

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GARY J. CAPONE and HENRY G. CHIN

Appeal No. 96-0892
Application No. 08/264,870¹

ON BRIEF

Before CAROFF, KIMLIN and WEIFFENBACH, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-13, all the claims in the present application. Claim 1 is illustrative:

1. A fiber formed from an acrylonitrile polymer, said

¹ Application for patent filed June 24, 1994.

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fiber comprising a delustrant and an optical brightener, wherein said fiber is characterized by a brightness value of at least about 79.

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

Mathes et al. (Mathes)	4,307,152	Dec. 22, 1981
Hähnke et al. (Hähnke)	4,607,071	Aug. 19, 1986

As is readily apparent from illustrative claim 1, appellants' claimed invention is directed to an acrylonitrile polymer comprising a delustrant and an optical brightener. The delustrant can be titanium dioxide while the optical brightener can be a benzimidazole or derivative thereof. The claimed fiber has a brightness value of at least about 79. According to appellants, "[t]he fibers of the present invention surprisingly achieve optical characteristics similar to cotton and superior to prior art synthetic fibers without application of the undesirable bleaching steps described above" (page 2 of Brief).

Appealed claims 1-13 stand rejected under 35 U.S.C. § 103 as being unpatentable over Hähnke in view of Mathes.

Upon careful consideration of the opposing arguments presented on appeal, we concur with appellants that the applied prior art fails to establish a prima facie case of

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obviousness for the claimed subject matter. Accordingly, we will not sustain the examiner's rejection.

The examiner relies upon Hähnke for disclosing an acrylonitrile polymer comprising a titanium dioxide delustrant and a benzimidazole optical brightener. However, the flaw in the examiner's reasoning is that although Hähnke discloses a class of dyestuffs that may comprise a benzimidazole moiety, the examiner has not established that the referenced dyestuffs qualify as optical brighteners. Appellants cite the Man-Made Fiber and Textile Dictionary for the art-recognized definitions of "dyestuff" and "optical brightener" (see page 5 of Brief). According to appellants, a "dyestuff" is defined as "substances which add color to textiles by absorption into the fiber," whereas "optical brightener" is defined as "a colorless compound which, when applied to fabric, absorbs the ultraviolet rays in light and emits them in the visible spectrum." Unfortunately, the examiner has not addressed this cogent argument made by appellants. Consequently, in the absence of any factually-based rationale by the examiner that the benzimidazole-containing dyestuffs of Hähnke meet the definition of an optical brightener, we must conclude that the

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examiner has not made out a prima facie case of obviousness for appellants' claimed invention.

Appellants devote the second section of their Brief to the argument that the comparative data found in their specification is evidence of nonobviousness, i.e., unexpected results. On the other hand, we have reviewed the Examiner's Answer in vain for any response to appellants' argument or analysis of the specification data. This lack of response by the examiner, in and of itself, warrants a summary reversal of the examiner's rejection. In any event, since we find that the examiner has not established a prima facie case of obviousness, we decline to address the probative value of appellants' specification data.

As a final point, we note that the examiner has limited the search of the claimed invention to Class 524. Perhaps, the examiner would find that a search of the textile arts would be fruitful.

In conclusion, based on the foregoing, the examiner's decision rejecting the appealed claims is reversed.

REVERSED

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MARC L. CAROFF)	
Administrative Patent Judge)	
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EDWARD C. KIMLIN)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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)	
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