

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.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. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRYAN N. FLYNN
and
GLYN C. CARTER

Appeal No. 2001-2357
Application 09/093,185

HEARD: SEPTEMBER 18, 2002

Before PAK, LIEBERMAN, and JEFFREY T. SMITH, Administrative Patent Judges.

PAK, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1 through 25, which are all of the claims pending in the above-identified application.

Claims 1, 15, 24 and 25 are representative of the subject matter on appeal and read as follows:

1. A waterproofing laminate material free of loose particulate material consisting essentially of:

a flexible, porous carrier sheet laminated to a waterproofing sheet which is formed by extrusion under vacuum from a substantially homogenous [sic, homogeneous] deformable mass consisting of a mixture of particulate smectite clay and a liquid, in which respect the clay is in a range from 50% to 75% by weight of the mixture and the liquid comprises water in a range from 10% to 30% by weight of the mixture.

15. A method of making a waterproofing laminate material consisting essentially of the steps of mixing a particulate smectite clay with a liquid to form a mixture, said mixture containing clay in a range from 50% to 75% by weight and water in a range 10% to 30%, kneading said mixture in a high speed, high shear mixer to form a substantially homogeneous deformable mass, forming said mass by extrusion under vacuum into a waterproofing sheet, and laminating said sheet with a flexible, porous, carrier sheet to form a laminate structure free of loose particulate material.

24. A waterproofing material free of loose particulate material, consisting essentially of a waterproofing sheet which is formed by extrusion under vacuum from a substantially homogeneous deformable mass consisting of a mixture of particulate smectite clay and a liquid, in which respect the clay is in a range from 50% to 75% by weight of the mixture and the liquid comprises water in a range from 10% to 30% by weight of the mixture.

25. A waterproofing material free of loose particulate material, consisting essentially of a waterproofing sheet which is formed by extrusion under vacuum from a substantially homogeneous deformable mass consisting of a mixture of particulate smectite clay and a liquid, in which respect the clay is in a range from 50% to 75% by weight of the mixture and the liquid comprises water and an organic material in a range from 10% to 30% by weight of the mixture.

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The prior art references relied upon by the examiner are:

Bechtner	2,277,286	Mar. 24, 1942
Alexander	5,132,021	Jul. 21, 1992
Flynn et al. (Flynn) (published PCT Application)	WO 94/05863	Mar. 17, 1994

The appealed claims stand rejected as follows:

- 1) Claims 1 through 25 under 35 U.S.C. § 102(b) as anticipated by the disclosure of Flynn; and
- 2) Claims 1 through 14, 24 and 25 under 35 U.S.C. § 103 as unpatentable over the combined disclosures of Alexander and Bechtner.

We have carefully considered the claims, specification and applied prior art, including all of the arguments advanced by both the examiner and appellants in support of their respective positions. This review leads us to conclude that the examiner's Section 102 and 103 rejections are not well founded. Therefore, we reverse the examiner's aforementioned rejections. Our reasons for this determination follow.

We reverse the examiner's Section 102 rejection for those reasons set forth at pages 3 through 8 of the Brief and pages 1 through 3 of the Reply Brief.

We also reverse the examiner's Section 103 rejection for essentially those reasons expressed at pages 8 through 15 of the

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Brief and pages 3 through 6 of the Reply Brief. We only add that the claim process limitation "formed by extrusion under vacuum from a substantially homogeneous deformable mass consisting of a mixture of particulate smectite clay and a liquid . . ." is critical in producing a product having a high density and no air pockets. See the Specification, page 9. The examiner has not demonstrated that the applied prior art references teach or would have suggested such a product or a process limitation responsible for such a product.

In view of the foregoing, the decision of the examiner is reversed.

REVERSED

CHUNG K. PAK)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
PAUL LIEBERMAN)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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JEFFREY T. SMITH)	
Administrative Patent Judge)	

CKP:svt

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Oliff & Berridge
P.O. Box 19928
Alexandria, VA 22320