

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 35

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS R. ANTHONY, ROBERT H.
ETTINGER and JAMES F. FLEISCHER

Appeal No. 95-2327
Application 08/119,448¹

ON BRIEF

Before RONALD H. SMITH, WARREN and WALTZ, Administrative Patent Judges.

RONALD H. SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 24-27 and 30, all the pending claims in the application.

The subject matter relates to a method of producing a diamond tube by chemical vapor deposition on a hollow mandrel.

¹ Application for patent filed September 9, 1993. According to appellants, the application is a continuation of Application 07/899,034, filed June 15, 1992, which is a continuation of Application 07/783,457, filed October 24, 1991, which is a division of Application 07/694,170, filed May 1, 1991, now abandoned.

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Claim 24 is illustrative of the appealed claims and reads as follows:

24. A method of producing a diamond article comprising:

depositing a diamond layer by chemical vapor deposition on a surface of a thermally stable substrate consisting of a tube open at both ends and having an inner surface and an outer surface, said outer surface having a shape substantially the same as that of the desired interior of said diamond article, while supporting said substrate to prevent distortion thereof; and

submerging said substrate and diamond layer in a vertical position in an etching bath and ultrasonically agitating said etching bath to remove said substrate by etching of the inner surface thereof.

The references relied on by the examiner are:

Jansen et al. (Jansen)	4,925,701	May 15, 1990
Ohata (Japanese Kokai)	1-138110	May 31, 1989

Since appellants' brief does not contain a statement that the claims do not stand or fall together, the claims do stand or fall together. 37 CFR § 1.192(c)(7). Accordingly, we will limit our consideration to claim 24.

Claims 24-27 and 30 stand rejected under 35 USC § 103 as unpatentable over Ohata alone or when taken in view of Jansen. Claims 24-27 and 30 stand further rejected under 35 USC § 103 as unpatentable over Jansen. We reverse.

Appellants raise two issues in their brief:

1. Is a prima facie case of obviousness raised by Jansen or Ohata alone or in combination?

2. Assuming that a prima facie case of obviousness is raised, has it been rebutted by appellants' showing of decreased etching time for their hollow substrate?

Adverting to issue 2., we agree with appellants that, assuming that a prima facie case of obviousness has been established by the examiner, it has been overcome by appellants' comparative showing of unexpected results. Since we are in agreement with appellants' position regarding issue 2 for the reasons as set forth in the brief, we adopt that position as our own.

The decision of the examiner is reversed.

REVERSED

RONALD H. SMITH
Administrative Patent Judge

CHARLES F. WARREN
Administrative Patent Judge

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THOMAS A. WALTZ)
Administrative Patent Judge)

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