained by the Polymer Science Dictionary, fully describes the claimed subject matter within the meaning of 35 U.S.C. § 102.

The appellants argue that the fluoropolymer described in Marvil is not "cross-linked". See the Brief and the Reply Brief in their entirety. However, the appellants have not proffered any evidence to support this argument. **See In re De Blauwe**, 736 F.2d 699, 705, 222 USPQ 191, 196 (Fed. Cir. 1994); **In re Lindner**, 457 F.2d 506, 508, 173 USPQ 356, 358 (CCPA 1972). As such, we are not persuaded by this argument.

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In view of the foregoing, we affirm the examiner's decision rejecting the claims on appeal under Section 102 or Section 103.³

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

AFFIRMED

CHUNG K. PAK)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
PETER F. KRATZ)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
)	
)	
BEVERLY A. PAWLIKOWSKI)	
Administrative Patent Judge)	

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³Lack of novelty in the claimed subject matter is the ultimate of obviousness. *In re Fracalossi*, 681 F.2d 792, 794, 215 USPQ 569, 571 (CCPA 1982).

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