

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for publication and is not binding precedent of the Board.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. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte YOICHI ISHIKAWA

Appeal No. 98-0779
Application No. 08/353,791

ON BRIEF

Before Warren, Owens, and Lieberman, Administrative Patent Judges.

Lieberman, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the decision of the examiner refusing to allow claims 12 through 16 and 20 through 22, which are all the claims pending in this application.

THE INVENTION

The invention is directed to a process of supplying carbon dioxide to plants in an aqueous medium using current supplied to electrodes including a carbon anode to form no, or substantially no oxygen gas at the carbon anode. Thereafter, whatever oxygen gas is formed, the carbon anode reacts with the oxygen gas to form

The carbon dioxide is dissolved in the aqueous medium.

THE CLAIM

Claim 21 is illustrative of appellant's invention and is reproduced below.

21. A method of supplying dissolved carbon dioxide to plants in an aqueous medium comprising the steps of providing at least two electrodes in the aqueous medium, wherein at least one of the electrodes is made of particulate or granulated carbon; supplying an electric current to the electrodes such that the carbon electrode functions as an anode; providing an electric collector that is in electrical contact with said anode; regulating the current density supplied to the electrodes so that no, or substantially no, oxygen gas is formed at the carbon anode; reacting the carbon anode with nascent oxygen generated at the anode to form carbon dioxide; dissolving the carbon dioxide in said aqueous medium.

THE REFERENCES OF RECORD

As evidence of obviousness, the examiner relies upon the following references.

Goto et al. (Goto)

5,256,268

Oct. 26, 1993
(filed Nov. 16, 1992)

Based upon the above analysis, we have determined that the examiner's legal conclusion of anticipation and obviousness is not supported by the facts. "Where the legal conclusion is not supported by the facts it cannot stand." *In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967).

DECISION

The rejection of claims 12 through 16, and 20 through 22 under 35 U.S.C. § 112, paragraph one, as the specification, as originally filed, does not provide support for the invention as now claimed is reversed.

The rejection of claims 12 through 16 and 20 through 22 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention is reversed.

The rejection of claims 12 through 16 and 20 through 22 under 35 U.S.C. § 102(e) as anticipated by or, in the alternative, under 35 U.S.C. § 103 as obvious over Goto is reversed.

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