

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RANDALL H. HELLAND, CHARLES W. GOMEZ,
and WILLIAM D. RAMSDEN

Appeal No. 1997-3485
Application No. 08/431,734

ON BRIEF

Before JOHN D. SMITH, PAK, and TIMM, Administrative Patent Judges.

PAK, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal under 35 U.S.C. § 134 from the examiner's refusal to allow claims 1 through 30, all of the claims pending in the above-identified application.

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Claims 1 and 2 are representative of the subject matter
on appeal and read as follows:

1. An infrared photosensitive element comprising:
a support bearing an infrared radiation-sensitive silver
halide material; and an antihalation layer comprising a basic
antistatic agent, an acid having a pKa less than 4.2 in an
amount equal to at least 0.50 mole equivalent of acid to 1
mole equivalent of base in said basic antistatic agent and
sufficient antihalation dye to provide a transmission optical
density at the wavelength of maximum absorbance of said dye of
at least 0.05 to 3.0 after coating.

In support of his rejection, the examiner relies on the
following prior art references:

Habu et al. (Habu)	3,743,608	Jul. 3, 1973
Ishihara et al. (Ishihara)	3,811,887	May 21, 1974
Gomez et al. (Gomez)	5,380,635	Jan. 10, 1995
		(Filed Feb. 28, 1994)
Helland et al. (Helland)	5,395,747	Mar. 7, 1995
		(Filed Dec. 20, 1993)

Claims 1 through 30 stand rejected under 35 U.S.C. § 103
as unpatentable over the combined disclosures of Gomez,
Helland, Ishihara and Habu.

We reverse.

The claimed subject matter is directed to a photographic
or photothermographic element comprising a support and an
antihalation layer. See specification, page 1, together with
claims 1 and 2. The antihalation layer contains a basic

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antistatic agent, a particular dye and "an acid having a pKa less than 4.2 in an amount equal to at least 0.05 mole equivalent of acid to 1 mole equivalent of base in [the] basic antistatic agent..." See claims 1 and 2. The acid is used to prevent or minimize reaction between the basic antistatic agent and the particular dye so that the bleaching of the dyes in solution is minimized. See specification, page 5, lines 6-10 and page 7, lines 9-14.

As evidence of obviousness of the claimed subject matter under 35 U.S.C. § 103, the examiner relies on the combined disclosures of Gomez, Helland, Ishihara and Habu. The examiner finds (Answer, pages 4, 5 and 7) that Gomez describes a photographic or photothermographic element comprising a support and an antihalation coating having the claimed dye and an antistatic agent described in U.S. Application Ser. No. 08/183,058¹. See also abstract together with columns 13 and

¹ Upon return of this application, the examiner is to review the content of this application to determine what antistatic agent is described and what problem it is expected to cause in a photographic or photothermographic element. If this application describes the claimed antistatic agent, with some recognition of any bleaching problem caused by the antistatic agent, the examiner is to determine whether the patentability of the claimed subject matter is affected by the

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14. The examiner recognizes that Gomez does not describe adding the claimed amount of the claimed acid to its antihalation coating. See Answer, pages 6 and 7.

To remedy this deficiency, the examiner relies on the disclosure of Helland. Helland discloses employing a stabilizer, including an acid, to retard "pre-bleaching of the dye" in a thermo-dye-bleach layer. See column 5, line 65 to column 10, line 38. Specifically, Helland states (column 10, lines 15-22) that:

Although addition of the above-disclosed stabilizers of the present invention is critical, additional use of other acids in the thermal-dye-bleach solution is frequently beneficial. Acid retards pre-bleaching of the dye prior to coating, during coating and in the drying ovens; and it results in longer solution pot life, higher D_{\max} and improved shelf life of the thermally bleachable coatings.

The dispositive question is, therefore, whether it would have been obvious to include the claimed acid "having a pKa less than 4.2 in an amount equal to at least 0.05 mole equivalent of acid to 1 mole equivalent of base in [a] basic antistatic agent" in the antihalation coating described in

combined disclosures of Gomez, the application and Helland.

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Gomez within the meaning of 35 U.S.C. § 103. We answer this question in the negative.

As indicated by appellants (Brief, pages 13 and 14), Gomez does not state that its antihalation layer used in a photothermographic element employs a "thermal-dye-bleach" solution. See Gomez in its entirety. Nor does Gomez state that its antihalation layer suffers from any pre-bleaching problem. *Id.* On this record, there simply is no evidence to show that the stabilizers or acids described in Helland, which are used as retardants for pre-bleaching in a bleach containing system, are needed in the antihalation layer of the photographic or photothermographic element described in Gomez.² Under these circumstances, we are constrained to agree with appellants that one of ordinary skill in the art would not have been led to employ the claimed amount of the claimed acid in the antihalation layer of the photographic or photothermographic element described in Gomez.

² The examiner relies on Habu and Ishihara only to show that the claimed basic antistatic agent can be employed as the antistatic agent for the photographic or photothermographic element described in Gomez. See Answer, page 5.

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In view of the foregoing, the decision of the examiner is reversed.

No period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

REVERSED

JOHN D. SMITH)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
CHUNG K. PAK)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
CATHERINE TIMM)	
Administrative Patent Judge)	

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CKP:lp

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SARAH MEEKS ROBERTS
EASTMAN KODAK COMPANY
343 STATE STREET
ROCHESTER, NY 14650-2201

Leticia

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APJ PAK

APJ JOHN D. SMITH

APJ TIMM

DECISION: REVERSED
Send Reference(s): Yes No
or Translation (s)
Panel Change: Yes No
Index Sheet-2901 Rejection(s):
Prepared: February 7, 2002

Draft Final

3 MEM. CONF. Y N

OB/HD GAU

PALM / ACTS 2 / BOOK
DISK (FOIA) / REPORT