

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HERBERT D. STROUD, JR. and PAUL R. CADMUS

Appeal No. 1997-0312
Application 08/371,311¹

ON BRIEF

Before KIMLIN, OWENS and WALTZ, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 and 4-14, all the claims remaining in the present application. Claim 1 is illustrative:

¹ Application for patent filed January 11, 1995. According to appellants, this application is a continuation of application 08/118,705, filed September 9, 1993, now abandoned.

1. A monofilament comprising a blend of:

a polyester consisting essentially of a condensation product of a polyhydric alcohol component of 1,4-cyclohexane-dimethanol, and a hexacarboxylic dicarboxylic acid; a polyamide; and a polyolefin.

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

Eagles et al. (Eagles)	5,169,499	Dec. 08, 1992
Sham et al. (Sham)	5,270,401	Dec. 14, 1993

Appellants' claimed invention is directed to a monofilament comprising a blend of the recited components, i.e., a specific polyester, a polyamide and a polyolefin. The claimed monofilament finds utility in making fabrics for papermaking machinery.

Appealed claims 1 and 4-14 stand rejected under 35 U.S.C. § 103 as being unpatentable over Sham, taken alone, or in combination with Eagles.

Upon careful consideration of the opposing arguments presented on appeal, we agree with appellants that the applied prior art fails to establish a *prima facie* case of obviousness for the claimed subject matter. Accordingly, we will not sustain the examiner's rejection.

We agree with the examiner that the claim language "consisting essentially of" does not exclude the polyester of Sham that may contain as little as 1% by weight of an

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aliphatic dimer fatty acid, especially since the blend of Sham may comprise as much as 90 parts by weight of a polyester that is not modified with a dimer fatty acid. We also concur with the examiner that it would have been obvious for one of ordinary skill in the art to prepare the polyester of Sham by using the 1,4-cyclohexane-dimethanol of Eagles as the diol component. However, we are in agreement with appellants that the disclosure of Sham, considered alone or in combination with Eagles, does not teach or suggest the presently claimed polyolefin as a component of the blend. While it is the examiner's position that Sham teaches the use of polyolefins at column 3, lines 10-14 and, also, at column 5 (ingredients g,q,t,u), we agree with appellants that Sham's disclosure of "an adduct of a diene polymer or an ethylene-propylene copolymer to maleic anhydride or a diene polymer or ethylene-propylene copolymer substituted with an amino, carboxyl, acid anhydride or hydroxyl group" (column 3, lines 10-14), is not a disclosure of a polyolefin but, rather, various derivatives of polyolefins. When ingredients g,q,t and u of Sham are considered in light of the general teaching at col. 3, lines 10-14, we are persuaded that one of ordinary skill in the art would not have interpreted Sham as disclosing a polyolefin as a component of the blend, as the term polyolefin is generally defined in chemical literature. Hence, since Eagles is not relied

upon for teaching the inclusion of a polyolefin in a blend of the type claimed, we find that the examiner has not cited sufficient prior art evidence to support the legal conclusion that it would have been obvious for one of ordinary skill in the art to incorporate a polyolefin in a blend comprising the claimed polyester and polyamide.²

One final point remains. In the paragraph bridging pages 8 and 9 of appellants' specification, we are told that the term "polyolefin" includes materials that are commercially available under the trade name of "ASPUN[®]." Furthermore, in the EXAMPLE at page 11 of appellants' specification, ASPUN® 6830A is described as an ethylene -1-octene copolymer with 0.1% maleic anhydride and 0.5% calcium stearate. Since appellants' position on appeal is that the claimed polyolefin is not an adduct of an olefin copolymer to maleic anhydride, we presume ASPUN® 6830A is an admixture of ethylene-1-octene-copolymer, maleic anhydride and calcium stearate. If this is not the case, it would seem that this issue should be resolved upon return of this application to the examiner.

² Appellants state at page 2 of the brief that "[t]he instant formulation is an improvement over a monofilament comprising a polyester (terephthalic acid and 1,4 dimethylcyclohexane) and polyamide." As a result, we presume that appellants' invention resides in adding a polyolefin to a blend comprising the other two components recited in appealed claim 1.

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

REVERSED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
TERRY J. OWENS)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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)	
THOMAS A. WALTZ)	
Administrative Patent Judge)	

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