

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 45

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RATANA KANLUEN and BRIGITTE H. LIGHT

Appeal No. 95-1909
Application No. 07/563,887¹

ON BRIEF

Before WINTERS, OWENS and WEIMAR, Administrative Patent Judges.

WINTERS, Administrative Patent Judge.

DECISION ON APPEAL

This appeal was taken from the examiner's decision rejecting claims 1, 4 through 7 and 14. Claims 19 through 21, which are the only other claims remaining in the application,

¹ Application for patent filed August 6, 1990. According to applicants, this application is a continuation of Application No. 07/330,651, filed March 30, 1989, now abandoned.

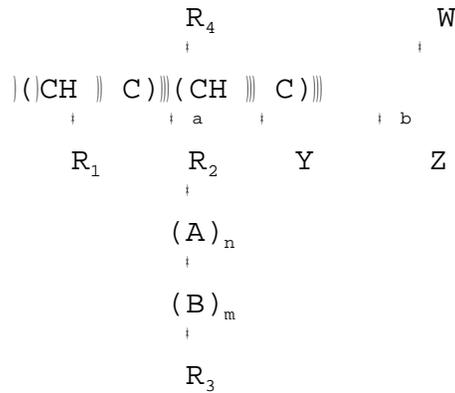
Appeal No. 95-1909
 Application No. 07/563,887

stand withdrawn from further consideration by the examiner as directed to a non-elected invention.

REPRESENTATIVE CLAIM

Claim 1, which is illustrative of the subject matter on appeal, reads as follows:

1. A deinking agent comprising a polyfunctional polymer of the formula:



wherein:

$R_1 = H, C_2-C_8 \text{ alkyl, or } -C-O^-;$

$R_2 = C_2-C_{12} \text{ alkylene, or } -C-O^-;$

$R_3 = H, \text{ or branched or straight chain } C_1-C_{22} \text{ alkyl or alkylphenol};$

$R_4 = H \text{ or } C_1-C_4 \text{ alkyl};$

$A = |(|CH_2|CH_2|O)|;$

Appeal No. 95-1909
Application No. 07/563,887

B = $\left(\begin{array}{c} | \\ \text{CH} \\ | \\ \text{CH}_2 \\ | \\ \text{O} \end{array} \right)_n$ (wherein R_5 is C_1 - C_4 alkyl or phenyl);
 R_5

W, Y = H or C_1 - C_4 alkyl; and

Appeal No. 95-1909
Application No. 07/563,887

Z is $\begin{array}{c} \text{O} \\ | \\ \text{C} \end{array} \text{O}^- \text{M}^+, -\text{SO}_3^- \text{M}^+, \begin{array}{c} \text{O} \\ | \\ \text{C} \end{array} \text{NHC}(\text{CH}_2)_x \text{R}_6 \text{SO}_3^- \text{M}^+$ (wherein: M is ammonium
or R_6

alkali metal, R_6 is C_1 - C_4 alkyl, and x is an integer of at least 1);

or $-\text{CH}_2\text{O}-\text{C}_6\text{H}_4-\text{SO}_3^- \text{M}^+$ (wherein M is ammonium or alkali metal);

a and b are positive integers of at least 1;

the ratio of a/b is at least 1/100;

n = a positive integer of 10-100; and

m = a positive integer of 0-50.

THE REFERENCE

The reference relied on by the examiner is:

Baur et al. (Baur) 4,814,102 Mar. 21, 1989

THE ISSUE

The issue presented for review is whether the examiner erred in rejecting claims 1, 4 through 7 and 14 under 35 U.S.C. § 102 as anticipated by or, in the alternative, under 35 U.S.C. § 103 as unpatentable over Baur.

DELIBERATIONS

Our deliberations in this matter have included evaluation and review of the following materials: (1) the instant

Appeal No. 95-1909
Application No. 07/563,887

specification, including all of the claims on appeal; (2) applicants' main Brief and Reply Brief before the Board; (3) the Examiner's Answer; and (4) the Baur patent cited and relied on by the examiner. We have not considered the Kanluen declaration, filed under the provisions of 37 CFR § 1.132 and attached to the Reply Brief. As stated in the communication mailed by the examiner January 12, 1995 (Paper No. 41), the declaration was not considered by the examiner because it was not timely filed.

On consideration of the record, including the above-listed materials but not including the Kanluen declaration, we reverse the examiner's prior art rejections.

DISCUSSION

Essentially, we agree with the reasons set forth in applicants' main Brief, page 4, last paragraph, through page 14, penultimate paragraph.

The claimed copolymers require a chain having at least 10 ethylene oxide groups, represented by $(A)_n$ in claim 1, on the moiety having subscript a. Baur does not disclose or suggest such a copolymer. On the contrary, in view of Baur's disclosed process of esterifying carboxylate polymers or

Appeal No. 95-1909
Application No. 07/563,887

copolymers after they are formed, it does not reasonably appear that the claimed and prior art products are identical or substantially identical. It does not reasonably appear that Baur prepares copolymers having at least 10 ethylene oxide groups added, as a chain, to one carboxyl site. In our judgment, therefore, Baur does not constitute sufficient evidence supporting a conclusion of prima facie anticipation or obviousness. The examiner's position to the contrary, notwithstanding, Baur is insufficient to shift the burden of persuasion to applicants, requiring them to prove by laboratory testing that the claimed copolymers patentably distinguish over the prior art copolymers.

The examiner's decision is reversed.

REVERSED

SHERMAN D. WINTERS)	
Administrative Patent Judge)	
)	
)	
)	
TERRY J. OWENS)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
ELIZABETH WEIMAR)	
Administrative Patent Judge)	

Appeal No. 95-1909
Application No. 07/563,887

Appeal No. 95-1909
Application No. 07/563,887

Mr. Russell R. Stolle
Huntsman Corp.
P.O. Box 15730
Austin, TX 78761