

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte IQBAL AHMED, HENRY L. HSIEH
and AHMAD MORADI-ARAGHI

Appeal No. 95-3374
Application No. 08/103,644¹

ON BRIEF

Before WINTERS, METZ and HANLON, Administrative Patent Judges.
WINTERS, Administrative Patent Judge.

DECISION ON APPEAL

This appeal was taken from the examiner's decision rejecting claims 26 through 52. Claims 1 through 25, which are the only other claims remaining in the application, stand withdrawn from

¹ Application for patent filed August 9, 1993. According to appellants, this application is a division of Application No. 07/873,135, filed April 24, 1992, now U.S. Patent No. 5,270,382, issued December 14, 1993.

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further consideration by the examiner as directed to a non-elected invention.²

The references relied on by the examiner are:

Swanson	4,440,228	Apr. 3, 1984
Hutchins et al. (Hutchins)	5,203,834	Apr. 20, 1993

The previously entered rejection of claims 26 through 52 under the judicially created doctrine of obviousness-type double patenting has been withdrawn. See the Examiner's Answer, page 2, line 1. This means to say that claims 50 and 52 no longer stand rejected. The issue remaining for review is whether the examiner erred in rejecting claims 26 through 49 and 51 under 35 U.S.C. § 103 as unpatentable over Hutchins, considered alone or in combination with Swanson. This prior art rejection is reversed.

DISCUSSION

As correctly argued by appellants, neither Hutchins nor Swanson discloses or suggests the imidazolium monomer (a) recited in independent claim 26. Accordingly, neither Hutchins nor Hutchins considered with Swanson constitutes sufficient evidence

² In the proffered amendment filed June 1, 1994 (Paper No. 7), appellants proposed canceling non-elected claims 1 through 25. In the Advisory Action mailed June 10, 1994, the examiner stated that "upon the filing of an appeal, the proposed amendment will be entered." We observe, however, that the amendment has not yet been physically entered, so that non-elected claims 1 through 25 remain in the application.

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to support a conclusion of obviousness of claims 26 through 49
and 51.

The examiner's decision is reversed.

REVERSED

SHERMAN D. WINTERS)	
Administrative Patent Judge)	
)	
)	
)	
ANDREW H. METZ)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
ADRIENE LEPIANE HANLON)	
Administrative Patent Judge)	

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