

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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 WILLIAM J. TAYLOR, JOSEPH F. LESSAR,
LOUIS E. HALPERIN and ROBERT E. KRASKA

Appeal No. 95-5093
Application 08/047,132¹

ON BRIEF

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

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 and 3-7, all the claims remaining in the present application. Claim 1 is illustrative:

¹ Application for patent filed April 9, 1993. According to appellants, this application is a continuation-in-part of Application 07/879,252, filed May 1, 1992, now abandoned; which is a continuation-in-part of Application 07/419,881, filed October 11, 1989, now abandoned.

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1. A device for implantation in a human body in contact with body fluids comprising:

a container having an opening between the exterior and interior of said container;

an electrical terminal extending from the interior of said container through the opening in said container to the exterior of said container where it is subject to contact with body fluids, said electrical terminal consisting of a material selected from the group consisting of platinum, platinum-iridium alloys, titanium, niobium clad with titanium to a thickness in the range of 50 to 300 microinches, and tantalum clad with titanium to a thickness in the range of 50 to 300 microinches;

a glass insulator positioned around a portion of said terminal in sealing engagement with said terminal and said container, said glass insulator having a chemical composition consisting essentially of about 20 mole % Al_2O_3 , about 20 mole % CaO, between about 10 mole % and 15 mole % SiO_2 , between about 25 mole % and 40 mole % B_2O_3 , between about 0 mole % and 20 mole % MgO between about 0 mole % and 20 mole % BaO and between about 0 mole % and 10 mole % SrO; and

a sleeve or header attached to said container at said opening, said sleeve or header positioned between said glass insulator and said container around a portion of said glass insulator for receiving same in sealing engagement therewith, said sleeve or header comprising a metal selected from the group consisting of titanium and titanium alloys.

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

Kyle	4,421,947	Dec. 20, 1983
Taylor et al. (Taylor)	4,556,613	Dec. 3, 1985
Kraska et al. (Kraska)	4,678,868	Jul. 7, 1987

Randall D. Watkins et al. (Watkins), Chemical Abstracts
108:115770s

Watkins, Chemical Abstracts 108:59384e

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Watkins, "Development of CABAL glasses for Use in Lithium Ambient-Temperature Batteries," abstract, SAND--87-0393

Appellants' claimed invention is directed to an electrical device that is designed for implantation in a human body. The device comprises, inter alia, an electrical terminal consisting of a material, such as platinum, which extends through an opening in a container, and a glass insulator in sealing engagement with a portion of said terminal and said container. The glass insulator has a chemical composition consisting essentially of Al_2O_3 , CaO , B_2O_3 and SiO_2 . The glass composition may also contain MgO , BaO and SrO . The SiO_2 is present in an amount between about 10 mole % and 15 mole %.

Appealed claims 1 and 3-7 stand rejected under 35 U.S.C. § 103 as being unpatentable over Taylor in view of Kyle, three Watkins abstracts and Kraska.

Upon careful consideration of the opposing arguments presented on appeal, we concur with appellants that the examiner has failed to establish a prima facie case of obviousness for the claimed subject matter. Accordingly, we will not sustain the examiner's rejection.

The examiner states at page 5 of the Answer that "[t]he references do not disclose the exact glass composition used as the insulating material." We understand this statement to be

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applicable only to the Taylor and Kyle references discussed immediately before the statement. We say this because the examiner later states at page 6 of the Answer that "the artisan recognizes that CABAL 12 is the trade name for the glass which the applicants are claiming by their generic compositions in the instant claims."² The examiner also states at page 9 of the Answer that CABAL 12 is the same as the instant glass (see first full paragraph). According to the examiner, it would have been obvious for one of ordinary skill in the art to employ the glass sealant CABAL 12 in manufacturing a device of the type claimed.

The fundamental error in the examiner's position is that CABAL 12 is not disclosed as containing any SiO₂, let alone the 10-15 mole % required by the appealed claims. This point is urged by appellants at page 12 of the principal Brief, first paragraph. Accordingly, since none of the applied references teach a glass insulator of the claimed composition, and the examiner has not established on this record why one of ordinary skill in the art would have found it obvious to modify the CABAL 12 composition of Watkins by including 10-15 mole % of SiO₂ in making a device for implantation in a human body, we are constrained to conclude that the examiner has not met her initial

² CABAL 12 is the glass composition disclosed in the three Watkins abstracts.

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burden of establishing a prima facie case of obviousness for the claimed subject matter.

Accordingly, the examiner's decision rejecting the appealed claims is reversed.

REVERSED

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

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Medtronic, Inc.
7000 Central Avenue N.E.
Minneapolis, MN 55432