

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEAN GUEVEL, MARC FRANCOIS and GUY CONTEMPS

Appeal No. 95-0429
Application No. 07/730,199¹

HEARD: December 10, 1997

Before JOHN D. SMITH, PAK, and WARREN, Administrative Patent Judges.

PAK, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1 through 6 and 8. Claim 7 stands withdrawn from further consideration by the examiner as being drawn to a nonelected invention.

Claim 1 is illustrative of the subject matter on appeal and is reproduced below:

¹ Application for patent filed July 15, 1991.

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1. A hybrid yarn for composite materials with a thermoplastic matrix, comprising an intimate mixture, of spun yarns of reinforcing fibers and spun yarns of thermoplastic matrix fibers, each of the spun yarns of fibers having been obtained by cracking with slow, gradual stretching of multifilaments, and, after stretching, parallel fibers of said mixture, having been wrapped by a continuous filament of thermoplastic material.

The references of record relied upon by the examiner are:

Zucker et al. (Zucker)	4,502,364	Mar. 05, 1985
O'Connor	4,800,113	Jan. 24, 1989
Roncato et al. (Roncato)	5,011,523	Apr. 30, 1991

Published European Patent Application, Publication No. 0 156 600, McMahon et al., Oct. 02, 1985 (hereinafter referred to as "McMahon")

Published Japanese Patent Application, No. JO 1292-129-A, Nov. 24, 1989 (hereinafter referred to as "JPA")
Appellants' admission at page 2 of the specification referring to French Patent No. 2,634,790

Published European Patent Application, Publication No. 0 351 201, Ying, Jan. 17, 1990 (hereinafter referred to as "Ying")

The appealed claims stand rejected as follows:

(1) Claims 1 through 6 under 35 U.S.C. § 102(b) as anticipated by Zucker or McMahon;

(2) Claims 1 through 6 under 35 U.S.C. § 103 as unpatentable over either Roncato, Ying or JPA in view of

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McMahon and Zucker; and

(3) Claims 1 through 6 and 8 under 35 U.S.C. § 103 as unpatentable over either O'Connor or appellants' admission in view of Zucker and McMahon.

We reverse.

The appealed claims are directed to a hybrid yarn which is defined in part by process limitations. The process limitations further define the structure and property of a hybrid yarn by requiring that "each of the spun yarns of [reinforcing fibers and thermoplastic matrix] fibers" is "obtained by cracking with slow, gradual stretching of multi-filaments, and after stretching, parallel fibers of said mixture" are "wrapped by a continuous filament of thermoplastic material." See claim 1. This requirement indicates that the claimed hybrid yarn is cracked and stretched parallel reinforcing and thermoplastic matrix fibers wrapped in a continuous filament of thermoplastic material. Since, according to page 4, lines 25-31, and page 5, lines 30-38 of the specification, cracking with slow, gradual stretching of multi-filaments produces discontinuous fibers, the claimed hybrid yarn is actually discontinuous

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parallel reinforcing and thermoplastic matrix fibers wrapped in a continuous filament of thermoplastic material.

In rejecting the appealed claims over the above references, the examiner essentially ignored the process limitations recited in claim 1. Specifically, the examiner has not indicated whether the claimed structural arrangement relating to parallel discontinuous reinforcing and thermoplastic matrix fibers is taught by or would have suggested by the above references. Thus, we agree with appellants that the examiner has not established a prima facie case of obviousness regarding the subject matter defined by claims 1 through 6 and 8.²

As a final point, we note that the scope of claim 1 is identical to that of claim 8 for the reasons indicated supra. At hearing on December 10, 1997, appellants' representative also agrees with us that both claims 1 and 8 are identical. Thus,

² Since the examiner failed to establish a prima facie case of obviousness, we need not consider the sufficiency of the alleged unexpected results.

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the examiner and appellants are advised to cancel either claim

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or 8. See MPEP § 706.03(k) (Rev. 3, July 1997).

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The decision of the examiner is reversed.

REVERSED

JOHN D. SMITH)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
CHUNG K. PAK)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
CHARLES F. WARREN)	
Administrative Patent Judge)	

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CKP/jrg

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APPLICATION NO. 07/730,199

APJ PAK

APJ JOHN D. SMITH

APJ WARREN

DECISION: REVERSED

Typed By: Jenine Gillis

DRAFT TYPED: 14 Jul 99

Revision: 16 Dec 97

FINAL TYPED: