

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 43

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

Ex parte SADAO NISHIBORI and YUZO ITAKURA

---

Appeal No. 1998-1390  
Application 08/607,441

---

HEARD: March 13, 2001

---

Before JOHN D. SMITH, KRATZ, and TIMM, Administrative Patent Judges.

JOHN D. SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal pursuant to 35 U.S.C. § 134 from the final rejection of claims 31-69.

Claim 31 is representative and is reproduced below:

31. Wood meal comprising:

a) wood meal granules formed by crushing raw material wood into treated wood meal and pulverizing the treated wood meal under the frictional forces of a plurality of balls such that the resulting wood meal granules have

Appeal No. 1998-1390  
Application 08/607,441

substantially round shape without rugged edges and without elongated protruding portions, thereby increasing the bulking density of the treated wood meal;

b) plurality of particles fixed on the surfaces of said wood meal granules by an external pressing force;

c) said particles being smaller than said wood meal granules such that said wood meal granules are coated with said particles; and

d) said particles being harder than said wood meal granules such that said particles are pressed into said wood meal granule surfaces from the application of the external pressing force.

The references of record relied upon by the examiner are:

Nara et al. (Nara)	4,915,987	Apr. 10,
1990		
Motegi et al. (Motegi)	4,687,793	Aug. 18,
1987		

The appealed claims stand rejected under 35 U.S.C. § 103 as unpatentable over Nara in view of Motegi.

We reverse.

The subject matter on appeal is directed to wood meal comprising wood meal granules of substantially rounded shape without rugged edges and elongated protruding portions which are coated on the granule surface with a plurality of smaller and harder particles pressed into the wood meal granule surface. The rounded shape of the wood meal is produced by

Appeal No. 1998-1390  
Application 08/607,441

ball mill pulverizing previously crushed wood meal to produce the wood meal granules having the smaller and harder particles pressed therein. Appellants indicate that in the prior art, small particulate wood meal has been used as a filler for molded plastic (e.g., epoxy resin) products to prevent deformation of the plastic products during molding, and to provide the desired hardness and moisture absorbing/releasing properties of the molded products. To provide surface properties and the appearance of natural wood, prior art workers have added a given amount of pigment together with the wood meal to the plastic material to be molded. Because of the tendency of wood meal to coagulate during handling, prior art workers have attempted to improve the wood meal properties to enable uniform dispersion of the wood meal into the plastic, for example, by using wood meal obtained by grinding the surface of particle boards previously hardened with urea base resin. Generally, see appellants' specification at pages 1 and 2.

Appellants' claimed coated wood meal is said to possess various improved properties including increased flowability

Appeal No. 1998-1390  
Application 08/607,441

and dispersibility when blended in the resin material for producing a molded product. See the specification at page 8.

As evidence of the obviousness of the herein claimed subject matter, the examiner relies on the disclosures in Nara and Motegi. Nara, the examiner's primary reference, contains no disclosure of wood meal or wood meal products. What Nara discloses are "powder-powder" systems described as "mother" particles coated with smaller and harder "child" particles. See column 2, lines 34-35 and column 6, lines 1-3. One of many representative "mother" particles which may be utilized by Nara is cellulose powder. See column 5, lines 47-55; column 12, lines 36-59; and column 14, lines 49-68. Nara includes the further broadening teaching that the "mother" particles are not limited to the specific materials enumerated and include "[c]omponents of various materials used in industries such as chemical industries, electrical industries, magnetic industries, and various other industries dealing with cosmetics, paints, printing ink, toners, color material, fiber, medicine, foods, rubber, plastics, ceramics and the like." See column 5, lines 63-68 (emphasis added).

Appeal No. 1998-1390  
Application 08/607,441

In light of Motegi's teaching that typical examples of cellulosic fillers include cellulose powder, wood flour<sup>1</sup>, wood chip, rice hull, used paper, and pulp, the examiner argues that to one of ordinary skill in the "plastic" art, Nara's disclosure of "cellulose" would suggest wood particles (presumably wood meal filler for a molded plastic). See the answer at page 7.

We agree with appellants that the above relied upon disclosures are too vague and speculative to constitute an adequate factual basis for establishing a prima facie case of obviousness for the subject matter here claimed directed to wood meal granules. First, while Nara makes a broad reference to plastic components, Nara makes no mention of fillers for plastics, much less mention of "cellulosic" fillers. Nara's disclosure of plastic "components" is inclusive of plastic particulates, antistatic agents, antioxidants, lubricants,

---

<sup>1</sup> Wood flour is synonymous with wood meal. See Hackh's Chemical Dictionary, Fourth edition, p 725, c 1977, of record herein.

Appeal No. 1998-1390  
Application 08/607,441

waxes, pigments, crystallization initiators, and other materials. Secondly, cellulose powder necessarily is useful in a multiplicity of technologies, not just as a "cellulosic filler" for plastics. Evidence that the mere mention of cellulose powder in a prior art reference is necessarily suggestive of a cellulosic filler utility is not of record.

Looked at in a light most favorable to the examiner, we find that at best, Nara's disclosure is generic to wood meal as a specie of "mother" particle only because Nara's disclosure is of potentially infinite scope. This is not a proper basis for establishing a prima facie case of obviousness for an otherwise

unsuggested specie. In re Jones, 958 F2d 347, 350, 21 USPQ2d 1941, 1943 (Fed. Cir. 1992). For this reason, we are unable to sustain the examiner's stated prior art rejection of the appealed claims.

The decision of the examiner is reversed.

REVERSED

Appeal No. 1998-1390  
Application 08/607,441

JOHN D. SMITH	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
PETER F. KRATZ	)	)
Administrative Patent Judge	)	APPEALS AND
	)	)
	)	INTERFERENCES
	)	)
CATHERINE TIMM	)	)
Administrative Patent Judge	)	)

JDS:pgg  
Shlesinger Arkwright and Garvey  
3000 South Eads Street  
Arlington, VA 22202