

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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

17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PIERRE DUFRESNE,
NILANJAN BRAHMA, and STEPHEN R. MURFF

Appeal No. 96-3454
Application No. 08/260,295¹

ON BRIEF

Before DOWNEY, OWENS, and KRATZ, Administrative Patent Judges.
KRATZ, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's refusal to allow claims 1-16, which are all of the claims pending in this application. Upon the filing of this appeal, the examiner approved entry (advisory mailed September 22, 1995)

¹ Application for patent filed June 14, 1994.

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of an amendment filed September 13, 1995, after the final
rejection.

BACKGROUND

The appellants' invention relates to a method of presulphurizing hydrocarbon conversion catalysts using a presulphuration agent including sulfur compounds of a type (a) and (b) each with different decomposition temperatures. An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. In a process for presulphurizing a hydrocarbon conversion catalyst, the improvement comprising employing a presulphuration agent containing (a) at least one first sulphur compound having a decomposition point T1 of less than 220EC and (b) at least one second sulphur compound having a decomposition point T2 greater than about 220EC.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Seiver et al. (Seiver) 1984	4,431,747	February 14,
Berrebi	4,530,917	July 23, 1985

Claims 1-16 stand rejected under 35 U.S.C. § 103 as being unpatentable over Berrebi in view of Seiver.

We make reference to the examiner's answer(s) for the examiner's reasoning in support of the rejection, and to the appellants' brief(s) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. For the reasons which follow, we cannot sustain the rejection presented by the examiner in this appeal.

Berrebi discloses presulfurizing catalysts using a first step of treating the catalysts with polysulfide sulfurization agents in the absence of hydrogen (column 4, lines 7-32). The catalyst may thereafter be activated by treatment with hydrogen (column 4, lines 32-38). Seiver discloses the use of sulfur containing compounds selected from among a list of compounds that includes dimethyl sulfoxide that are used during the decomposition of a catalyst precursor in the presence of hydrogen (column 9, line 30 through column 10, line 60).

The position of the examiner is that the sulfur containing compounds of Seiver are combinable with the sulfurization agents of Berrebi for use in the presulfurizing process of Berrebi since it would have been obvious to combine

"two or more materials disclosed by the prior art for the same purpose to form a third material that is to be used for the same purpose...." (Final rejection, page 3). The examiner urges that motivation for combining the prior art teachings "comes from the fact that both

are directed to the same desulfurization process." See page 6 of the answer. We cannot agree with the examiner.

In our view, the examiner's reliance on the "same purpose" and "same desulfurization process" as motivation for combining the references is not supported by the applied references. In this regard, we note that Seiver teaches decomposing a catalyst precursor in the presence of a sulfur bearing compound and hydrogen (column 10, lines 35-42) whereas Berrebi discloses loading the catalyst with his disclosed presulfurizing agent in a process step that is carried out in the absence of hydrogen (column 6, lines 9-15). In view of the above and based on the present record, we cannot agree with the examiner that the dissimilar methods of Seiver and Berrebi are directed to the "same desulfurization process" using sulfur containing materials for the "same purpose."

Accordingly, we disagree with the examiner's assertion of obviousness of the claimed method, based on the teachings of the Berrebi and Seiver patents as the sole evidence relied upon.

Because we reverse on the basis of failure to establish a prima facie case of obviousness, we need not reach the issue of the sufficiency of appellants' showing of alleged unexpected results in their application (specification, page 13, Table 1) as supplemented by the Germain Martino declaration of record. See In re Geiger, 815 F.2d 686, 688, 2 USPQ2d 1276, 1278 (Fed. Cir. 1987).

CONCLUSION

To summarize, the decision of the examiner to reject claims 1-16 under 35 U.S.C. § 103 is reversed.

REVERSED

MARY F. DOWNEY)	
Administrative Patent Judge)	
)	
)	
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)	BOARD OF PATENT
TERRY J. OWENS)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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)	
PETER F. KRATZ)	
Administrative Patent Judge)	

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APJ KRATZ

APJ OWENS

APJ DOWNEY

DECISION: **REVERSED**

Prepared By: TINA

DRAFT TYPED: 11 Jan 00

FINAL TYPED: 26 Apr 99