

*THIS OPINION WAS NOT WRITTEN FOR PUBLICATION*

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

*Ex parte* ROBIN B. SOMERVILLE  
AND LIANG-TSENG FAN

---

Appeal No. 95-1668  
Application 07/948,089<sup>1</sup>

---

*ON BRIEF*

---

Before PAK, WARREN and OWENS, *Administrative Patent Judges*.  
OWENS, *Administrative Patent Judge*.

*DECISION ON APPEAL*

This is an appeal from the examiner's rejection of claims 1 and 3-18, which are all of the claims remaining in the application. Claim 14 is illustrative and reads as follows:

---

<sup>1</sup> Application for patent filed September 18, 1992. According to applicants, this application is a continuation-in-part of Application 07/644,192 filed January 22, 1991, now abandoned.

Appeal No. 95-1668  
Application 07/948,089

14. A method of preparing a high heating value fuel product comprising the steps of:

blending a high heating value waste material with a sewage sludge, said waste material having a hydrocarbon-containing material having a heating value of greater than 7000 BTU, said sewage sludge being between 10 and 50% of a weight of said waste material, said sewage sludge being a product of a secondary treatment system of a sewage processing plant;

adding a lime-containing substance to the blend of said waste material and said sewage sludge; and

forming the blended mixture into a form suitable for handling.

#### *THE REFERENCES*

von Porten	1,572,909	Feb. 16, 1926
Somerville et al. (Somerville)	4,875,905	Oct. 24, 1989

#### *THE REJECTION*

Claims 1 and 3-18 stand rejected under 35 U.S.C. § 103 as being unpatentable over Somerville in view of von Porten.

#### *OPINION*

We have carefully considered all of the arguments advanced by appellants and the examiner and agree with appellants that the aforementioned rejection is not well founded. Accordingly, this rejection will be reversed.

Appellants' invention as it is most broadly recited in claim 14 is a method for preparing a high heating value product by

Appeal No. 95-1668  
Application 07/948,089

blending a hydrocarbon-containing waste material having a heating value greater than 7000 BTU with sewage sludge from a secondary treatment system of a sewage processing plant in an amount which is between 10 and 50 wt% of the hydrocarbon-containing waste material, adding a lime-containing substance to the blend, and forming the resulting mixture into a form suitable for handling.

Somerville discloses a method for preparing a high heating value fuel product by blending a high heating value waste material which "should be a material having a heating value greater than seven thousand BTU" with a cellulosic material and a pozzolanic agent, and forming the resulting mixture into a form suitable for handling (col. 2, lines 41-57). Somerville teaches that a wide variety of high heating value waste materials can be used such as oil tank bottoms, activated carbon particles and ion exchange resins (col. 3, lines 37-45). The cellulosic material "can be rice hulls, wood shavings, sawdust, ground corncobs, grain dust, cotton gin waste, or similar material" (col. 2, lines 62-64). The pozzolanic agent "may be cement kiln dust or fly ash" (col. 3, lines 8-10).

Somerville does not include in the blend sewage sludge from a secondary treatment system of a sewage processing plant. To remedy this deficiency the examiner relies upon von Porten. This

Appeal No. 95-1668  
Application 07/948,089

reference discloses a method for producing an artificial fuel by mixing waste animal or vegetable matter, a hydrocarbon distillate such as coal oil, a combustible binder such as tar oil and pitch, and optionally an earth product such as clay to serve as a diluent, compressing the mixture into bricks or blocks, and drying the bricks or blocks (page 1, lines 21-66). von Porten states that the animal or vegetable waste is "refuse organic matter such as manure, garbage and other like substances that are not now put to beneficial use" page 1, lines 17-20). von Porten teaches that the waste animal or vegetable matter preferably is 75% of the mixture and that such a percentage can be departed from within reasonable limits (page 1, lines 28-37 and 67-71).

The examiner argues that "[i]n view of the fact that Somerville et al. clearly teach that a wide variety of high heating value waste may be incorporated into its invention, it would have been obvious to one skilled in the art to substitute the waste animal/vegetable matter and the oil components of von Porten for the high heating value mixture of Somerville et al." (answer, page 4). We are not persuaded by this argument for two reasons.

First, the examiner does not explain where von Porten discloses a high heating value waste material. The hydrocarbon

Appeal No. 95-1668  
Application 07/948,089

distillate and combustible binder materials disclosed by von Porten, *i.e.*, coal oil and tar oil and pitch, do not appear to be waste materials. The artificial fuel product used by von Porten is not a waste material because it is useful as a fuel for home consumption (page 1, lines 80-88). The waste animal or vegetable matter disclosed by von Porten is a waste material, but the examiner has not established that it has a high heating value as that term is used by Somerville. Furthermore, if the waste animal and vegetable matter were the high heating value waste material recited in appellants' claims, then the rejection is deficient because the examiner has not explained why the reference would have suggested, as required by appellants' claims, including sewage sludge in the blend in addition to the waste animal and vegetable matter.

Second, the examiner does not explain in this argument why, even if the teachings of the references are combined as proposed by the examiner, appellants' claimed invention would result. *See Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 1052, 5 USPQ2d 1434, 1439 (Fed. Cir.), *cert. denied*, 488 U.S. 825 (1988). Neither Somerville nor von Porten discloses a composition which contains sewage sludge from a secondary treatment system of a sewage processing plant, and the examiner

Appeal No. 95-1668  
Application 07/948,089

does not explain in this argument why the references would have fairly suggested, to one of ordinary skill in the art, including such a material in the blend.

The examiner further argues that "Somerville et al. clearly teach the claimed method and it also teaches that any otherwise unusable waste material may be used in its invention. It would have been well within the level of ordinary skill in the art to substitute waste animal matter as taught by von Porten for the hazardous waste material as taught by Somerville et al." (answer, page 6). We are not convinced by this argument because, for the reasons given above regarding why the examiner has not established that von Porten discloses a high heating value waste material, the examiner has not established that von Porten discloses an "otherwise unusable" high heating value material.

Regarding the claim requirement that the blend include sewage sludge from a secondary treatment system of a sewage processing plant, the examiner argues that "if one of ordinary skill in the art were to seek an 'otherwise unusable' waste material, one would surely consider the use of sewage sludge from a secondary treatment plant" (answer, page 7). We are not persuaded by this argument because it is merely unsupported speculation. The examiner has not explained, and it is not

Appeal No. 95-1668  
Application 07/948,089

apparent to us, why Somerville's statement that the high heating value material is otherwise unusable would have provided one of ordinary skill in the art with motivation to use sewage sludge from a secondary treatment system of a sewage processing plant as or in addition to the high heating value material.

For the above reasons, we conclude that the examiner has not carried his burden of establishing a *prima facie* case of obviousness of appellants' claimed invention. See *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); *In re Rinehart*, 531 F.2d 1048, 1051, 189 USPQ 143, 147 (CCPA 1976).

Appeal No. 95-1668  
Application 07/948,089

*DECISION*

The rejection of claims 1 and 3-18 under 35 U.S.C. § 103 as being unpatentable over Somerville in view of von Porten is reversed.

*REVERSED*

CHUNG K. PAK	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
CHARLES F. WARREN	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
TERRY J. OWENS	)	
Administrative Patent Judge	)	

Appeal No. 95-1668  
Application 07/948,089

John S. Egbert  
Harrison & Egbert  
1018 Preston  
Suite 100  
Houston, TX 77002

TJO/cam