

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CLYDE D. CALHOUN
and DAVID C. KOSKENMAKI

Appeal No. 94-3704
Application 07/815,173¹

ON BRIEF

Before MEROS, LYDDANE and THOMAS, Administrative Patent Judges.
MEROS, Administrative Patent Judge.

DECISION ON APPEAL

This appeal is from the examiner's rejection of claims 1-13, all of the claims pending in the application.

The rejected claims are directed to an adhesive tape comprising an adhesive layer coated on a carrier web, said adhesive

¹ Application for patent filed December 31, 1991.

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layer comprising a first and a second adhesive which have different viscoelastic properties each from the other. In the embodiment of claims 1-6, both the first and second adhesives are continuous through the thickness of the adhesive layer with the first adhesive being laterally continuous and the second adhesive being laterally noncontinuous. In the embodiment of claims 7-13, the first and second adhesives are both continuous in all directions.

Claims 1 and 7 are illustrative of the claimed subject matter and read as follows:

1. An adhesive tape including an adhesive layer having first and second planar surfaces coated on a carrier web, said adhesive layer comprising a first adhesive and a second adhesive, said first and second adhesives having different viscoelastic properties from the other, both said first and second adhesives being continuous through the thickness of the adhesive layer, and wherein said first adhesive is laterally continuous and said second adhesive is laterally non-continuous.

7. An adhesive tape including an adhesive layer having first and second planar surfaces coated on a carrier web, said adhesive layer comprising a first and a second adhesive, said first and second adhesives having different viscoelastic properties from the other, wherein said first and said second adhesive are both continuous in all directions.

The examiner relies on the following references:

Economou	3,811,438	May 21, 1974
Esmay et al. (Esmay)	4,415,615	Nov. 15, 1983
Akasaki	4,894,277	Jan. 16, 1990

Claims 1 and 6 stand rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103 as being obvious over Economou. We will not sustain this rejection.

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The examiner urges that the adhesive tape illustrated in Fig. 4 of Economou anticipates the adhesive tape claimed in instant claims 1 and 6. However, appellants argue that the adhesive tape disclosed by Economou has the cross-section shown in Fig. 6 of Economou and that, as shown by said Fig. 6, Economou's adhesive tape comprises a first adhesive on top of a second adhesive rather than two adhesives which are both continuous through the thickness of the adhesive layer as required by claims 1 and 6. The examiner has not disputed appellants' argument and we see no reason to conclude that appellants' argument is not well taken. Thus, the rejection of claims 1 and 6 under § 102 as being anticipated by Economou cannot stand. The rejection of claims 1 and 6 under § 103 as being obvious over Economou also cannot stand because the examiner has not presented a prima facie case of obviousness as to the claimed invention as a whole based on the teachings of Economou. Accordingly, we reverse the examiner's § 102/103 rejection of claims 1 and 6.

Claims 2-5 stand rejected under 35 U.S.C. § 103 as being obvious over Economou. However, rather than explain just why claims 2-5 would have been obvious to one having ordinary skill in the art in the sense of § 103 in view of the teachings of Economou, the examiner simply states that "Since these claims

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have been grouped with claims 1 and 6 for purposes of the obviousness rejection, no further discussion is deemed to be necessary." Thus, we reverse this rejection for the same reasons given above for reversing the rejection of claims 1 and 6.

Claims 7-13 stand rejected under 35 U.S.C. § 103 as being obvious over each of Esmay and Akasaki. We will affirm this rejection.

It is undisputed that Esmay and Akasaki each discloses an adhesive tape comprising a cellular or foam adhesive layer coated on a carrier web. Appellants argue, however, that, contrary to the examiner's assertion, neither of said references discloses or renders obvious an adhesive layer which comprises first and second adhesives which have different viscoelastic properties each from the other and both of which are continuous in all directions as called for in instant claim 7. We are unpersuaded.

The adhesive layer of Esmay is disclosed as comprising a mixture of different polymer adhesives (col. 2, lines 12-24; col. 5, lines 10-17). In the absence of countervailing evidence, the respective polymer adhesives in said mixture have different viscoelastic properties and are continuous in all directions. Appellants have not shown otherwise. Cf. In re Spada, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990); In re Best, 562 F.2d 1252,, 195 USPQ 430 (CCPA 1977). Moreover, Esmay discloses the addition

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of a tackifying resin adhesive to the adhesive layer (col. 5, lines 18-24; Example 27). Said tackifying resin adhesive as well as the other adhesive component(s) in Esmay's adhesive layer presumably have different viscoelastic properties and are continuous in all directions as called for in instant claim 7.

Similarly, Akasaki's foamed adhesive layer presumably contains a mixture of different polymer adhesives which have different viscoelastic properties and which are continuous in all directions. Moreover, Akasaki discloses (col. 1, lines 20-23) the addition of a resin adhesive to the polymer adhesive mixture, which resin adhesive presumably has different viscoelastic properties than the other adhesive component(s) of the adhesive layer and is continuous in all directions.

Thus, for the foregoing reasons, we find that each of Esmay and Akasaki discloses or at least suggests and renders prima facie obvious an adhesive layer comprising first and second adhesives which have different viscoelastic properties each from the other and which are both continuous in all directions as here claimed.

As indicated by the grouping of the claims on page 6 of appellants' brief, the rejection of dependent claims 8-13 stand or fall with the rejection of claim 7. 37 CFR 1.192(c)(7).

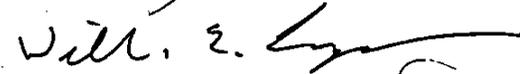
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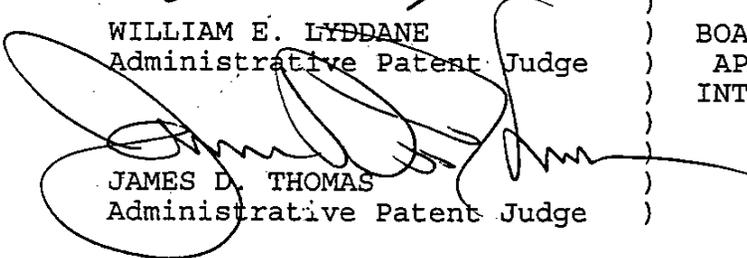
In summary, we have reversed the rejection of claims 1-6 and affirmed the rejection of claims 7-13.

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

AFFIRMED-IN-PART


EDWARD J. MEROS)
Administrative Patent Judge)


WILLIAM E. LYDDANE)
Administrative Patent Judge)


JAMES D. THOMAS)
Administrative Patent Judge)

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