

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JON F. BAUER and KEVIN D. SCHAAL

Appeal No. 96-1400
Application No. 08/242,478¹

ON BRIEF

Before KIMLIN, WARREN and KRATZ, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

¹ Application for patent filed May 13, 1994. According to appellants, this application is a continuation of Application No. 07/947,327, filed September 18, 1992, now U.S. Patent No. 5,401,693, issued March 28, 1995.

Appeal No. 96-1400
Application No. 08/242,478

This is an appeal from the final rejection of claims 11-20, all the claims remaining in the present application.

Claim 11 is illustrative:

11. Glass fiber composition comprising an inorganic fiber comprising silicon dioxide, calcium oxide, and alkali oxide having a free energy of hydration greater than (more positive than) -5.00 kcal/mol, a free energy of formation less than (more negative than) -210.0 kcal/mol, a dissolution rate in simulated extra cellular fluid greater than 750 (calculated as nanograms of fiber/per square centimeter of fiber surface area/per hour) and having an average fiber diameter not greater than 4.5 micrometers.

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

Parrott	372,486	Nov. 1, 1887
---------	---------	--------------

Appellants' claimed invention is directed to a glass fiber composition and a method of manufacturing the composition. The composition comprises silicon dioxide, calcium oxide and an alkali oxide having the recited properties of free energy of hydration, free energy of formation and a dissolution rate in simulated extra cellular fluid. The glass fiber composition of the present invention is biosoluble.

Appeal No. 96-1400
Application No. 08/242,478

Appealed claims 11, 14 and 17-20 stand rejected under
35 U.S.C. § 112, second paragraph. In addition, claims 14-16

Appeal No. 96-1400
Application No. 08/242,478

and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Parrott.²

Having carefully reviewed each of the examiner's rejections in light of the evidence and the arguments of record, we fully concur with appellants that the claimed subject matter as a whole would not have been obvious to one of ordinary skill in the art within the meaning of 35 U.S.C. § 103. We also agree with appellants that claims 1, 14 and 17-20 do not run afoul of the second paragraph of 35 U.S.C. § 112. Since we find ourselves in complete agreement with the position espoused by appellants in the principal and reply briefs on appeal, we will adopt appellants' position as our own in reversing the examiner's rejections under 35 U.S.C. § 103 and 35 U.S.C. § 112, second paragraph. Accordingly, we will not belabor the record with further comment other than inviting the examiner's attention to the decision in In re Brouwer, 77 F.3d 422, 37 USPQ2d 1663 (Fed. Cir. 1995) as it applies to the examiner's rejection under 35 U.S.C. § 103.

² The examiner withdrew the rejection of claims 11-13 and 17-19 under the judicially created doctrine of obviousness-type double patenting in the Supplemental Answer.

Appeal No. 96-1400
Application No. 08/242,478

Appeal No. 96-1400
Application No. 08/242,478

For the reasons set forth in appellants' principal and reply briefs on appeal, the examiner's decision rejecting the appealed claims is reversed.

REVERSED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
)	
)	
)	
)	
)	
)	
CHARLES F. WARREN)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
)	
)	
PETER F. KRATZ)	
Administrative Patent Judge)	

clm

Appeal No. 96-1400
Application No. 08/242,478

William G. Conger
Brooks and Kushman P.C.
1000 Town Center
Twenty-second Floor
Southfield, MI 48075