

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

Ex parte BRIAN J. BRIDDELL,  
DENNIS K. FISHER, and JAMES F. WOOD

---

Appeal No. 1997-4433  
Application No. 08/414,381

---

ON BRIEF

---

Before JOHN D. SMITH, GARRIS, and LIEBERMAN, Administrative Patent Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claims 1 through 16. The only other claims in the application, which are claims 17 through 27, stand withdrawn from further consideration by the examiner.

Appeal No. 1997-4433  
Application No. 08/414,381

The subject matter on appeal relates to an adhesive composition for adhering together roofing materials comprising a rubbery polymer and a compatible tackifier wherein the rubbery polymer comprises a blend of from about 12% or less by weight of the total composition of an ethylene-propylene-diene terpolymer. This composition results in a peel strength of at least 1000 grams/cm at room temperature, and at least 500 grams/cm at 70EC. Further details of this appealed subject matter are set forth in representative independent claim 1 which reads as follows:

1. A cured adhesive composition for adhering together EPDM roofing materials comprising a) a rubbery polymer comprising a blend of (i) from about 12% or less by weight of the total composition of an ethylene-propylene-diene terpolymer, (ii) a halogenated butyl rubber or a halogenated copolymer of p-methylstyrene and isobutylene, and (iii) polyisobutylene, and b) a compatible tackifier, said composition being fully vulcanized prior to use by heating to achieve essentially full crosslinking of the components, said composition having a peel strength of at least 1000 grams/cm at room temperature, at least 500 grams/cm at 70EC, and support a static load of at least 300 grams at 70EC.

The reference relied upon by the examiner as evidence of obviousness is:

Briddell et al. (Briddell)      5,242,727      Sep. 7, 1993

All of the appealed claims stand rejected under 35 U.S.C. § 103 as being unpatentable over Briddell.

Appeal No. 1997-4433  
Application No. 08/414,381

This rejection cannot be sustained.

We agree with the appellants that the applied reference contains no teaching or suggestion of the appealed claim requirement for a rubbery polymer comprising a blend of from about 12% or less by weight of the total composition of an ethylene-propylene-diene terpolymer.

As indicated by the appellants on page 4 of the subject specification and emphasized by the examiner in the answer, Run 6 in the Example 1 table of the Briddell patent discloses an adhesive composition having a quantity of EPDM rubber (which corresponds to the here claimed terpolymer) that is equal to 16% of the total composition. According to the examiner, "the claim language 'about 12%' EDPM [sic, EPDM] is rendered obvious by the disclosure of about 16% EDPM [sic, EPDM] at Run 6 of [Briddell's] Example 1" (answer, page 4). We cannot agree.

In proceedings before the Patent and Trademark Office, claims in an application are to be given their broadest reasonable interpretation consistent with the specification and are read in light of the specification as they would be interpreted by one of ordinary skill in the art. In re Sneed,

Appeal No. 1997-4433  
Application No. 08/414,381

710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983). As so interpreted, it is clear that the appealed claim requirement of "about 12% or less" does not encompass the 16% EPDM concentration in Run 6 of the Briddell patent. This is particularly evident in light of the appellants' unambiguous disclosure that their "about 12% or less" concentration is an improvement, vis-à-vis peel strength, over the 16% concentration of Briddell. Furthermore, we find nothing in this applied reference which would have suggested lowering patentee's 16% EPDM concentration to a level of "about 12% or less" as required by the appealed claims notwithstanding the examiner's contrary view.

In this latter regard, the examiner states that, "if one were to formulate the rubbery blend [in Briddell's composition] of equal parts of each and utilize the lower amount, i.e., 35% based on the total composition, then one would have an amount of EPDM based on the total composition as that instantly claimed" (answer, page 4). We agree with the appellants, however, that patentee's disclosure contains no suggestion for such a modification and specifically no suggestion of a rubbery blend comprising equal parts of the

Appeal No. 1997-4433  
Application No. 08/414,381

blend ingredients. Although the examiner appears to regard lines 29 through 35 in column 3 of Briddell as suggesting this modification (see the paragraph bridging pages 1 and 2 of the supplemental answer), we simply cannot agree with this opinion. From our perspective, nothing in this section of patentee's disclosure would have suggested the modification in question.

Finally, the examiner points to the table in Example 1 of Briddell and states that "there appears to be a relationship established between the low amount of EPDM and the increase in peel strength" (answer, page 5). This is clearly incorrect, while we appreciate the examiner's point that the 16% EPDM concentration in Run 6 yields the highest room temperature peel strength (which is somewhat below the here claimed range), it also yields the lowest 70EC temperature peel strength (which is far below the here claimed range). In addition, a study of the other EPDM concentrations in patentee's other Runs (i.e., Runs 1-5 and 7) militates against the examiner's viewpoint that Briddell's table establishes a relationship between lower amounts of EPDM and increased peel strength.

Appeal No. 1997-4433  
Application No. 08/414,381

For the above stated reasons, we cannot sustain the examiner's section 103 rejection of the appealed claims as being unpatentable over Briddell.

Appeal No. 1997-4433  
Application No. 08/414,381

The decision of the examiner is reversed.

REVERSED

	John D. Smith	)	
	Administrative Patent Judge	)	
		)	
		)	
		)	
	Bradley R. Garris	)	BOARD OF
PATENT		)	
	Administrative Patent Judge	)	APPEALS AND
		)	INTERFERENCES
		)	
		)	
	Paul Lieberman	)	
	Administrative Patent Judge	)	

BRG:tdl

Appeal No. 1997-4433  
Application No. 08/414,381

KILLWORTH, GOTTMAN, HAGAN & SCHAEFF, L.L.P.  
One Dayton Centre, Suite 500  
One South Main Street  
Dayton, OH 45402-2023