

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WALTER J. GAFFIGAN

Appeal No. 1997-1525
Application No. 08/151,352¹

ON BRIEF

Before GARRIS, WARREN and OWENS, Administrative Patent Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This a decision on an appeal the refusal of the examiner to allow claims 1 through 36 and 47 through 49 as amended subsequent to the final rejection. These are all of the claims remaining in the application.

¹ Application for patent filed November 12, 1993.

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The subject matter on appeal relates to a unitary, single sheet sound insulating membrane comprising a backing layer and a nonfoam, polymeric layer having an elongation factor of from about 500% to about 900% and a Shore A hardness of from about 65 to about 80 points, 5 seconds, wherein the membrane has a thickness of less than about 0.150 inches. This appealed subject matter is adequately illustrated by independent claim 1 which reads as follows:

1. A unitary, single sheet sound insulating membrane comprising:

at least one backing layer; and

a nonfoam, polymeric layer contacting and affixed to said one backing layer, said polymeric layer formed from at least one polymeric material, said polymeric layer having an elongation factor of from about 500% to about 900% and a Shore A hardness of from about 65 to about 80 points, 5 seconds, wherein said membrane has a thickness of less than about 0.150 inches.

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

Bernett et al. (Bernett) 4, 1986	4,567,704	Feb.
Brown 1987	4,681,786	Jul. 21,
Puydak et al. (Puydak) 1995	5,403,892	Apr. 4,

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(filed Sep. 25, 1992)

All of the claims on appeal are rejected under 35 U.S.C. § 103 as being unpatentable over Brown in view of Bennett and Puydak.

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

OPINION

We cannot sustain this rejection.

As correctly argued by the appellant in his Briefs, the applied prior art simply contains no teaching or suggestion of a sound insulating membrane comprising a nonfoam polymeric layer having the properties of elongation factor and Shore A hardness defined by the independent claims on appeal. We appreciate that Puydak discloses in Table II a polymeric composition F (which was not a composition in accordance with his invention; see lines 43 through 45 in column 13) which possesses Shore A hardness and elongation properties within

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the broad ranges claimed by the appellant. However, we cannot agree with the examiner that it would have been obvious for one with ordinary skill in the art to use this composition "as the resilient layer of a sound insulating sheet as disclosed in Brown and Bernett . . . for the purpose of noise and impact reduction" (Answer, page 5). This is because the applied references do not contain the suggestion to modify or the reasonable expectation of success which are required under 35 U.S.C. § 103. In re O'Farrell, 853 F.2d 894, 903, 7 USPQ2d 1673, 1680-1681 (Fed. Cir. 1988).

The decision of the examiner is reversed.

REVERSED

BRADLEY R. GARRIS)
Administrative Patent Judge)
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) BOARD OF PATENT
CHARLES F. WARREN)

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Administrative Patent Judge)	APPEALS AND
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TERRY J. OWENS)	
Administrative Patent Judge)	

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