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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte JOHN E. HICKOX

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Appeal No. 95-2449
Application 08/011,120[1]

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ON BRIEF

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Before WILLIAM F. SMITH, GARRIS, and WALTZ, Administrative Patent Judges.

WILLIAM F. SMITH, Administrative Patent Judge.

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[1] Application for patent filed January 29, 1993. According to appellant, the application is a continuation of application 07/740,859, filed July 31, 1991; which is a continuation of application 07/393,973, filed August 14, 1989.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the final rejection of claims 15 through 26, all the claims remaining in the application.

Claim 15 is illustrative of the subject matter on appeal and reads as follows:

15. In a perming mat for use with hair care solutions, the mat being flexible and absorbent and including malleable wire stiffeners for user-molded shape retention of the mat, the improvement comprising a substantially hair-care-solution-inert covering associated with each wire stiffener for substantially preventing corrosion of the wire stiffeners when in contact with hair care solutions, said covering being approximately 1 mil thick.

The references relied upon by the examiner are:

Fox et al. (Fox)	4,648,414	Mar. 10, 1987
UK Specification (Laurenson)	391,590	May 4, 1933
UK Application (Bura)	2,194,437A	Mar. 9, 1988

Claims 15 through 26 stand rejected under 35 U.S.C. § 103 as unpatentable over "appellant's admissions"[2] or Bura in view of Fox and Laurenson. We reverse.

The claims on appeal are in Jepson format. In selecting this claim format, appellant, in effect, admitted that the perming mat set forth in the preamble of claim 15

[2] The examiner relies upon appellant's description at page 1 of the specification of prior art perming mats.

is prior art. As seen from claim 15, the claimed improvement is the provision of a substantially hair-care-solution-inert covering associated with each wire stiffener having a thickness of approximately 1 mil.

The examiner has determined that none of the references relied upon nor appellant's admission specifically teach that a malleable wire stiffener used in a perming mat should be covered with a hair-care-solution-inert covering having a thickness of approximately 1 mil thick. Rather, the examiner relies upon the disclosure in Fox at column 3, lines 45-57, that a covering used in combination with a wire stiffener in a perming mat should have a thickness of about one-half the wire diameter. See, e.g., page 5 of the Examiner's Answer. For this teaching to be relevant in determining the patentability of claim 15 on appeal, the prior art must also teach a perming mat containing malleable wire stiffeners having a thickness of approximately 2 mils. If the prior art describes such a perming mat, Fox's teaching concerning the thickness of the covering of the wires in a perming mat would have suggested covering a malleable wire in a perming mat with a coating having a thickness of approximately 1 mil.

As succinctly argued in the paragraph bridging pages 1-2 of the Reply Brief, the prior art does not describe such a perming mat. Rather, the smallest prior art wire diameter taught on this record to be associated with a perming mat is 14 mils as set

forth at the specification of this application at page 4, line 17. Thus, on this record, the prior art would have, at best, suggested a coating having a thickness of 7 mils. Accordingly, we do not find that the examiner has properly established a prima facie case of obviousness.

Having found that a prima facie case of obviousness does not exist, we need not consider appellant's declaration filed under 37 CFR § 1.132.

The decision of the examiner is reversed.

REVERSED

William F. Smith Administrative Patent Judge	)	
Bradley R. Garris Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
Thomas A. Waltz Administrative Patent Judge	)	

Jacob E. Vilhauer, Jr.
Chernoff, Vilhauer, McClung & Stenzel
600 Benjamin Franklin Plaza
One Southwest Columbia
Portland, OR 97258