The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board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. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte MARIA D. ELLUL

Appeal No. 1997-4412
Application 08/372,539

ON BRIEF

Before KIMLIN, Administrative Patent Judge, and McKELVEY, Senior Administrative Patent Judge, and PAWLIKOWSKI, Administrative Patent Judge.

PAWLIKOWSKI, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 28, 29, 31-33, and 35-38. A copy of illustrative 28 is reproduced below:

28. A thermoplastic crystalline olefin polymer composition having a lowered glass transition temperature, consisting essentially of a C_3 polyolefin containing a low molecular weight aliphatic tallate ester plasticizer which is compatible with the polyolefin.

Claims 28, 29, 31-33, and 35-38 stand rejected under 35 U.S.C. § 112, first paragraph (written description).

For the reasons set forth below, we reverse.

OPINION

The examiner states that the specification is directed to a blend of a polyolefin and a rubber taken together with a plasticizer. (Answer, page 4). The examiner concludes that no support exists for a composition consisting essentially of a polyolefin and a plasticizer. (Answer, page 4). The examiner states that every example in the specification contains a rubbery component (Answer, page 7).

Appellant argues that the specification does convey to the artisan that separate phases of thermoplastic polyolefin and rubber were recognized by appellant. Appellant refers to page 1, lines
16-17, page 3, lines 5-6, page 6, lines 5-9, and page 13, lines 21-23 of the specification in this regard. (Brief, pages 3-4). Appellant also refers to the paragraph bridging pages 6-7, and to Tables 1, 2, 3, and 7 of the specification.

We have carefully reviewed the above-mentioned parts of the specification in search of a description of any phase containing only 2 components (polyolefin and an ester plasticizer). We find that the paragraphs bridging pages 6-7 provides such a description. This paragraph indicates that a polyolefin was immersed in an ester plasticizer in order to determine the compatibility between the ester plasticizer and the polyolefin. The subject matter of two components only are supported by this description. With respect to the other parts of the specification mentioned above, we cannot find such as description of any phase containing only 2 components, and hence agree with the examiner’s comments with regard to these other parts of the specification.

In view of the description found in the paragraph bridging pages 6-7 of the specification, we find that appellant was in possession of the invention as claimed, and hence reverse the 35 U.S.C. § 112, first paragraph rejection.

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

REVERSED

Edward C. Kimlin Administrative Patent Judge	)	
Fred E. McKelvey, Senior Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
Beverly A. Pawlikowski Administrative Patent Judge	)	

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