

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN H. PELTZ and GLENN H. PRICE

Appeal No. 95-2719
Application No. 08/090,676¹

ON BRIEF

Before KIMLIN, JOHN D. SMITH and WALTZ, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-4, all the claims in the present application. Claim 1 is illustrative:

1. A low smoke and flame retardant composition comprising a vinylidene fluoride polymer and from about 0.02

¹ Application for patent filed July 13, 1993.

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to about 2.0 percent by weight of said composition of calcium tungstate.

The examiner relies upon the following references as evidence of obviousness:

Taguchi et al. (Taguchi)	4,585,703	Apr. 29, 1986
Oka et al. (Oka)	4,696,989	Sep. 29, 1987
Hannecart	4,898,906	Feb. 6, 1990

As is readily apparent from illustrative claim 1 above, appellants' claimed invention is directed to the addition of calcium tungstate to a vinylidene fluoride polymer in order to render the polymer flame retardant along with a reduced smoke-generating capability.

Appealed claims 1-4 stand rejected under 35 U.S.C. § 103 as being unpatentable over Hannecart and Oka in view of Taguchi.

Upon careful consideration of the opposing arguments presented on appeal, we will not sustain the examiner's rejection.

Hannecart employs molybdenum derivatives, such as calcium molybdate, as a smoke reducer and flame retardant for vinylidene fluoride polymers. Recognizing that Hannecart provides no teaching or suggestion of utilizing appellants' calcium tungstate in composition with a vinylidene fluoride

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polymer, the examiner relies upon Taguchi. However, Taguchi is directed to a method of treating wood or a woody material to improve its water resistance, weatherability, rustproofness, water-resistant and solvent-resistant fire retardancy, bug resistance, corrosion resistance and ease of processing (column 1, lines 5 et seq.). Taguchi's process entails treating the wood with a mixture or reaction product of a polymeric compound and a phosphonic acid compound and, optionally, the treatment composition may contain any one of a number of silicon-containing inorganic compounds, magnesium-containing inorganic compounds, calcium-containing inorganic compounds, etc. (column 1, lines 26-39). In a list of calcium-containing inorganic compounds that impart a higher level of fire retarding property to the woody material, Taguchi discloses calcium tungstate.

The flaw in the examiner's reasoning is that neither Taguchi, nor any other prior art of record, teaches or suggests the use of calcium tungstate as a flame retardant for a vinylidene fluoride polymer. Indeed, the examiner has presented no evidence that calcium tungstate is a flame retardant for any material other

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than wood. In the absence of any prior art teaching that calcium tungstate was a known flame retardant for, at minimum, polymeric materials, in general, there is no factual basis to support the examiner's legal conclusion that it would have been obvious for one of ordinary skill in the art to use calcium tungstate as a flame retardant for a vinylidene fluoride polymer. At best, the evidence of record may suggest that it might have been obvious to try calcium tungstate as a flame retardant for a vinylidene fluoride polymer. Manifestly, this is not the proper legal standard for determining obviousness within the meaning of 35 U.S.C. § 103.

The Oka patent cited by the examiner makes no mention of calcium tungstate. Regarding the examiner's application of Oka, we note the examiner's statement that "Hannecart is deemed the more relevant primary reference" (page 6 of Answer).

In conclusion, based on the foregoing, it is our judgment that the examiner has not established a prima facie case of obviousness for the claimed subject matter. Accordingly, the examiner's decision rejecting the appealed claims is reversed.

REVERSED

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EDWARD C. KIMLIN)	
Administrative Patent Judge)	
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JOHN D. SMITH)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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