

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(2) is not binding precedent of the Board.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. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte NOEL R.M. DE KEYZER and GEERT E.A. VERMUNICHT

Appeal No. 1997-0833
Application No. 08/363,438

ON BRIEF

Before JOHN D. SMITH, WALTZ 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 through 10 and 13.

The subject matter on appeal relates to a releasable pressure sensitive adhesive composition. Appellants explain in the specification (page 1, lines 8 through 20) that

Releasable pressure sensitive adhesives are used in numerous applications wherein tackiness and removability without leaving traces of adhesives on the

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substrate (even after repeated use) are required. Specific examples [of the use of such releasable pressure sensitive adhesives] include self-adhering memo labels, removable tapes, and reusable closure systems, such as closures of packages containing tissues.

Such releasable pressure sensitive adhesive compositions are also referred to as "repositionable" adhesives and "releasable and readherable" adhesives. Repositionable adhesives are widely used on Post-It™ note pads. See the specification at pages 2, lines 5 through 15.

Appellants' claimed releasable adhesive compositions utilize a monovinyl aromatic-conjugated diene block copolymer crosslinked by reaction with an organohydrogenpolysiloxane crosslinking agent. Appellants contend that surprisingly, such crosslinked compositions "can be obtained without using any curing accelerator" and that such compositions "need contain only relatively small amounts of plasticizer." See the specification page 5, lines 5 through 9.

Further details of the claimed composition are evident from appealed claim 1, which is reproduced below:

1. A releasable pressure sensitive adhesive composition comprising:

(a) a block copolymer comprising at least one poly(monovinyl aromatic hydrocarbon) block and at least one poly(conjugated diene) block and having

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- a vinyl content of at least 3 % by weight,
- (b) a solid tackifying resin, and
- (c) a plasticizer,

wherein the block copolymer has been cross-linked without the use of a curing accelerator through its vinyl groups by means of a reaction, in the presence of a crosslinking catalyst, with an organohydrogenpolysiloxane crosslinking agent which contains at least two hydrogen atoms which are directly bonded to a silicon atom, and wherein the plasticizer is present in an amount of from 1 to 50 parts by weight per 100 parts by weight of the block copolymer.

The references of record relied upon by the examiner are:

Blizzard et al. (Blizzard)	4,831,080	May 16, 1989
Huddleston et al. (Huddleston)	4,997,709	Mar. 05, 1991
Miller et al. (Miller)	EP 0 443 263	Aug. 28, 1991
Onohara et al. (Onohara)	JP 61-60727	Mar. 28, 1986

The appealed claims stand rejected under 35 U.S.C. § 103 as unpatentable over Blizzard in view of Miller and Onohara. Additionally, the appealed claims stand rejected under the same section of the statute over Huddleston in view of Blizzard.

We cannot sustain the stated rejections.

The examiner's "primary reference" to Blizzard relied upon in the first stated rejection, is cited and discussed in appellants' specification at pages 3 and 4. Therein, Blizzard is described as disclosing a composition comprising a pressure

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sensitive adhesive and a liquid organohydrogenpolysiloxane containing on the average at least two silicon-bonded hydrogen atoms per molecule. When this composition is combined with a second composition comprising the same pressure sensitive adhesive and a curing agent for the liquid organohydrogenpolysiloxane, a crosslinkable pressure sensitive adhesive composition is obtained. Appellants point out at lines 3 and 4 of page 4 of the specification, however, that the adhesive properties of Blizzard's compositions are such that it cannot be used as a releasable adhesive. Moreover, appellants indicate that while Blizzard discloses that the pressure sensitive adhesive may be based on styrene-butadiene random copolymers, styrene-butadiene block copolymer adhesives are not explicitly disclosed by Blizzard.

Using the Blizzard reference as his "primary reference", the examiner contends that it would have been obvious to a person of ordinary skill in this art to replace the conventional random styrene-butadiene copolymer utilized in Blizzard's pressure sensitive adhesive composition with the known block copolymer (presumably the styrene-butadiene block copolymers described as "Kraton" 1101 and 1102) utilized in the pressure adhesive composition of Miller. See Miller at page 4, lines 10-17,

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particularly line 15. The basis for the examiner's proposed substitution is that the random copolymers of Blizzard and the block copolymers of Miller are recognized functional equivalents. For factual support for this proposition, the examiner relies on the Onohara reference.

We agree with appellants that the examiner's stated rejection based principally on Blizzard cannot be sustained because, as appellants emphasized in the brief, the examiner's rejection is based on the erroneous assumption that random and block copolymers described in the Blizzard and Miller references respectively are functionally equivalent adhesive components. Clearly, the Onohara reference relied upon by the examiner does not support such a contention, since Onohara is specifically directed to polymers used to form crosslinked molded articles, not crosslinked adhesives. See the translation of this reference at page 4. While it may be true, as apparently alleged by the examiner, that in some instances, random and block copolymers may be used for the same purpose, clearly, the examiner has failed to provide objective evidence that this is the case with respect to the herein claimed blocked copolymer adhesive components. The examiner's stated rejection based on Blizzard is further undermined by the fact that Blizzard fails to disclose

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releasable pressure sensitive adhesive compositions. Compare the disclosures of Blizzard at column 8, lines 6 through 22. Accordingly, we cannot sustain the examiner's stated rejection of the appealed claims based on Blizzard in view of Miller and Onohara.

The examiner's alternatively stated obviousness rejection of the appealed claims based on Huddleston in view of Blizzard is similarly deficient. As appellants point out in their brief, Huddleston does disclose a pressure sensitive adhesive composition which contains a block copolymer which has been crosslinked. However, Huddleston's block copolymer is crosslinked with sulfur, not a organohydrogenpolysiloxane crosslinking agent. Moreover, based on the applications of Huddleston's adhesive, appellants persuasively argue that Huddleston's pressure sensitive adhesive composition is extremely strong and would not likely be suitable for use in a releasable pressure sensitive adhesive application as required by the claims on appeal herein. Accordingly, we cannot sustain the examiner's obviousness rejection based principally on Huddleston.

Accordingly, the decision of the examiner is reversed.

As a final matter, however, prior to taking further action in this application, the examiner should reconsider the

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patentability of the pending claims herein in light of Miller's disclosure in view of the disclosures of Blizzard. Respecting this issue, we note that counsel for appellants has indicated in the brief (unnumbered pages 4 and 5) that if Miller were considered as the "primary reference", Blizzard could be utilized as a "secondary reference" to "overcome the deficiencies" in Miller, because Blizzard "discloses pressure sensitive adhesive compositions wherein random copolymers" including styrene-butadiene rubbers, are crosslinked with organohydrogenpolysiloxane to obtain an improved adhesive bond strength. Presumably, appellants' statement above is based at least in part on the disclosure by Blizzard at column 2, lines 2 through 5 that the adhesion to a substrate, as well as the cohesive strength of the pressure sensitive adhesive composition itself, can be improved by curing a pressure sensitive adhesive. Accordingly, in light of appellants' comments in the brief, the examiner should reevaluate the patentability of the claims herein in light of the relevant disclosures in Miller as "a primary reference" in view of the relevant disclosures in Blizzard, as a "secondary reference".

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The decision of the examiner is reversed.

REVERSED

JOHN D. SMITH)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
THOMAS A. WALTZ)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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DOUGLAS W. ROBINSON)	
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