

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.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. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte EDWARD NASHED BOULOS  
and  
JAMES VICTOR JONES

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Appeal No. 2000-1849  
Application No. 08/988,481

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ON BRIEF

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Before KIMLIN, GARRIS and LIEBERMAN, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-

24. Claim 1 is illustrative:

1. A nitrate/nitrite-free method for retarding the volatilization of selenium used as a colorant in preparing a glass composition by including a manganese compound colorant along with the selenium without nitrate or nitrite compounds

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during the melt processing of the glass composition, the manganese compound being included to provide 0.1 to 1.0 wt. % manganese oxide as MnO<sub>2</sub> weight percent based on the total weight of the glass composition.

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

Barrett et al. (Barrett)	4,341,566	Jul. 27, 1982
Jones et al. (Jones)	5,346,867	Sep. 13, 1994

Appellants' claimed invention is directed to a nitrate/nitrite-free method for retarding the volatilization of selenium in the preparation of a glass composition. The method entails including the recited amount of MnO<sub>2</sub> during the melt processing of the glass composition. According to appellants' specification, "[w]e have unexpectedly found that the manganese compound, e.g., used in the gray glass of Jones '867 to retain selenium, also has sufficient oxidizing ability which allows nitrates and nitrites to be avoided throughout the manufacturing process of the selenium containing glass, contrary to what was formerly believed" (page 2, last paragraph). The specification explains in the following sentence that "[t]his also allows the amount of sodium sulfate to be desirably increased over that which

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would normally be used when nitrates are included in the batch materials, which improves the fining action of the sulfates without negatively impacting the selenium retention."

Appealed claims 1-24 stand rejected under 35 U.S.C. § 103 as being unpatentable over Jones, alone, or in view of Barrett.

Upon careful consideration of the opposing arguments presented on appeal, we will not sustain the examiner's rejections. In essence, we are in full agreement with the position espoused by appellants in the Brief. We add the following for emphasis only.

The basis for the examiner's rejections is the Jones disclosure that "[w]e have unexpectedly discovered that introducing manganese oxide in the batch increases the retention of selenium in the glass product over and above that obtained by incorporating nitrates" (column 2, lines 32-35). Notwithstanding the affidavit of patentee Jones and the exemplified glass compositions of Jones, the examiner holds to the argument that the referenced portion of Jones "does suggest that nitrates are not needed" (page 5 of Answer, first paragraph). However, as urged by appellants, there is no

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evidence of record which supports the examiner's position that one of ordinary skill in the art would have interpreted Jones as meaning that nitrates may be eliminated from the glass composition. In our view, appellants' position is reasonable that "using manganese oxide with nitrates provides a level of selenium retention greater than that provided using nitrates alone" (page 6 of Brief, first full paragraph), particularly in light of the supporting affidavit by patentee Jones.

The examiner's reliance on Barrett for the teaching that "the addition of sodium nitrate causes the generation of oxides of nitrogen which are air pollutants" (page 4 of Answer, last sentence), although providing motivation for eliminating nitrates, does not remedy the deficiency in Jones argued by appellants and discussed above.

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

REVERSED

EDWARD C. KIMLIN )  
Administrative Patent Judge )  
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BRADLEY R. GARRIS	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
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PAUL LIEBERMAN	)	
Administrative Patent Judge	)	

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