

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte H. ALAN KARRFALT

Appeal No. 95-0931
Application No. 08/070,638¹

HEARD: March 4, 1998

Before KIMLIN, GARRIS and WALTZ, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 2-4, 7, 8 and 13, all the claims remaining in the present application.

Claim 13 is illustrative:

13. A multicomponent sealing tape for sealing linear seams between adjacent elastomeric substrates, comprising:

¹ Application for patent filed June 1, 1993. According to appellant, this application is a continuation of Application 07/837,308, filed February 18, 1992, now abandoned.

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a linear center strip interposed between and connected along its sides with a pair of laterally spaced linear side strips, said center strip being at least 10 percent larger in thickness than each of said side strips;

said center strip consisting essentially of a compounded butyl rubber adhesive sealant which is non-crosslinked, whereby said center strip exhibits good dimensional stability at room temperature and whereupon application of said sealing tape to a seam, under heat, pressure or both heat and pressure, said center strip flows freely into and seals said seam;

said side strips consisting essentially of a compounded elastomeric rubber composition which is at least partially crosslinked, whereby said side strips exhibit resilience and dimensional stability at both room temperature conditions and upon application of heat, pressure or both heat and pressure;

and wherein said tape is preassembled, whereby said side strips are adhered to said center strip prior to application of said tape to said seam.

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

Van Ornum et al. (Van Ornum)	4,113,799	Sept. 12, 1978
Sheahan	5,093,171	Mar. 3, 1992
		(filed Mar. 6, 1989)

Appellant's claimed invention is directed to a multi-component sealing tape that is used for sealing lapped or butted seams between adjacent elastomeric substrates, such as roofing membranes. The tape comprises a linear center strip consisting essentially of non-crosslinked butyl rubber adhesive sealant that is interposed between laterally spaced side strips consisting essentially of partially crosslinked elastomeric rubber. Upon

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application of heat the center strip flows and fills voids to provide sealing water-tight integrity to the seam.

Appealed claims 2-4, 7, 8 and 13 stand rejected under 35 U.S.C. § 103 as being unpatentable over Sheahan in view of Van Ornum.

Upon careful consideration of the opposing arguments presented on appeal, we concur with appellant that the prior art applied by the examiner fails to establish a prima facie case of obviousness for the claimed subject matter. Accordingly, we will not sustain the examiner's rejection.

The fatal deficiency in the applied prior art is that Sheahan, the primary reference, in addition to requiring modification to meet the claimed non-crosslinked center strip and side strips of elastomeric rubber, fails to disclose or suggest a sealing tape, a basic requirement of the claimed subject matter. The product of Sheahan is a unitary covering for roofs, pipes and the like that is monolithic in nature. The product of Sheahan is simply not a sealing tape, and no modification of the specifics of Sheahan's article will make it one. Also, while the examiner dismisses the preambular language "for sealing linear seams between adjacent elastomeric substrates," said language sets forth a certain function of the claimed sealing tape that the product of Sheahan does not appear to be capable of performing.

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The disclosure of Van Ornum does not remedy the basic deficiency of Sheahan as evidence of obviousness for the claimed sealing tape.

Based on the foregoing, the examiner's decision rejecting the appealed claims is reversed.

REVERSED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
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BRADLEY R. GARRIS)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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THOMAS A. WALTZ)	
Administrative Patent Judge)	

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