

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 11

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS L. JONES

Appeal No. 95-4926
Application No. 08/101,495¹

ON BRIEF

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

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claims 8 through 14.² The only other claims in the application, which are claims 1 through 7 and 15 through 23, stand withdrawn

¹ Application for patent filed August 2, 1993.

² On line 1 of dependent claims 10 through 14, the phrase, "A sterile substrate" lacks strict antecedent basis and should read -- A sterile rigid sleeve --. This minor informality should be corrected in any further prosecution that may occur.

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from further consideration by the examiner as being directed to a nonelected invention or species.

The subject matter on appeal relates to a sterile rigid sleeve produced from a mixture of a plastic and an antimicrobial agent for avoiding cross-contamination between persons who come in contact with the sleeve. Further details of this appealed subject matter are set forth in representative independent claim 9 which reads as follows:

9. A sterile rigid sleeve produced from a mixture of a plastic and an antimicrobial agent for avoiding cross-contamination between persons who come in contact with said sleeve; said plastic being formed from styrenic resins; said antimicrobial agent is taken from the group consisting of iodines and povidone-iodines and any combinations of said antimicrobial agents; said sterile rigid sleeve being elongated for covering non-sterile surfaces; said mixture being from 1% to 10% by weight of antimicrobial agent.

The references relied upon by the examiner as evidence of obviousness are:

Broussard	4,768,531	Sep. 6, 1988
Marhevka	5,017,369	May 21, 1991
Neiner et al. (Neiner)	5,161,971	Nov. 10, 1992
Brink et al. (Brink)	5,173,291	Dec. 22, 1992
Usala	5,236,703	Aug. 17, 1993
		(filed Jul. 20, 1989)
Weder	5,242,052	Sep. 7, 1993
		(filed Jan. 27, 1992)
Sieveking et al. (Sieveking)	5,294,445	Mar. 15, 1994
		(filed Aug. 17, 1992)

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The appealed claims stand rejected under 35 U.S.C. § 103 as being unpatentable over Weder in view of Neiner and further in view of Broussard, Sieveking, Marhevka, Brink and Usala.

This rejection cannot be sustained.

Even disregarding the appellant's argument that certain of the applied references are from a nonanalogous art, we still could not sustain the examiner's rejection. This is because the applied prior art contains no teaching or suggestion for combining the reference teachings in such a manner as to result in the here claimed sterile rigid sleeve. Thus, while individual features of the appellant's claimed subject matter may be shown in the applied references, it is only the appellant's own disclosure which provides the necessary guidance for selecting and combining these features to thereby obtain a sterile rigid sleeve as defined by the independent claims on appeal. Further, this last mentioned determination is reinforced by the fact that none of the applied reference teachings is directed to the cross-contamination problem addressed by the appellant and the fact that these reference teachings concern widely diverse subject matters.

In short, we are convinced that the examiner's rejection is based upon impermissible hindsight derived from the appellant's

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own disclosure rather than some teaching, suggestion or incentive derived from the applied prior art. It follows that we cannot sustain the § 103 rejection of claims 8 through 14 as being unpatentable over Weder in view of Neiner and further in view of Broussard, Sieveking, Marhevka, Brink and Usala.

The decision of the examiner is reversed.

REVERSED

JOHN D. SMITH)	
Administrative Patent Judge))	
)	
)	
BRADLEY R. GARRIS)	BOARD OF PATENT
Administrative Patent Judge))	APPEALS AND
)	INTERFERENCES
)	
CHUNG K. PAK)	
Administrative Patent Judge))	

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