

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(2) is not binding precedent of the Board.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. 47

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SIEGFRIED R. WISSMANN,
WILLIAM T. SCHMITT, and
DAVID E. MURDOCK

Appeal No. 97-0576
Application 08/308,876¹

HEARD: Nov. 10, 1997

Before STONER, Chief Administrative Patent Judge, and COHEN and
LYDDANE, Administrative Patent Judges.

LYDDANE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the examiner's
refusal to allow claims 3 and 5 through 10, which are all of the
claims pending in the application.

¹ Application for patent filed September 19, 1994.
According to appellants, this application is a continuation of
Application 08/008,014, filed January 22, 1993.

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The subject matter on appeal is directed to an apparatus for preheating thermoplastic material. Claim 9 is exemplary of the invention and reads as follows:

9. An apparatus for preheating thermoplastic material prior to entry of the material into an extruder barrel, comprising:

an elongated housing having a central bore, an inlet adjacent a first end of the housing, and an outlet between the inlet and a second end opposite the first end of the housing, both the inlet and the outlet intersecting the central bore;

a material flow path beginning at the inlet, continuing through the central bore, and passing from the central bore through the outlet;

a pair of adjacent, parallel feed screws received within the central bore of the housing for blending the thermoplastic material and advancing it along the material flow path, each feed screw having

a main body section having a helical flight configured to form a screw channel that is generally U-shaped in cross-section and to advance the material from the inlet toward the outlet when the feed screw is rotated,

an open section having a constant diameter, and

a terminal section having a helical flight configured to form a screw channel that is generally U-shaped in cross-section and with a lead opposite that of the main body section,

such that the main body section extends from the inlet to the open section which is adjacent the outlet, and the terminal section extends from the open section to the second end of the housing;

drive means for rotating the feed screws in the same direction within the central bore; and

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means for heating the thermoplastic material to a desired temperature as it is blended and advanced along the material flow path.

The references of record relied upon by the examiner in rejections of the claims under 35 U.S.C. § 103 are:

Geier et al. (Geier)	3,023,455	Mar. 6, 1962
Schuur	3,224,739	Dec. 21, 1965
Skidmore	3,738,409	Jun. 12, 1973
Gerhards	3,884,607	May 20, 1975
Kertok	4,502,858	Mar. 5, 1985
Loomans	4,752,135	Jun. 21, 1988
Zahradnik	4,913,641	Apr. 3, 1990

Brydson et al. (Brydson), "Principles of PLASTICS EXTRUSION," Applied Science Publishers LTD, London, pp. 95-105 (1973).

Griff, "Plastics Extrusion Technology," 2nd ed., Robert E. Krieger Publishing Co., New York, pp. 10-11 (1976).

Claims 3, 5, 6, 8 and 9 stand rejected under 35 U.S.C. § 103 as being unpatentable over Zahradnik in view of Loomans, any one of Schuur, Geier and Skidmore, and either Brydson or Griff.

Claim 10 stands rejected under 35 U.S.C. § 103 as being unpatentable over Zahradnik in view of Loomans, any one of Schuur, Geier and Skidmore, either Brydson or Griff, and Kertok.

Claim 7 stands rejected under 35 U.S.C. § 103 as being unpatentable over Zahradnik in view of Loomans, any one of Schuur, Geier and Skidmore, either Brydson or Griff, and Gerhards.

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Rather than reiterate the examiner's statement of the above rejections and the conflicting viewpoints advanced by the examiner and the appellants, we refer to pages 3 through 10 of the examiner's answer, to the supplemental answer, to pages 6 through 18 of the appellants' brief (Paper No. 26, dated April 23, 1996), and to the reply brief for the full exposition thereof.

OPINION

In arriving at our decision in this appeal, we have given careful consideration to appellants' specification and claims, to the applied prior art, and to the respective positions advanced by the appellants and by the examiner. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the examiner is insufficient to establish a prima facie case of obviousness with respect to all claims on appeal. Our reasoning for this determination follows.

We agree with the examiner that the patent to Zahradnik discloses a preheater for an extruder which includes a pair of counter-rotating screws that is similar to that recited in appealed claim 9 except for drive means for co-rotating the screw, for the particular configuration of the screw body sections, and for the shape of the screw channels. We also agree

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that Griff and Brydson disclose that it is known to drive pairs of screws in an extruder such that they co-rotate or counter-rotate, that Skidmore discloses counter-rotating screws in a feed device that have the configuration of the body sections recited in appealed claim 9, and that Loomans discloses counter-rotating screws in a feed device wherein the screw channel has a generally U-shaped configuration. However, we find nothing in this mosaic of references that would either teach or suggest the modifications proposed by the examiner in the rejection of the claims on appeal.

As stated in W.L. Gore & Assocs. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984),

[t]o imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher.

It is our conclusion that the only reason to combine the teachings of the applied references in the manner proposed by the examiner results from a review of appellants' disclosure and the application of impermissible hindsight. Thus, we cannot sustain

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the examiner's rejections of appealed claims 3, 5, 6, 8 and 9 under 35 U.S.C. § 103.

We have also considered the teachings of the patent to Kertok applied in the rejection of claim 10 under § 103 as well as the teachings of the patent to Gerhards applied in the rejection of claim 7 under § 103. However, we find nothing in either of these references that would supply the motivation missing from the rejection based on the combined teachings of Zahradnik, Loomans, Schuur, Geier, Skidmore, Brydson and Griff. Thus, we also cannot sustain the rejection of claims 7 and 10 under 35 U.S.C. § 103.

In view of the fact that none of the examiner's rejections have been sustained, it has not been necessary to consider the declaration of David Dear, filed by the appellants as evidence of nonobviousness.

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Accordingly, the decision of the examiner rejecting
claims 3 and 5 through 10 under 35 U.S.C. § 103 is reversed.

REVERSED

Bruce H. Stoner, Jr., Chief)	
Administrative Patent Judge)	
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Irwin Charles Cohen)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
William E. Lyddane)	
Administrative Patent Judge)	

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Stephen H. Friskney
4701 Marburg Avenue
Cincinnati, OH 45209