

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ZINA NOZIK

Appeal No. 1998-1862
Application 08/644,622

ON BRIEF

Before KIMLIN, WALTZ and DELMENDO, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 4-7, 9-13 and 16-19, all the claims remaining in the present application. Claim 1 is illustrative:

1 . A resilient elastomeric mount comprising natural rubber produced by an efficient vulcanization system having a curing system comprising an accelerator component at a level of about 1.2 phr to about 1.8 phr and a sulfur donor component at a level of about 0.1 phr to about 0.4 phr, wherein the natural rubber further comprises antidegradants including an

Appeal No. 1998-1862
Application No. 08/644,622

antioxidant comprising a blend of p-phenylene diamine in combination with zinc salt derivatives of mercapto-benzimidazole, wherein said natural rubber has a majority of monosulfidic crosslinks and wherein the mount has stable dynamic properties after exposure to a temperature of 250/F for 70 hours, when tested using the MTS 830 elastomer test system.

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

Cox	4,021,404	May 03, 1977
Aoshima et al. (Aoshima)	4,983,685	Jan. 08, 1991
Cornell et al. (Cornell)	5,120,779	Jun. 09, 1992
Wolff et al. (Wolff)	5,159,009	Oct. 27, 1992

Appellant's claimed invention is directed to a natural rubber that is useful for engine mounts and has stable dynamic properties upon exposure to a temperature of 250/F for 70 hours. The natural rubber, which is produced by a known efficient vulcanization system, has a curing system comprising an accelerator component and a sulfur donor component, and

Appeal No. 1998-1862
Application No. 08/644,622

also comprises an antioxidant which is a blend of p-phenylene diamine and zinc salt derivatives of mercaptobenzimidazole.

Appellant submits at pages 6 and 7 of the principal brief that the appealed claims should be considered separately and patentably distinct. However, the Argument section of

appellant's brief fails to set forth an argument that is reasonably specific to any particular claim on appeal. For instance, the arguments appearing on pages 11 and 12 of the principal brief regarding dependent claims 4-7, 9-12 and 13 are tantamount to a mere re-recitation of the features of the claim, in addition to including the statement that "a claim in dependent form shall be construed to incorporate all the limitations of the claim to which it refers". Accordingly, all the appealed claims stand or fall together with claim 1. In re Nielson, 816 F.2d 1567, 1572, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987); Ex parte Ohsumi, 21 USPQ2d 1020, 1023 (Bd. Pat. App. & Int. 1991). See also 37 CFR 1.192 (c)(7) and (c)(8).

Appealed claims 1, 4-7, 9-13 and 16-19 stand rejected under 35 U.S.C. § 103 as being unpatentable over Wolff in view

Appeal No. 1998-1862
Application No. 08/644,622

of Cornell, Aoshima and Cox.

Upon careful consideration of the opposing arguments presented on appeal, we will not sustain the examiner's rejection.

Wolff, like appellant, discloses a natural rubber composition that finds utility as engine mounts. Wolff discloses

that the composition comprises conventional vulcanization accelerators, such as sulfenamides, 2-mercaptobenzothiazol, and thiurames (column 3, lines 51-56). Hence, Wolff renders obvious appellant's claimed accelerator component and sulfur donor component. Also, while Wolff discloses the inclusion of antioxidant agents, such as appellant's p-phenylene diamine, Wolff does not disclose the presently claimed blend of p-phenylene diamine with zinc salt derivatives of mercaptobenzimidazole. However, since Cornell discloses mercaptobenz-imidazole and zinc 2-mercaptobenzothiazole as sulfur cure accelerators for rubber compositions (column 6, lines 39 and 40), we find that it would have been prima facie

Appeal No. 1998-1862
Application No. 08/644,622

obvious for one of ordinary skill in the art to incorporate the mercaptobenzimidazole of Cornell in the form of a zinc salt in the natural rubber formulations of Wolff. Also, as pointed out by the examiner, Aoshima discloses the addition of a zinc salt of 2-mercaptobenzimidazole in a rubber composition to prevent tackiness. Hence, it would have also been obvious to include zinc salt derivatives of mercaptobenzimidazole in the natural rubber formulation of Wolff for the benefit disclosed by Aoshima.

While appellant maintains at page 10 of the principal brief that Aoshima teaches the use of zinc salts of mercaptobenzimidazole as anti-tacking agents, not accelerators, appellant does not claim the zinc salt derivative as an accelerator. In any event, both Cornell and Aoshima, as discussed above, provide motivation for one of ordinary skill in the art to add the zinc salt derivatives to the rubber composition of Wolff.

Appellant invites attention to Examples 1 and 2 in the present specification as evidence that "a combination of

Appeal No. 1998-1862
Application No. 08/644,622

p-phenylene diamine with the zinc derivatives of mercaptobenzi-midazole produce excellent improvement in heat resistance and flex fatigue life as compared to that of conventional natural rubber compounds" (page 10 of principal brief). In response, the examiner notes "that 'conventional natural rubber compounds' are not identified and, therefore, no meaningful comparison can be made to that which is taught by the prior art of record" (page 5 of answer, last sentence). Appellant takes issue with this finding of the examiner in the reply brief and submits that "the conventional natural rubber compounds are clearly identified on page 4, Table 1 of the specification" (page 3 of reply brief, second full paragraph). Appellant adds that "Table 1 discloses, in substantial detail, the general formula for conventional natural rubber as compared to the general formula of EV rubber." Our review of the specification finds us in agreement with appellant that the general formula for conventional natural rubber is disclosed in Table 1. Since

Appeal No. 1998-1862
Application No. 08/644,622

the examiner has presented no other reasons for refuting appellant's evidence of nonobviousness, we are constrained to reverse the examiner's rejection.

This application is remanded to the examiner to evaluate the specification data relied upon by appellant. Since it would appear from the present specification that the efficient vulcanization (EV) rubber was known in the art at the time of filing the instant application, the examiner should consider whether the specification data provides a comparison with the closest prior art. We again direct the examiner's attention to

the statement made at page 3 of the reply brief that "Table 1 discloses in substantial detail, the general formula for conventional rubber as compared to the general formula of EV rubber." Also, the examiner should determine whether the closest prior art is represented by the Wolff reference, and whether the

conventional natural rubber offered for comparison fairly

represents the teachings of Wolff. The examiner should also determine whether the specification data establishes that the

Appeal No. 1998-1862
Application No. 08/644,622

specification results would have been truly unexpected by one of ordinary skill in the art in light of the teachings of the prior art.

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

The application is remanded to the examiner for consideration of the issues outlined above.

This application, by virtue of its "special" status, requires an immediate action. MPEP § 708.01(D)(Rev. 1, Feb. 2000).

REVERSED AND REMANDED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
THOMAS A. WALTZ)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
)	
)	
)	
ROMULO H. DELMENDO)	
Administrative Patent Judge)	

vsh

Appeal No. 1998-1862
Application No. 08/644,622

ROBERT M. SIMINSKI
HARNESS, DICKEY & PIERCE
P.O. BOX 828
BLOOMFIELD HILLS, MI 48303