

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.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. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte NICOLAAS ANTONIUS MARIA SCHOONDERWOERD,  
and  
PAUL MARIE VANDEVOORDE

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Appeal No. 2002-1653  
Application No. 09/543,336

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ON BRIEF

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

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 3, 12-16 and 18-22. The examiner has withdrawn the final rejection of claims 4-11 and 17, the other claims remaining in the present application, and has indicated that they are allowable. Claim 1 is illustrative:

1. A coating composition comprising

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(a) a polyacetoacetate having acetoacetate groups and having a number average molecular weight less than 1000 and

(b) a crosslinker for said polyacetoacetate, the crosslinker having groups capable of crosslinking with said acetoacetate groups, and wherein the ratio of acetoacetate groups to groups capable of crosslinking with said acetoacetate groups is about 1.15 to about 2;

said coating composition when cured without additional crosslinker has improved substrate adhesion.

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

Hoy et al. (Hoy)	3,668,183	Jun. 6, 1972
Chen et al. (Chen)	5,451,653	Sep. 19, 1995

Appellants' claimed invention is directed to a coating composition comprising a polyacetoacetate and a crosslinker for the polyacetoacetate. The claimed ratio for the acetoacetate groups to crosslinking groups, about 1.15 to about 2, results in incomplete crosslinking of the polyacetoacetate. According to appellants, "[t]he coating composition is particularly useful as a primer for an aluminum substrate" (page 2 of principal brief, third paragraph). Appealed claims 1, 3, 12-16 and 18-22 stand rejected under 35 U.S.C. § 103 as being unpatentable over Chen in view of Hoy.

Appellants submit at page 3 of the principal brief that the appealed claims stand and fall together. Accordingly, all the appealed claims stand or fall together with claim 1.

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We have thoroughly reviewed each of appellants' arguments for patentability. We are in complete agreement, however, with the examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of 35 U.S.C. § 103 in view of the applied prior art. Accordingly, we will sustain the examiner's rejection for essentially those reasons expressed in the Answer, which we incorporate herein. We add the following for emphasis only.

Appellants do not dispute the examiner's factual determination that Chen, like appellants, discloses a composition comprising a polyacetoacetate and a crosslinker wherein a preferred ratio of acetoacetate groups to crosslinker groups is 1.5, which falls directly within the claimed range of 1.15 to 2. Also like appellants' composition, the composition of Chen finds utility as a coating composition (see Abstract, first sentence). Accordingly, based on the Chen disclosure alone, we find that coating compositions within the scope of appealed claim 1 would have been prima facie obvious to one of ordinary skill in the art. Hoy, cited by the examiner for disclosing a 10% excess of acetoacetate groups to crosslinker groups, lends further support to the conclusion of obviousness.

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Appellants contend at page 3 of the principal brief that there would have been no motivation for one of ordinary skill in the art to look to the cited prior art for the problem of adhesion for the coating composition. However, we concur with the examiner that the requisite motivation arises from the disclosure by both Chen and Hoy of coating compositions having acetoacetate groups in amounts greater than the crosslinker groups, resulting in an incompletely crosslinked polyacetoacetate. It is not necessary for a finding of obviousness under 35 U.S.C. § 103 that the prior art articulate the same motivation as appellants. In re Kemps, 97 F.3d 1427, 1430, 40 USPQ2d 1309, 1311 (Fed. Cir. 1996); In re Dillon, 919 F.2d 688, 693, 16 USPQ2d 1897, 1901 (Fed. Cir. 1990) (en banc), cert. denied, 500 U.S. 904 (1991).

Appellants also maintain that the improved adhesion of the claimed coating composition to a substrate is an unexpected result. However, the examiner has persuasively demonstrated that appellants' specification data is not of sufficient probative value to rebut the prima facie case of obviousness (see pages 5-6 of Answer). Moreover, we note that appellants' brief fails to present any analysis of the specification data which satisfies their burden of establishing unexpected results. It is not

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within the province of this Board to ferret out evidence from appellants' specification which supports a conclusion of nonobviousness.

The thrust of appellants' argument is directed towards Hoy, the secondary reference. As explained by the examiner, however, appellants have failed to address the specific disclosure in Chen of utilizing 1.5 mols of acetoacetate per mol of crosslinker. While appellants state at page 4 of the Reply Brief that the examiner "erroneously states that Appellants have not addressed his arguments regarding the cited prior art" (penultimate paragraph), appellants' Reply Brief persists in not confronting Chen's disclosure of the preferred ratio that falls directly within the claimed range. Appellants do not shoulder their burden of refuting the examiner's rejection by offering the conclusion that "[i]t is akin to comparing the proverbial apples and oranges to compare Chen with the Appellants' [sic, Appellants'] invention" (id.). It is incumbent upon appellants to cite facts to support their "apples and oranges" analogy. The principal and reply briefs, however, are fatally deficient in presenting such facts.

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In conclusion, based on the foregoing and the reasons well-stated by the examiner, the examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

EDWARD C. KIMLIN	)	
Administrative Patent Judge	)	
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PAUL LIEBERMAN	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
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JEFFREY T. SMITH	)	
Administrative Patent Judge	)	

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