

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 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 GUOCUN CHEN and STEPHEN R. MOYSAN III

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Appeal No. 2003-2003  
Application No. 09/746,474

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ON BRIEF

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Before KIMLIN, GARRIS, and WALTZ, Administrative Patent Judges.  
GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the refusal of the examiner to allow claims 1-14 as amended subsequent to the final rejection. These are all of the claims in the application.

The subject matter on appeal relates to an article having on its surface a nickel colored coating comprising a color layer comprised of refractory metal nitride or refractory metal alloy nitride wherein the nitrogen content is a substoichiometric amount of from about 6 to about 45 atomic percent. This appealed

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subject matter is adequately represented by independent claim 1 which reads as follows:

1. An article having on at least a portion of its surface a coating having the color of nickel comprising:

at least one basecoat layer comprised of nickel;

color layer comprised of refractory metal nitride or refractory metal alloy nitride wherein the nitrogen content of said refractory metal nitride or refractory metal alloy nitride is a substoichiometric amount of from about 6 to about 45 atomic percent.

The references set forth below are relied upon by the examiner as evidence of obviousness:

Moysan, III et al. (Moysan '233)	5,552,233	Sep. 3, 1996
Moysan, III et al. (Moysan '972)	5,626,972	May 6, 1997
Welty et al. (Welty)	6,132,889	Oct. 17, 2000
Meckel	6,196,936	Mar. 6, 2001

(filed Jul. 25, 1997)

Claims 1-7 and 12-14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Welty and Meckel; claims 8 and 9 are correspondingly rejected over these references and further in view of Moysan '972; and claims 10 and 11 are correspondingly rejected over Welty and Meckel and further in view of Moysan '233.<sup>1</sup>

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<sup>1</sup> In the "GROUPING OF CLAIMS" section of the brief, the appellants state that "[a]ll the claims on appeal stand or fall together" (brief, page 3). For this reason and because separately rejected dependent claims 8-11 have not been separately argued by the appellants, we will focus on claim 1,

(continued...)

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Rather than reiterate the respective positions advocated by the appellants and by the examiner, we refer to the brief (i.e., Paper No. 19, filed February 7, 2003) as well as the reply brief and to the answer as well as the final Office action (i.e., Paper No. 10, mailed May 15, 2002) for a complete exposition thereof.

OPINION

For the reasons set forth in the answer (as well as the final Office action) and below, we will sustain each of the above noted rejections.

We share the examiner's conclusion that it would have been obvious for one with an ordinary level of skill in the art to provide Welty's coated article with a coating having a nickel or lustrous gray or silver color such as a titanium aluminum nitride, a chromium nitride or a di-titanium nitride coating of the type taught by Meckel (e.g., see lines 6-9 in column 8) wherein this last mentioned coating contains a substoichiometric amount of nitrogen in a range of from about 6 to about 45 atomic percent. As explained by the examiner (and not contested by the

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<sup>1</sup>(...continued)

the sole independent claim on appeal, in assessing the merits of the rejections before us. See In re Wood, 582 F.2d 638, 642, 199 USPQ 137, 140 (CCPA 1978) and compare In re McDaniel, 293 F.3d 1379, 1382-85, 63 USPQ2d 1462, 1464-66 (Fed. Cir. 2002). Also see 37 CFR § 1.192(c) (7) (8) (2002).

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appellants), this proposed combination would have been motivated by the commercial desirability of a finish or coating having the aforementioned color.

In support of their contrary view, the appellants argue that "[n]owhere does Meckel disclose or suggest a nickel color" and that "[n]owhere does Meckel disclose or suggest a substoichiometric amount of nitrogen" (brief, page 5). In this latter regard, the appellants further argue that "[c]olumn 8, lines 2-9 [of Meckel, upon which the examiner relies in support of his obviousness conclusion,] is a one sentence disclosure on using excess nitrogen to vary color" (brief, page 5). Thus, it is the appellants' contention that "[t]he passages of Meckel [i.e., the aforementioned disclosure at lines 2-9 in column 8] teach doing just the opposite of what Appellant has [sic, Appellants have] done, i.e., using excess nitrogen rather than using Appellants' substoichiometric amount of nitrogen!" (brief, page 10).

Like the examiner, we perceive no distinction between the lustrous gray and silver colors explicitly disclosed by Meckel and the nickel color required by appealed independent claim 1. Significantly, the appellants have offered no explanation in support of their unembellished position that these colors of

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Meckel do not satisfy the nickel color requirement of claim 1. It appears, therefore, that the appellants' position amounts to nothing more than the observation that patentee does not use the word "nickel" in his description of color which is indistinguishable from the here claimed color. Such an observation, though factually accurate, simply does not militate against a nonobviousness conclusion.

We also share the examiner's view that the appellants have erroneously characterized Meckel as teaching the use of excess nitrogen for each of the color coatings including the lustrous gray and silver color coatings disclosed in lines 2-9 of column 8. As correctly explained by the examiner, patentee's teaching of excess nitrogen relates only to providing a greenish tinge to the champagne color of a zirconium nitride coating. It follows that the appellants are factually incorrect in arguing that Meckel teaches "doing just the opposite of what Appellant has [sic, Appellants have] done, i.e., using excess nitrogen rather than using Appellants' substoichiometric amount of nitrogen" (brief, page 10).

With respect to the here claimed requirement that the color layer contain a substoichiometric amount of nitrogen, we remind the appellants that, generally speaking, it would have been

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obvious for an artisan with ordinary skill to develop workable or even optimum ranges for an art-recognized, result-effective parameter. In re Woodruff, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990); In re Boesch, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980); In re Aller, 220 F.2d 272, 276, 205 USPQ 233, 235 (CCPA 1955). Here, Meckel repeatedly discloses that varying the ratios and amounts of his coating composition ingredients including nitrogen results in varying colors (e.g., see lines 40-49 in column 2, lines 21-28 in column 7, and lines 2-14 in column 8). Because the Meckel patent evinces that the amount of ingredients including nitrogen in color coating compositions is an art-recognized, result-effective parameter vis-à-vis color, we conclude that it would have been obvious for the artisan to develop workable or even optimum ranges for the parameter of nitrogen content, thereby yielding a nitrogen content for patentee's lustrous gray or silver color coatings which is in the substoichiometric range as required by the independent claim on appeal.

Finally, in an apparent attempt to support their nonobviousness position, the appellants state that "Meckel teaches, varying both the nitrogen content and carbon content in the carbonitride coating" (brief, page 10). As properly

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indicated by the examiner, this statement has no apparent relevance to Meckel's lustrous gray or silver color coatings which do not contain carbon. In any event, the "comprised of" language in appealed independent claim 1 permits the inclusion of other unrecited elements and thus does not exclude carbon as implied by the appellants' statement. See In re Baxter, 656 F.2d 679, 686, 210 USPQ 795, 802 (CCPA 1981).

In light of the foregoing and for the reasons expressed by the examiner, it is our determination that the Welty and Meckel references establish a prima facie case of obviousness with respect to the independent claim on appeal which the appellants have failed to successfully rebut with arguments and/or evidence of nonobviousness. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). It follows that we will sustain the examiner's section 103 rejection of claims 1-7 and 12-14 as being unpatentable over Welty and Meckel. The additional section 103 rejections of claims 8-11 as being unpatentable over these references and further in view of the Moysan references likewise will be sustained since these rejections have not been contested by the appellants on the record before us.

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The decision of the examiner 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	)	
	)	
	)	
	)	
Bradley R. Garris	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
Thomas A. Waltz	)	
Administrative Patent Judge	)	

BRG:tdl

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