

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DOMINIQUE BASSET,
ALAIN BOUILLOUX, and YVES LE DU

Appeal No. 1997-2924
Application No. 08/320,726

HEARD: Oct. 25, 2000

Before JOHN D. SMITH, GARRIS, and OWENS, Administrative Patent Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the refusal of the examiner to allow claims 1 through 3 and 10 as amended subsequent to the final rejection. These are all of the claims pending in the application.

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The subject matter on appeal relates to an article of manufacture having at least one weld line such as an automobile fender made by injection molding via a composition comprising a polyamide, a polypropylene and a resin compatibilization agent, for example, maleinized polypropylene. Further details of this appealed subject matter are set forth in representative independent claim 1 which reads as follows:

1. An article of manufacture comprising per hundred parts by weight a mixture of (i) 65 to 68 parts by weight of polyamide, (ii) 20 to 30 parts by weight of a polypropylene having a melt flow index, measured at 230EC/2.16 kg, lower than 0.5, and (iii) 4 to 8 parts by weight of a resin compatibilization agent selected from the group consisting of maleinized polypropylene, maleinized polypropylene grafted with PA6, and maleinized polypropylene grafted with PA66/12 and including at least one weld line, wherein (a) the ratio of the viscosities of the polyolefin (ii) to the polyamide (i), measured at a shear rate higher than 100 s^{-1} , is greater than 0.70, and (b) the quantity of polyamide (i) is sufficient for the elongation at break of said article to be greater than 10%.

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

Fukui et al (Fukui)	5,206,284	Apr.
		27, 1993
Glotin et al. (Glotin)(EP)	0 342 066	Nov. 15,
		1989

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Nagao et al. (Nagao) (JP) 1-284785 Jun. 21, 1991

All of the appealed claims are rejected under 35 U.S.C. § 103 as being unpatentable over Nagao and Glotin in view of Fukui.

For the reasons which follow, we cannot sustain this rejection.

As argued by the appellants and recognized by the examiner, none of the applied references discloses an article of manufacture which includes a weld line. Nevertheless, the examiner concludes that such an article made from a composition in accordance with the appealed claims would have been suggested by these references. This is because, in the examiner's view, the reference disclosures are generic to articles having a weld line and to compositions of the type defined by the appealed claims. We cannot agree.

It is well established that obviousness under 35 U.S.C. § 103 requires a suggestion to modify and a reasonable expectation of success. In re O'Farrell, 853 F.2d 894, 903-04, 7 USPQ2d 1673, 1680-81 (Fed. Cir. 1988).

This requirement for obviousness is not satisfied by the applied references in light of their aforementioned deficiency

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with respect to an article having a weld line and a composition appropriate for making such an article. That is, because of this deficiency, the references contain no guidance concerning the manufacture of such an article or the development of a composition suitable therefor. As a consequence, even if the applied references are "generic" to articles and compositions of the type claimed by the appellants as urged by the examiner, there is simply nothing in these references which would have suggested manufacturing an article having a weld line via a composition in accordance with the independent claim on appeal based upon a reasonable expectation of success as required by 35 U.S.C. § 103.

Thus, even assuming an artisan were motivated to manufacture an article having a weld line via the generic compositions of the applied prior art, there is nothing in this prior art which would have suggested modifying these generic compositions in such a manner as to result in the specific composition having the specific characteristics defined by the independent claim before us. Likewise, the references plainly contain nothing which would have given the artisan a reasonable expectation for believing that the

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resulting composition would be successful for the manufacture of an article having a weld line. In re O'Farrell, id.

On the record of this appeal, it is only the appellants' own disclosure which provides any basis for using the composition of the appealed claims for manufacturing an article having a weld line with a reasonable expectation that such a use would be successful. Viewed from this perspective, we believe the examiner has unwittingly fallen victim to the impermissible application of hindsight in formulating the rejection under consideration. 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).

Under the foregoing circumstances, it is our determination that we cannot sustain the examiner's section 103 rejection of the appealed claims as being unpatentable over Nagao and Glotin in view of Fukui.

The decision of the examiner is reversed.

REVERSED

John D. Smith)
Administrative Patent Judge)
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	Bradley R. Garris)	BOARD OF
PATENT)	
	Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
	Terry J. Owens)	
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BRG:tdl

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