

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHRISTIAN WEBER, JURGEN GRUN and ELKE WASMER

Appeal No. 96-2102
Application No. 08/119,205¹

ON BRIEF

Before GARRIS, OWENS and WALTZ, Administrative Patent Judges.
GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the refusal of the examiner to allow claims 9 through 37 and 39 as amended subsequent to the final rejection. The only other claims

¹ Application for patent filed September 22, 1993.

Appeal No. 96-2102
Application No. 08/119,205

remaining in the application, which are claims 38, 40 and 41, stand withdrawn from further consideration by the examiner.

The subject matter on appeal relates to a reagent kit for the production of synthetic resin bodies for bonding and anchoring a fastening element which includes a preaccelerated reaction mixture comprising from 51.0 to 100.00 parts by weight of monomeric 2,2-bis[4(methacryloxyethoxy)phenyl] propane also known on this record via the acronym BPAM. This appealed subject matter is adequately illustrated by independent claim 9 which reads as follows:

9. Reagent kit for the production of synthetic resin bodies for bonding and anchoring a fastening element in a fixing base, the reagent kit comprising a cartridge having a plurality of chambers, said chambers including:

(a) a preaccelerated reaction mixture comprising from 51.0 to 100.00 parts by weight of monomeric 2,2-bis[4(methacryloxy-ethoxy)phenyl] propane and an accelerator;

(b) a curing agent component of an organic peroxide; and

(c) a filler component,

wherein the curing agent component (b) and the reaction mixture (a) are each contained in a respective said chamber prior to the use of said reagent kit.

The references relied upon by the examiner as evidence of obviousness are:

Appeal No. 96-2102
Application No. 08/119,205

Kozuka et al. (Kozuka) 1992	5,098,973	Mar. 24,
Hense et al. (Hense) 1992	5,157,072	Oct. 20,

Appeal No. 96-2102
Application No. 08/119,205

All of the claims on appeal are rejected under 35 U.S.C. § 103 as being unpatentable over Hense in view of Kozuka. According to the examiner, "[i]n view of Kozuka, it would have been obvious to include BPAM in the packaged compositions taught by Kozuka [sic, Hense] in order to improve water resistance" (Answer, pages 2-3).

This rejection cannot be sustained.

As correctly pointed out by the appellants, the Hense patent (similar to appealed claim 9) is directed to compositions useful as borehole-filling masses for anchoring a fastening element, whereas the Kozuka patent is directed to compositions useful as a material for coating floors. In light of the disparate purposes of these respective compositions, we agree with the appellants' ultimate conclusion that it would not have been obvious for one with ordinary skill in the art to combine the disclosures of Hense and Kozuka in the manner proposed by the examiner. Further, Hense's teaching at lines 54 through 62 in column 3 militates against the examiner's obviousness position for the reasons explained in the Reply Brief (to which the examiner has not responded). In addition to the foregoing, we share the

Appeal No. 96-2102
Application No. 08/119,205

appellants' general viewpoint that the examiner has failed to establish on this record a prima facie case of obviousness with respect to the amounts of BPAM required by appealed claim 9. Indeed, we find in the Answer no exposition by the examiner as to why the applied references would have suggested such amounts to an artisan with ordinary skill.

For the above stated reasons, the examiner's § 103 rejection of claims 9 through 37 and 39 as being unpatentable over Hense in view of Kozuka cannot be sustained.

The decision of the examiner is reversed.

REVERSED

BRADLEY R. GARRIS)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
TERRY J. OWENS)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
THOMAS A. WALTZ)	

Appeal No. 96-2102
Application No. 08/119,205

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