

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARK WALDROP

Appeal No. 2000-0026
Application No. 08/942,054

ON BRIEF

Before KIMLIN, GARRIS and OWENS, Administrative Patent Judges.
KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-9, all the claims remaining in the present application. Claim 1 is illustrative:

1. A PVC pipe cement composition, comprising:
 - (a) at least about 10% by weight of a polymeric material of a methyl methacrylate homopolymer or copolymer, a styrene-

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acrylonitrile polymer, and a rubber grafted with at least a methacrylic acid ester of a C₁ to C₈ alkanol; and

(b) at least about 10% by weight organic solvent.

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

Briggs et al. (Briggs)	4,942,201	Jul. 17, 1990
Patel et al. (Patel)	5,252,634	Oct. 12, 1993

Appellant's claimed invention is directed to a PVC pipe cement composition comprising the three recited polymeric components and at least about 10% by weight of an organic solvent.

Appealed claims 1-9 stand rejected under 35 U.S.C. § 103 as being unpatentable over Briggs in view of Patel.

We have thoroughly reviewed the respective positions advanced by appellant and the examiner. In so doing, we concur with appellant that the prior art cited by the examiner fails to establish a prima facie case of obviousness for the claimed invention. Accordingly, we will not sustain the examiner's rejection.

There is general agreement that Briggs discloses structural adhesive compositions comprising the three polymeric components recited in paragraph (a) of appealed

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claim 1. As appreciated by the examiner, Briggs does not disclose adhesive compositions comprising an organic solvent. To remedy this deficiency, the examiner relies upon Patel who discloses thermoplastic pipe adhesives comprising a resin and one or more solvents. It is the examiner's position that it would have been obvious for one of ordinary skill in the art to employ the adhesive of Briggs in combination with a solvent of the type disclosed by Patel (page 4 of Answer, second full paragraph). The examiner explains that the use of a solvent, which is appreciated in the art to function as processing and application aids, would have readily suggested itself to one of ordinary skill in the art for use in conjunction with the pasty adhesives of Briggs (sentence bridging pages 5 and 6 of Answer).

We certainly agree with the examiner that, in general, it was well-known in the art to employ a solvent as a processing aid or thinner in adhesive compositions. Accordingly, there is a strong temptation to conclude, at least at first blush, that it would have been a matter of prima facie obviousness for one of ordinary skill in the art to incorporate a solvent in any adhesive composition. However, in the present case, we

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BRADLEY R. GARRIS) BOARD OF PATENT
Administrative Patent Judge) APPEALS AND
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