

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

Ex parte WILLIAM P. ENLOW  
and ROGER W. AVAKIAN

---

Appeal No. 1996-3934  
Application 08/288,670<sup>1</sup>

---

ON BRIEF

---

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

JOHN D. SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal pursuant to 35 U.S.C. § 134 from the final rejection of claims 1-10.

Claim 1 is representative and is reproduced below:

1. An extrusion process for making a polyolefin film, said process comprising:

---

<sup>1</sup> Application for patent filed August 9, 1994. According to appellants, the application is a division of 08/038,413, filed March 29, 1993, now U.S. Patent No. 5,414,034, issued May 9, 1995.

Appeal No. 1996-3934  
Application 08/288,670

forming a polyolefin composition comprising a polyolefin resin, an organic phosphite ester stabilizer, and a metal salt of a lactic acid, said phosphite stabilizer being selected from the group consisting of tetrakis(2,4-di-t-butylphenyl)4,-4'-biphenylene diphosphonite, tris(2,4-di-t-butylphenyl)phosphite, trisnonylphenyl phosphite, bis(2,4-di-t-butylphenyl)pentaerythritol diphosphite, and bis(distearyl)pentaerythritol diphosphite, said metal salt being a bivalent salt of lactic acid, said polyolefin composition comprising from 90 to 99.5 weight percent polyolefin resin, from 0.001 to 5 weight percent phosphite stabilizer, and from 0.01 to about 5 weight percent of said metal salt,

b) melt extruding said composition through a filtration system to produce a filtered polyolefin melt stream, said filtration system (sic. comprising) a plurality of filter screens,

c) passing said filtered melt stream through an elongated die orifice to form a polyolefin film.

The references of record relied upon by the examiner are:

Yukawa	4,366,280	Dec. 28, 1982
Allen et al. (Allen)	4,425,464	Jan. 10, 1984

The appealed claims stand rejected under 35 U.S.C. § 103 as unpatentable over Allen in view of Yukawa and admissions of prior art (specification, page 10).

We cannot sustain the stated rejection.

The subject matter on appeal is directed to an extrusion process for making a polyolefin film by melt extruding a particular polyolefin composition through a filtration system comprising a plurality of filter screens to produce a filtered

Appeal No. 1996-3934  
Application 08/288,670

polyolefin melt stream which is then passed through an elongated orifice to form the polyolefin film. The composition is comprised of a polyolefin resin, certain specified phosphite stabilizers, and a metal salt of a lactic acid in relative amounts as called for in appealed claim 1.

As appellants point out in their brief, neither Allen nor Yukawa discloses an extrusion process for making a polyolefin film, much less an extrusion process wherein a polyolefin composition is melt extruded through a filtration system prior to being passed through an elongated die orifice to form a film as required by the appealed claims. Although we disagree with appellants' contention that Yukawa does not disclose a specific polyolefin composition "that includes an acylated hydroxy acid additive in combination with a phosphite or phosphonite compound"<sup>2</sup> (brief, page 4), appellants correctly argue that the examiner's stated rejection, which is based on a "combination of references", is fundamentally deficient since the examiner fails to point to any disclosure or

---

<sup>2</sup> See Yukawa's example 17 and compare to the composition required for use in appellants' process.

Appeal No. 1996-3934  
Application 08/288,670

suggestion in the prior art that would have led a person of ordinary skill in this art to use either the composition of Allen or Yukawa in an extrusion process as claimed for making a polyolefin film. That appellants' process (in terms of the manipulative steps per se) may be known in the art<sup>3</sup> does not remedy the basic deficiencies of the stated rejection.

The decision of the examiner is reversed.

REVERSED

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

---

<sup>3</sup> See the specification at page 3, lines 19-28 and page 3, line 34 to page 4, line 6. The "admitted prior art" process relied upon by the examiner (specification, page 10) involves the use of a spinneret which produces a fiber, not a film.

Appeal No. 1996-3934  
Application 08/288,670

DOUGLAS W. ROBINSON )  
Administrative Patent Judge )

JDS/kis

Kevin E. McVeigh  
GENERAL ELECTRIC COMPANY  
One Plastics Avenue  
Pittsfield, MA 01201