

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JOO H. SONG and DONALD TOWNSEND

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Appeal No. 2003-0410  
Application 09/775,785

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ON BRIEF

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Before KIMLIN, DELMENDO, and POTEATE, *Administrative Patent Judges*.

POTEATE, *Administrative Patent Judge*.

*DECISION ON APPEAL*

This is an appeal under 35 U.S.C. § 134 from the examiner's refusal to allow claims 1-20, which are all of the claims pending in the application. Claim 1 is representative of the subject matter on appeal and is reproduced below:

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1. A process for making chewing gum comprising the steps of:

using a single continuous mixing apparatus to perform all of the addition and compounding steps necessary to produce gum base;

adding to the single continuous mixing apparatus all of a group of components necessary to make a chewing gum base including an elastomer and a plasticizer, wherein the elastomer is added to the single continuous mixing apparatus separate and apart from the plasticizer;

providing at least two mixing zones in the mixing apparatus;

producing gum base from the mixing apparatus; and

mixing the gum base with other ingredients to produce chewing gum.

The references relied upon by the examiner are:

Naumann	0,273,809	Jul. 06, 1988
(European Patent Application)		
Boudy	2,635,441	Feb. 23, 1990
(French Patent Application)		

*GROUND'S OF REJECTION<sup>1</sup>*

1. Claims 1-5, 9-16, 19 and 20 stand rejected under 35 U.S.C. § 102(b) as anticipated by Naumann.

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<sup>1</sup>The rejections of claims 1-20 under the judicially created doctrine of obviousness type double patenting (see final rejection, paper no. 3, mailed Oct. 22, 2001) have been overcome by appellants' filing of a terminal disclaimer (paper no. 5, received Jan 22, 2002). Advisory action, paper no. 6, mailed Jan. 29, 2002.

2. Claims 6 and 17 stand rejected under 35 U.S.C. § 103 as obvious over Naumann.

3. Claims 7, 8 and 18 stand rejected under 35 U.S.C. § 103 as unpatentable over Naumann in view of Boudy.

We affirm as to all three grounds of rejection.

#### *BACKGROUND*

The invention relates to a process for manufacturing a chewing gum base which includes, *inter alia*, an elastomer, one or more fillers and a plasticizer. Specification, page 1, lines 13-19. In particular, the invention is directed to a continuous process for making a chewing gum base wherein all of the necessary component additions and compounding steps are completed in a single, continuous mixing apparatus. Appeal brief, paper no. 9, received March 21, 2002, page 2. Thus, the chewing gum base is made without the need for a pre-blending or pre-treatment processing step, such that transfer of a pre-mix material to a second mixing apparatus is not required. *Id.* According to appellants, there are numerous advantages associated with the claimed method which include a reduction in average residence time in processing equipment for the gum base ingredients, and improved metering and mixing of the ingredients. *Id.*, page 6.

#### *DISCUSSION*

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Anticipation requires the disclosure, in a single prior art reference, of each element of the claim under consideration. See *W. L. Gore & Assoc. v. Garlock Inc.*, 721 F.2d 1540, 1544, 220 USPQ 303, 313 (Fed. Cir. 1983). Each of claims 1, 13 and 19 requires the use of a single mixing apparatus (claim 1) or extruder (claims 13 and 19) for performing all of the addition and compounding steps necessary to produce a gum base. According to appellants,

[a]n important step that is disclosed in each of the independent claims is that the chewing gum base is produced in a single mixing apparatus such as an extruder and that the processes use a continuous mixing operation to produce the gum base. Unlike the known processes, the claimed invention does not require the separate step or steps of pre-blending or pre-treating any of the ingredients before the ingredients are mixed to produce the gum base. These processes, therefore, reduce the time needed to produce the chewing gum base and thereby increase the efficiency of chewing gum production.

Appeal brief, page 9.

It is the examiner's position that claims 1, 13 and 19 read on Naumann's disclosure of combining an unplasticized chewing gum base from a powder mixer B with a liquid plasticizer in an extruder C. See Examiner's answer, paper no. 10, mailed Aug. 26, 2002, page 4. Appellants maintain that Naumann cannot anticipate the claimed invention because Naumann utilizes separate mixers to

produce the unplasticized gum base. *Id.* Appellants point out that Naumann teaches that an elastomer and filler are first pre-mixed in a mixer A, processed, and then fed to the powder mixer B where other ingredients of the gum base are added. Reply brief, paper no. 11, received Oct. 31, 2002, page 3. Further processing occurs before the resultant unplasticized gum base is added to the extruder for final processing. *Id.*

In making a patentability determination, analysis begins with the question, "what is the invention claimed?" since "[c]laim interpretation, . . . will normally control the remainder of the decisional process." *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1567-68, 1 USPQ2d 1593, 1597 (Fed. Cir.), *cert. denied*, 481 U.S. 1052 (1987). In determining the patentability of claims, the Patent Office gives claim language its "broadest reasonable interpretation" consistent with the specification and claims. *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).

While the independent claims require that a single mixing apparatus/extruder is utilized to perform "all of the addition and compounding steps" necessary to produce a gum base, the claims do not require the addition of each of the individual

components of the gum base to the single mixing apparatus/extruder. In other words, we are in agreement with the examiner that in interpreting the independent claims as broadly as possible consistent with the specification and claims, the claims read on Naumann's disclosure of adding a pre-mix containing gum base components (i.e., the unplasticized gum base) and a plasticizer to a single apparatus/extruder.

Our conclusion is based on our review of the specification wherein we note that no specific definition has been provided for the phrase "all of the addition and compounding steps necessary to produce gum base." Further, appellants' own examples show the addition of various blends of materials to the extruder. See, e.g., specification, page 23, line 22, and page 24, line 14. The specification teaches that the invention provides a method of preparing a chewing gum base without requiring pre-blending or pre-treatment of the elastomer with any other ingredient. See, e.g., specification, page 4. However, the claims are not so limited. Rather, the claims merely require that the elastomer is added to the mixing apparatus/extruder separate and apart from the plasticizer. Claims 1, 13 and 19. This step is clearly taught by Naumann. See Naumann, page 8. See *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir.

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1983), *cert. denied*, 465 U.S. 1026 (1984) (Anticipation does not require that the references teach what the appellants are claiming, but only that the claims on appeal "read on" something disclosed in the reference.)

Accordingly, we are in agreement with the examiner that Naumann anticipates claims 1-5, 9-16, 19 and 20. The rejection under 35 U.S.C. § 102(b) is affirmed.

With respect to the rejections of claims 6-8, 17 and 18 under 35 U.S.C. § 103, appellants again urge that Naumann fails to teach or suggest the use of a single mixing apparatus to form the chewing gum base. However, we are unpersuaded by this argument for the reasons set forth above.

With respect to claims 7, 8 and 18, appellants further argue that Boudy teaches away from a process for making a chewing gum base using a single stage and single apparatus. See appeal brief, pages 12-13. The examiner, however, points out that Boudy is merely relied on to show that appellants' claimed counter-rotating twin screw extruder is a conventional extruder used in preparing a chewing gum base. We are in agreement with the examiner that one of ordinary skill in the art would have been motivated to have looked to Boudy in considering the type of extruder to utilize in Naumann's process.

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Accordingly, the rejections of claims 6-8, 17 and 18 under 35 U.S.C. § 103 are affirmed.

*TIME PERIOD FOR RESPONSE*

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	)	
	)	
	)	
	)	BOARD OF PATENT
ROMULO H. DELMENDO	)	
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
	)	
LINDA R. POTEATE	)	
Administrative Patent Judge	)	

LRP:pgg

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