

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PETER PUTSCH

Appeal No. 1997-0668
Application No. 08/232,854¹

ON BRIEF

Before KIMLIN, GARRIS and LIEBERMAN, Administrative Patent Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

¹ Application for patent filed April 22, 1994. According to appellant, this application is a continuation of Application No. 07/971,855 filed January 8, 1993, now abandoned.

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This is a decision on an appeal from the final rejection of claims 9, 11 and 18 through 25 which are all of the claims pending in the application.

The subject matter on appeal relates to a method for molding a product from recycled plastic which has been presorted comprising the steps of kneading the recycled presorted plastic substantially continuously so that it is simultaneously comminuted, mixed, heated, melted and homogenized and then passing the kneaded plastic to an intermediate buffer reservoir for intermediate storage therein and thereafter supplying the kneaded plastic to an injection molding equipment and effecting quasi-continuous flow of plastic material from said kneading step, said passing step, said storage step and said supplying step. This appealed subject matter is adequately illustrated by independent claim 9, a copy of which taken from the appellant's Brief is appended to this decision.

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

Nichols
1945

2,382,655

Aug. 14,

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Niimi et al. (Niimi) 1994	5,286,187	Feb. 15,
Japanese Patent (Aoki) 1977	52-7018	Feb. 26,

All of the claims on appeal stand rejected under the first paragraph of 35 U.S.C. § 112 as being based upon a disclosure which is nonenabling and which does not set forth the best mode for practicing the here claimed invention.

The appealed claims also stand rejected under 35 U.S.C. § 103 as being unpatentable over Japanese '018 or Niimi taken with Nichols.

We refer to the Brief and Reply Brief and to the Answer for a complete exposition of the opposing viewpoints expressed by the appellant and the examiner concerning the above noted rejections.

OPINION

For the reasons which follow, we cannot sustain the rejections before us on this appeal.

As support for her § 112, first paragraph, rejection of the appealed claims, the examiner states that "[t]he

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disclosure at the bottom of page 7 and page 8 [of the subject specification] states that pressure is built up in storage space 12 such as by a piston but does not teach how a piston can be arranged or used to build up pressure in the system or any type of best mold [sic, mode]" (Answer, page 4). We do not consider the examiner's position on this matter to be well founded.

In the first place, the enablement and best mode requirements in the first paragraph of § 112 relate to the invention which has been claimed, and, as properly indicated by the appellant, none of the appealed claims are directed to an invention which includes use of the piston referred to on specification pages 7 and 8. Indeed, again as the appellant has properly indicated, certain of the claims on appeal are directed to an invention which would exclude use of such a piston. Moreover, and in any event, it is our opinion that the examiner has failed to advance acceptable reasoning inconsistent with enablement in accordance with her initial burden of proof. In re Strahilevitz, 668 F.2d 1229, 1232, 212 USPQ 561, 563 (CCPA 1982). Further regarding the issue of enablement, we consider the appellant to have proffered

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evidence (i.e., the here applied Niimi patent) which reflects that his disclosed use of a piston would be known to those skilled in the art and thus enabled. In re Howarth, 654 F.2d 103, 105, 210 USPQ 689, 691 (CCPA 1981). Finally, the record before us contains utterly no evidence of concealment by the appellant as required by the best mode provision of § 112, first paragraph. Spectra-Physics v. Coherent, 827 F.2d 1524, 1535, 3 USPQ2d 1737, 1745 (Fed. Cir. 1987).

For the above stated reasons, the examiner's rejection of the claims on appeal under the first paragraph of 35 U.S.C. § 112 cannot be sustained.

We also cannot sustain the examiner's § 103 rejection of the claims on appeal as being unpatentable over Japanese '018 or Niimi taken with Nichols. In essence, we agree with the appellant's basic position that, even if one with an ordinary level of skill in the art were to combine the applied references, the resulting combination would not correspond to the method defined by the appealed claims. Specifically, the applied references whether taken individually or in combination simply would not have suggested the here claimed

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step of kneading recycled plastic so that it is simultaneously comminuted, mixed, heated, melted and homogenized.

It appears to be the examiner's opinion that such a multi-operational step would have been suggested by Nichols notwithstanding the fact that patentee's method includes discrete and segregated operational steps such as the chopping step (see element 31 of the patent drawing), the mixing step (see element 18 of the patent drawing), and the melting step (see element 15 of the patent drawing). According to the examiner, "[t]he steps [of Nichols] are simultaneously and continuously occurring since the material continuously flows from the chopping 31 to the screw conveyor 18 and both operate simultaneously" (Answer, page 9). However, we do not share the examiner's implicit belief that the here claimed kneading step encompasses comminuting, mixing, heating, melting and homogenizing operations which are performed simultaneously albeit on disparate segments on the plastic material flowstream. From our perspective, such an interpretation would be unreasonable and inconsistent with the appellant's specification disclosure (In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983)), and the examiner has not

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explained why this specification disclosure would support her contrary perspective.

In summary, we have not sustained either the § 112 or the § 103 rejections of claims 9, 11 and 18 through 25 which the examiner has advanced on this appeal.

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The decision of the examiner is reversed.

REVERSED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
BRADLEY R. GARRIS)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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PAUL LIEBERMAN)	
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APPENDIX

9. A method for molding a product from recycled plastic which has been presorted, comprising the steps of:

kneading the recycled presorted plastic substantially continuously so that it is simultaneously comminuted, mixed, heated, melted and homogenized;

passing the kneaded plastic to an intermediate buffer reservoir;

intermediately storing the kneaded plastic at a controlled temperature in said intermediate buffer reservoir;

supplying the kneaded plastic, after said intermediate storage, to injection molding equipment;

molding said kneaded plastic into a product in said injection molding equipment, said molding step being affected intermittently; and

affecting quasi-continuous flow of plastic material from said kneading step, said passing step, said intermediate storing step, and said supplying step with said intermediate storing step compensating for the difference in the plastic material flowing from step to step.