

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JOHN R. NEWTON,  
and JEFFREY W. STRONG

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Appeal No. 2000-0505  
Application 08/856,743

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ON BRIEF

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Before PATE, STAAB, and GONZALES, Administrative Patent Judges.

PATE, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the examiner's refusal to allow claims 1, 3 through 7 and 10 as amended after final rejection. Claims 11 through 15 stand withdrawn from consideration, and claims 2, 8 and 9 have been canceled. Thus, the appealed claims are the only claims remaining in the application.

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The claimed invention is directed to a ball and socket bearing wherein the bulbous ball portion of the ball and socket is formed of an ultra-high molecular weight polyethylene. The socket-like journal box is then cast around the ball, but it is not bonded thereto because of the ball's non-stick properties.

The claims may be further understood with reference to the appendix appended to appellants' brief.<sup>1</sup>

The references of record relied upon by the examiner as evidence of obviousness are:

Cox et al. (Cox) 1953	2,637,528	May 5,
Koch 29, 1978	4,109,976	Aug.
Strong et al. (Strong) 1994	5,346,315	Sep. 13,

REJECTION

Claim 10 stands rejected under 35 U.S.C. § 112, first

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<sup>1</sup> The following areas are deserving of correction in any further prosecution before the examiner: In claim 3, it is noted that tetrafluoroethylene is a gas at standard temperature and pressure. Presumably, polytetrafluoroethylene is intended.

In Figs. 5 and 6, the bearings 26 and 28 disclosed as formed of polyethylene are crosshatched as a metal. This same error is found in Fig. 8.

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paragraph, as "containing subject matter which was not  
described in the specification in such a way as to enable one  
skilled in

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the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention" (answer, page 3).

Claims 1 and 3 through 7 stand rejected under 35 U.S.C. § 103 as being unpatentable over Strong in view of Koch.

Claims 1, 3, 4 and 7 stand rejected under 35 U.S.C. § 103 as being unpatentable over Koch.

Claims 1, 3, 4, 7 and 10 stand rejected under 35 U.S.C. § 103 as being unpatentable over Cox.

The examiner includes an objection to the drawings on page 3 of the examiner's answer. Such an objection is not an appealable matter. Presumably, this objection is pertinent to the 35 U.S.C. § 112, first paragraph, rejection of claim 10.

#### OPINION

We have carefully reviewed the rejections on appeal in light of the arguments of the appellants and the examiner. As a result of this review, we have come to the determination that claim 10 is not drawn to subject matter which is not enabled by the specification. We have further come to the conclusion that the

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applied prior art does not establish a prima facie case of obviousness with respect to any of the claims on appeal. Therefore, the rejections on appeal are reversed. Our reasons follow.

Turning first to the rejection of claim 10 under 35 U.S.C. § 112, first paragraph, we note the examiner's opinion with respect to the objection to the drawings on page 3 that the mounting of the assembly between a pair of parallel platforms is not shown. We note that claim 10 calls for the molded journal box to be provided with an opposing pair of stringers. In our view, the recitation of a pair of parallel platforms in claim 10 is simply an environment in which the stringers mount the journal box. They are not part of the positively recited ball and socket bearing assembly and, as such, we find no problem under the enablement provision of 35 U.S.C. § 112, first paragraph. Accordingly, the rejection of claim 10 under 35 U.S.C. § 112 is reversed.

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Turning to the examiner's rejection of claims 1 and 3 through 7 as unpatentable over Strong in view of Koch, we are in general agreement with the examiner's findings of fact with

respect to the Strong reference. On the other hand, with respect to the Koch reference, the examiner states that Koch discloses a self-aligning ball and socket bearing comprising a one-piece journal box forming a cavity for receiving the bearing therein. In our view, this finding by the examiner is based on supposition and conjecture in that Koch has little disclosure directed to the structure of his outer socket or ring 14. Without a clear and supportable factual finding that Koch discloses a one-piece outer ring, the examiner's rejection lacks the suitable factual basis for a prima facie case of obviousness. The examiner's conclusion that "as taught by Koch, it would have been obvious . . . to form the journal box as a one-piece component" (answer, page 4) cannot be sustained.

Turning to the rejection of the claims based on the Koch reference taken alone, viz., claims 1, 3, 4 and 7, the rejection based on Koch alone has the same factual shortcomings as the rejection based on Strong in view of Koch. There is insufficient detail in the Koch reference to support the examiner's finding. Additionally, the examiner's

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conclusion that it would have been

obvious to manufacture the Koch bearing of appellants' specific polymer is not supported by sufficient facts or reasoning. In a bearing subjected to significant forces and subjected to friction and wear, it is not clear that it would have been obvious to substitute for the carefully machined metallic bearing of Koch, a molded plastic member.

Finally, turning to the rejection of claims 1, 3, 4, 7 and 10 as unpatentable over Cox, here again, the examiner's conclusion that it would have been obvious to form the Cox bearing of a polymer is unsupported by facts or convincing reasoning. The polish rod and the carrier bar, therefore, in an oil well pumping jack are subjected to great forces, and the examiner's unsupported conclusion that it would have been obvious to use plastic or polymer for these components appears to be based on mere supposition or conjecture. Therefore, the

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examiner has failed to establish a prima facie case of obviousness with respect to the obviousness rejection based on Cox.

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For the reasons given above, the rejections of all claims  
on appeal are reversed.

REVERSED

WILLIAM F. PATE, III	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
LAWRENCE J. STAAB	)	
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
	)	
JOHN F. GONZALES	)	
Administrative Patent Judge	)	

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