

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte AZIZ EL SAYED, EDGAR OSTLINNING,
ALBAN HENNEN, GEORG HEGER, WERNER NIELINGER,
KARSTEN-JOSEF IDEL, KLAUS SOMMER
and RAYMOND AUDENAERT

Appeal No. 96-2103
Application 08/194,515¹

ON BRIEF

Before WEIFFENBACH, ELLIS and OWENS, **Administrative Patent Judges.**

ELLIS, **Administrative Patent Judge.**

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the final rejection of claims 11, 14, 16 through 18, 20 and 21, all the claims pending in the application. Claims 1 through 10, 12, 13, 15 and 19 have been canceled.

¹ Application for patent filed February 10, 1994.

Claims 11 and 21 are illustrative of the subject matter on appeal and read as follows:

11. A thermally stable, weather-resistant polyamide molding composition based on aliphatic or aromatic polyamides, produced by polymerization in the presence of 10 to 5000 ppm, based on composition, of an ionic or complexed copper stabilizer selected from the group consisting of CuBr, CuI, CuCl, Cu carbonate, Cu hydroxycarbonate, CuCN, Cu naphthenate, and copper complexes based on amines, phosphines, phenols or cyanides, which composition contains finely-divided, elemental copper in colloidal form produced in situ from said copper stabilizer by the addition, before or during said polymerization, of 10 to 5000 ppm, based on composition, of a reducing agent selected from the group consisting of hypophosphite salts and salts of dithionic acids.

21. A method of preparing a stable, weather-resistant polyamide molding composition, which comprises polymerizing the polyamide in the presence of 10 to 5000 ppm, based on composition, of an ionic or complexed copper stabilizer selected from the group consisting of CuBr, CuI, CuCl, Cu carbonate, Cu hydroxycarbonate, CuCN, Cu naphthenate, and copper complexes based on amines, phosphines, phenols or cyanides, and in the presence of 10 to 5000 ppm, based on composition, of a strong reducing agent selected from the group consisting of hypophosphite salts and salts of dithionic acid, whereby the reduction of the copper compound forms colloidal copper in situ in the polyamide.

The references relied on by the examiner are:

Stamatoff	2,705,227	Mar. 29, 1955
Watanabe et al. (Watanabe)	3,280,052	Oct. 18, 1966
Kelmchuk	3,691,131	Sep. 12, 1972
Plischke et al. (Plischke)	5,851,466	July 25, 1989

Hackh's Chemical Dictionary, Fourth Edition, pages 222-23 (1969).

All the claims stand rejected under 35 U.S.C. § 103 as being unpatentable over Stamatoff, Watanabe, Kelmchuk, Nakamura, Plischeke and Hachk's Chemical Dictionary.²
We **reverse**.

Background and Discussion

As indicated in the claims above, the appellants' invention is directed to a thermal stable, weather-resistant polyamide molding composition which comprises an aliphatic or aromatic polyamide, a copper stabilizer and a reducing agent, and a method of making said composition. According to the specification, "[p]olyamide molding compounds are high-quality thermoplastics which are distinguished by high heat resistance, very good mechanical properties, high toughness, high resistance to chemicals and ready processability." Specification, p. 1, lines 6-10. Such compounds are said to be useful in the electrical, construction, furniture and automotive industries. *Id.*, lines 21-24.

Although the examiner states that she has based her conclusion of obviousness on

² We note that on p. 3 of the Answer the examiner has rejected canceled claims 1 through 10 as being unpatentable over the applied prior art. In addition, the examiner points to the limitations in claim 1 on p. 6 of the Answer. However, since in the statement of the "Status of the Claims" on p. 1 of the Answer, the examiner recognizes that the present appeal involves claims 11, 14, 16 through 18, 20 and 21, we presume that the statement of rejection, and p. 6 of the Answer, contain inadvertent errors. Accordingly, we have considered the examiner's rejection and comments as being directed to claims 11, 14, 16 through 18, 20 and 21.

the teachings of Stamatoff, Watanabe, Kelmchuk, Nakamura, Plischeke and Hachk's Chemical Dictionary, she has limited her discussion to Stamatoff, Watanabe, Kelmchuk and Hachk's Chemical Dictionary, only. Accordingly, we will do the same.

To that end, we note that Stamatoff discloses synthetic, linear polyamide compositions which are stabilized by incorporating a copper compound (e.g., copper acetate), "a halogen compound, and a phosphorus compound from the group consisting of inorganic phosphorous acids and alkali metal salts thereof; also effective are aryl phosphites and phosphates, and aralkyl phosphites and phosphates." Stamatoff, col. 2, lines 24-28. Kelmchuk discloses synthetic polyamide compositions comprising a hindered phenolic compound, a copper compound (in the form of a copper salt of an organic acid; e.g., copper acetate), a metal halide, and a metal hypophosphite. Kelmchuk, col. 1, lines 1-35. Watanabe discloses polyamide compositions comprising a copper compound (e.g., copper stearate, copper acetate, and copper halides), and a sulfur-containing compound (e.g., acid sodium sulphite, sodium thiosulfate, sodium sulfide, sodium thiocyanate, etc.). Said compositions are said to have improved thermal and color stability.

After summarizing the teachings of the applied prior art, the examiner states:

Accordingly, the prior art as evinced by Stamatoff's disclosure relates that

soluble copper compounds used as thermal stabilizers for polyamides are benefited by further addition of alkali metal halide **and** a phosphorus compound which Kelmchuk relates can be a **hypophosphite salt**. Watanabe relates that soluble copper compounds which are thermal stabilizers for polyamides are more improved in their coloring by utilizing inorganic sulfur compounds which are devoid of sulfate ions as Hackh's Chemical Dictionary is shown to typify metal salts of dithionic acid [Answer, p. 5, para. 1].

We find this position untenable. At best, we find that the examiner has related the teachings of the references to each other, but she has failed to indicate why, in view of these teachings, it would have been obvious **to one of ordinary skill in the art** to arrive at the claimed invention. The examiner has overlooked the fact that it is the references which must suggest (i) the combination of an aliphatic or aromatic polyamide with one of the copper stabilizers recited in the claims and a reducing agent selected from the group consisting of hypophosphite salts and salts of dithionic acids, and (ii) a method of making a polyamide molding composition using the claimed elements. That is, the combined teachings of the references must suggest the claimed composition and method of making the same. Here, however, we find that the examiner's statements indicate that these suggestions are only in the appellants' disclosure. Accordingly, we find that the examiner has relied on impermissible hindsight in making her determination of obviousness. ***In re Fritch, supra; Interconnect Planning Corp. v. Feil***, 774 F.2d 1132, 1138, 227 USPQ 543, 547 (Fed. Cir. 1985) ("It is impermissible to engage in hindsight reconstruction of the claimed invention, using the applicant's structure as a template and selecting elements

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from references to fill the gaps”). **W.L. Gore & Assocs. v. Garlock, Inc.**, 721 F.2d 1540, 1553, 220 USPQ 303, 312-313 (Fed. Cir. 1983), **cert. denied**, 469 U.S. 851 (1984)(“To imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher”). A conclusion of obviousness must be based on evidence, not unsupported arguments. **In re Freed**, 425 F.2d 785, 788, 165 USPQ 570, 572 (CCPA 1970); **In re Warner**, 379 F.2d 1011, 1014-17, 154 USPQ 173, 176-78 (CCPA 1967), **cert. denied**, 389 U.S. 1057 (1968).

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Accordingly, the decision of the examiner is reversed.

REVERSED

CAMERON WEIFFENBACH)
Administrative Patent Judge)
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JOAN ELLIS) BOARD OF PATENT
Administrative Patent Judge) APPEALS AND
) INTERFERENCES
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TERRY J. OWENS)
Administrative Patent Judge)

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Connolly and Hutz
P. O. Box 2207
Wilmington, DE 19899-2207