

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. 38

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex Parte KOE ENMANJI, ITSUO NISHIYAMA
and KENZO TAKAHASHI

Appeal No. 1998-0575
Application 08/190,569

HEARD: March 7, 2001

Before, GARRIS, WALTZ and JEFFREY T. SMITH, Administrative Patent Judges.

JEFFREY T. SMITH, Administrative Patent Judge.

Decision on appeal under 35 U.S.C. § 134

Applicants appeals the decision of the Primary Examiner finally rejecting claims 9 and 10, all the claim remaining in the application. We have jurisdiction under 35 U.S.C. § 134.¹

¹ The claims on appeal have been amended by an after final amendment, paper no. 29, filed March 23, 1995. The Examiner indicated the amendment would be entered upon filing an appeal. (Paper no. 30, mailed March 30, 1995).

BACKGROUND

The invention is directed to a method for deodorizing air containing H₂S by passing the air through a deodorant material. Claim 9 which is representative of the invention is reproduced below:

9. A method for deodorant an air flow containing H₂S, comprising deodorizing said air flow by passing it through a deodorant material, said deodorant material comprising
(a) a carrier which has been prepared by treating granular or fibrous active carbon by an oxidizing treatment, and
(b) cupric ion supported on said carrier, H₂S reacting with said cupric ion.

As evidence of obviousness, the Examiner relies on the following reference:

Ninomiya et al. (Ninomiya) 4,210,628

Jul. 1, 1980

THE REJECTION

Claims 9 and 10 are rejected as being unpatentable under 35 U.S.C. § 103(a) over Ninomiya. (Examiner's Answer, page 3).

OPINION

We reverse the aforementioned rejection. We need to address only claim 9, which is the sole independent claim.

Ninomiya discloses a process for removing nitrogen oxides contained in waste gases. The waste gases are said to contain sulfur oxides together with the nitrogen oxides. (Column 1, lines 20-25). The process employs active carbon, carbon supported with one

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or more elements including Cu, to reduce the nitrogen oxide to nitrogen. (Column 2, lines 8-23). Ninomiya discloses the sulfur oxides are also removed from the waste gases because the process also converts the sulfur oxides to sulfuric acid and/or ammonium sulfate. (Column 2, lines 24-32).

The Examiner urges that Ninomiya teaches a process for passing air containing paving sulfide through a deodorant material. The Examiner states “[i]t would have been obvious to one of ordinary skill in the art at the time the invention is made to include well known sulfide gases such as H₂S as constituents to be deodorized for Ninomiya et al. in col. 2, line 59 teaches that it is known to include various types or sulfide molecule in his gas.” (Examiner’s Answer, page 3, fourth paragraph).

The Examiner has not directed us to evidence or a reason to believe that the waste gas of Ninomiya contains H₂S. We have not been directed to evidence or a reason to believe the deodorant material of Ninomiya could treat H₂S. Further, the Examiner has not provided motivation for subjecting air containing H₂S to the deodorant material of Ninomiya. The Examiner’s conclusion is based on mere speculation, and such speculation is not sufficient for establishing a *prima facie* case of obviousness. See *In re Warner*, 379, F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967); *In re Sprock*, 301 F.2d 686, 690, 133 USPQ 360, 364 (CCPA 1962).

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In the absence of sufficient factual evidence or scientific rationale on the part of the Examiner to establish why and how a skilled artisan would have arrived at the subject matter of claim 9, we find that the Examiner has failed to meet the initial burden of establishing the *prima facie* obviousness of the claimed subject matter. Accordingly, we are constrained to reverse the Examiner's rejection of claims 9 and 10.

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Time for taking action

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

AFFIRMED-IN-PART

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BRADLEY R. GARRIS)	
Administrative Patent Judge)	
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