

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KARL-HEINZ SCHUNDEHUTTE
and KARL J. HERD

Appeal No. 94-2148
Application 07/460,702¹

HEARD: March 5, 1996

MAILED

APR 3 - 1996

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Before TURNER, PAK and WARREN, Administrative Patent Judges.

TURNER, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the Examiner's decision finally rejecting claim 3, the only claim remaining in the application. Claim 3 as it appears in the appendix to the Brief is attached to this decision.

¹ Application for patent filed January 4, 1990.

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The references of record relied upon by the Examiner
are:

Hegar	4,039,523	Aug. 2, 1977
Rohrer	4,560,388	Dec. 24, 1985

Appealed claim 3 stands rejected under 35 U.S.C. § 103
as unpatentable over Rohrer or Hegar.

The subject matter on appeal is directed to a monoazo
dyestuff of a certain formula as depicted and defined in claim 3.

OPINION

We have carefully reviewed the record before us,
including each of the arguments and comments advanced by
Appellants and the Examiner in support of their respective
positions. This review leads us to conclude that the Examiner's
position is well founded. Accordingly, we will sustain the
rejection. Our reasons follow.

We will affirm this rejection primarily for the reasons
set forth by the Examiner in the Answer. We offer the following
comments for clarity and emphasis. There is no dispute that the

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Examiner has established a prima facie case of obviousness. Counsel for Appellants conceded as much at the oral hearing and the thrust of the argument in the Brief is that the evidence of record is sufficient to overcome the prima facie case. Appellants have submitted four (4) different declarations over the course of prosecution in an effort to present evidence sufficient to rebut the prima facie case. Insofar as declarations A, B and C are concerned, we do not share Appellants' view that the declarations establish directly or indirectly, unexpected results for the compounds embraced by claim 3. More specifically, the declarations do not establish that compounds embraced by claim 3 would impart or demonstrate the unexpected advantages stated in the declarations since none of the tests conducted were directed to compounds as defined in claim 3. There is no evidence that the azopyridone moiety of the claimed dyestuff (which is not the fiber reactive group) has no effect in achieving the stated unexpected advantages. The data does not show that any unexpected results are due solely to the fiber reactive group as contrasted with the azopyridone moiety. Thus, we agree with the Examiner that declarations A, B and C do not establish unexpected results as to the claimed dyestuffs. As to declaration D, we agree with the Examiner's evaluation that declaration D does establish superior or unexpected results for the specific compound tested as to fixation yield. The claims,

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however, are much broader in scope. It is axiomatic that the objective evidence of unobviousness must be commensurate in scope with the claims the evidence is offered to support. In re Greenfield, 571 F.2d 1185, 197 USPQ 227 (CCPA 1978). Thus, we find that the evidence of obviousness outweighs the evidence of unobviousness and will affirm the rejection.

Under the provisions of 37 CFR § 1.196(c), this panel makes the following recommendation. We recommend that claim 3 be allowed if the claim is amended to be directed to the compound of declaration D. We consider the declaration to be sufficient to support the claimed dyestuff, when R' is H as well as methyl through butyl, X' is CH₂SO₃H and the fiber reactive group is attached at the orthoposition of the phenyl diazo component having only one sulfonic acid group. Accordingly, we recommend that claim 3 be allowed if amended to be directed only to the compound of declaration D as indicated above. This recommendation is made provided no other reasons are found by the Examiner for rejecting the claim recommended to be amended.

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

AFFIRMED

37 CFR § 1.196(c)

Vincent D. Turner

VINCENT D. TURNER)
Administrative Patent Judge)

Chung K. Pak

CHUNG K. PAK)
Administrative Patent Judge)

) BOARD OF PATENT
) APPEALS
) AND
) INTERFERENCES

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Warren, *Administrative Patent Judge*, Concurring-in-part and
Dissenting-in-part:

While I concur in the result reached by the majority of this panel that the examiner's decision as to claim 3 on appeal must be affirmed, I must respectfully dissent with respect to the recommendation under 37 CFR § 1.196(c) that claim 3 may be allowed upon amendment to limit the scope of this claim to that subject matter which is principally addressed in the rejection before us by the Hegar reference and the factual evidence in Declaration D. I am of the view that the totality of the record, with due consideration given to appellants' factual evidence and arguments, does not support a determination of the patentability of the identified claimed subject matter as a whole by a preponderance of the evidence for the following reasons.

It is apparent from appellants' brief and admission of counsel at oral hearing, that appellants have conceded that a *prima facie* case of obviousness under 35 U.S.C. § 103 was made out by the examiner over the Hegar and Rohrer references but alleged that they have carried their burden of proof in the submission of several declarations containing evidence which establishes the nonobviousness of the claimed fiber-reactive azo dyestuff compounds encompassed by claim 3 on appeal.

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Consequently, the patentability of the claimed invention as a whole must be again assessed based on the record as a whole, including evidence of obviousness and unobviousness, giving due consideration to the weight of appellants' factual evidence and arguments. *See generally In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

I agree with appellants that the closest prior art adduced by the examiner is Hegar which reference disclosure is addressed in appellants' Declaration D.² Thus, I find it unnecessary to discuss Rohrer³ in determining the patentability of claim 3 on appeal.

There is considerable evidence of obviousness in the record as it is readily apparent that Hegar generically discloses and claims the 4-fluoro-5-chloro-pyrimidinyl fiber-reactive radical containing sulphophenyl-azo-(3-sulphomethyl-6-hydroxy-pyrid-(2)-one) monoazo dyestuffs encompassed by claim 3 on

² Brief, page 5, sole full paragraph.

³ Rohrer discloses processes for the dyeing of silk or silk containing fiber blends using known fiber-reactive dyestuffs and is cumulative to Hegar with respect to dyestuffs having a sulphomethyl substituent in the "3" position of the pyrid-(2)-one coupler component. See, e.g. cols. 1 to 2 and col. 3 lines 40 to 45 of Rohrer.

appeal.⁴ The generic disclosure and claims of this reference⁵ are specifically directed to fiber-reactive azo dyestuffs wherein the chromophore contains a 3-sulphomethyl-6-hydroxy-pyrid-(2)-one coupler component which may be substituted, *inter alia*, by hydrogen or lower alkyl in the "1" or "R" position and by lower alkyl in the "4" or "R'" position⁶, and which is coupled⁷ to a diazo component derived from, *inter alia*, a sulfonated diamino-benzene, with the resulting monoazo dyestuff acylated at the available amino group on the diazo component with an intermediate which would provide a fiber-reactive radical.⁸ Hegar provides examples of these diazo and coupler components⁹ and teaches that the fiber-reactive radicals may be derived from, *inter alia*, 4,6-difluoro-5-chloro-pyrimidine and 2,4,6-trifluoro-5-chloro-

⁴ Specification, page 4, lines 5 to 6.

⁵ Hegar, e.g., abstract; col. 1, lines 7 to 28, and 61 to 63; col. 2, lines 23 to 64; col. 4, line 49, to col. 5, line 7; and claim 1.

⁶ Hegar, e.g., col. 2, lines 42 to 64.

⁷ Hegar, e.g., col. 4, line 49,1 to col. 5, line 13.

⁸ Hegar, col. 10, line 65, to col. 11, line 23.

⁹ Hegar, col. 11, lines 21 to 23, and col. 9, lines 48 to 49, 54 to 55, 60, and 63 to 64.

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pyrimidine.¹⁰ Appellants teach that their dyestuffs are prepared in the same or similar manner.¹¹

Hegar further discloses the dyestuff compound No. 29 in the table of Example 2 thereof¹² which differs solely from the closest dyestuff within claim 3 on appeal, which is found in specification Example 2¹³, in that the reference dyestuff contains the 2,4-difluoro-5-chloro-pyrimidinyl fiber-reactive radical which has an additional fluoro substituent than and thus is analogous to the 4-fluoro-5-chloro-pyrimidinyl fiber-reactive radical contained by the dyestuffs encompassed by claim 3. The formulae of these two dyestuffs are depicted on page 2 of Declaration D.

¹⁰ Hegar, col. 12, lines 54 and 55.

¹¹ Specification, page 6, line 10, to page 7, line 9.

¹² Hegar, cols. 19-20.

¹³ The "3-aminocarbonyl" substituent on the 1-ethyl-4-methyl-3-aminocarbonyl-5-sulphomethyl-6-hydroxy-2-pyridone which is used as the coupler component corresponds to the compound named 1-ethyl-4-methyl-3-sulphomethyl-5-carbamoyl-6-hydroxy-pyridone(2) listed as an alternative coupler component in Hegar as the difference is one of nomenclature since the aminocarbonyl and the carbamoyl substituents are the same -CONH₂ substituent. The aminocarbonyl or carbamoyl substituent is removed from the coupler component under the conditions of the coupling reaction. Cf. application Example 1 at page 8, line 27, to page 9, line 4, with Hegar, col. 5, lines 20 to 47, and col. 10, lines 21 to 25, and 45 to 46.

It is also clear that the fiber-reactive azo dyestuffs of Hegar and encompassed by claim 3 on appeal are disclosed to have the same properties. Hegar teaches that¹⁴

... the most important compounds are those azo compounds according to the invention which contain a fiber reactive radical and a water-solubilizing group, in particular a sulphonic acid group. These dyestuffs are preferably employed for dyeing nitrogen-containing fibers, such as, for example, of super polyamides, super polyurethanes, silk, leather and in particular wool, for examples from weakly acid, neutral or weakly alkaline baths, optionally with the addition of customary auxiliaries, for example ethylene oxide condensation products of high molecular weight amines, and, above all, for dyeing cellulose materials, in particular cotton, for example by the exhaustion process from a dilute liquor, from alkaline baths optionally having a high salt content, and particularly by the pad-dyeing process, according to which the article is impregnated with aqueous dyestuff solutions which optionally also contain salt, and the dyestuffs are fixed after an alkali treatment or in the presence of alkali, optionally under the action of heat.

The water-soluble reactive dyestuffs according to the invention show an excellent build-up capacity. They are also suitable for printing, in particular on cotton, and also for printing nitrogen-containing fibers ...

The dyeings and prints are distinguished by interesting and valuable yellow, very pure and brilliant shades. The dyeings and prints exhibit a good stability to acids and alkalis, and a good stability to synthetic resin finishing agents, have a good fastness

¹⁴ Hegar, col. 14, lines 24 to 63.

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to light and, in particular on cotton, an outstanding fastness to wet processing. The light degree of fixation and the easy removability of non-fixed dyestuff is also worth noting.

In order to improve the fastness to wet processing, it is advisable to rinse the dyeings and printings obtained thoroughly with cold and hot water, optionally with the addition of an agent which has a dispersing effect and promotes the diffusion of the non-fixed material.¹⁵

Hegar also discloses that the fiber reactive compounds in the table of Example 2, including compound No. 29, would dye cotton in fast yellow shades.¹⁶

In the same manner, appellants disclose that¹⁷

The new monfunctional azopyridone dyestuffs containing the fibre-reactive 5-chloro-6-fluoro-4-pyrimidinyl radical are suitable for dyeing and printing materials containing hydroxyl or amide groups, such as textile fibres, threads and woven fabrics of wool, silk and synthetic polyamide and polyurethane fibres, and for wash-fast dyeing and printing of naturally occurring or regenerated cellulose, the treatment of cellulose materials advantageously being carried out in the presence of acid-binding agents and if appropriate by the action of heat in accordance with the processes customary for reactive dyestuffs.

¹⁵ Hegar, col. 14, lines 34 to 63.

¹⁶ Hegar, col. 18, lines 42 to 50.

¹⁷ Specification, page 7, lines 10 to 21.

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Appellants further disclose that the dyestuff of specification Example 2 would have the same shade as the compound of specification Example 1 which dyestuff is also encompassed by claim 3 on appeal and is disclosed to dye "cotton, by the dyeing process practiced for reactive dyestuffs, in a brilliant greenish-tinged yellow colour shade."¹⁸

Accordingly, Hegar would have reasonable suggested to one of ordinary skill in this art that the fiber-reactive dyestuffs having a sulphophenylazo[1-(hydrogen or lower alkyl)-3-sulphomethyl-4-(lower alkyl)-6-hydroxy-pyrid-(2)-one] chromophore with a fluoro, chloro substituted pyrimidinyl fiber-reactive radical attached to the diazo component through an amino linkage as disclosed and claimed therein would dye and print the same fibers in the same shades with the same fastness properties, and one of ordinary skill in the art would have reasonably expected that closely structurally related compounds within the teachings of the reference would possess the same properties to the same or similar extent. See *In re Dillon*, 919 F.2d 688, 692-93, 16 USPQ2d 1897, 1901 (Fed. Cir. 1990), cert. denied, 500 U.S. 904 (1991); *In re Zeidler*, 682 F.2d 961, 966, 215 USPQ 490, 494 (CCPA 1982); *In re Payne*, 606 F.2d 303, 314, 203 USPQ 245, 254-55 (CCPA 1979); *In re Heyna*, 360 F.2d 222, 149 USPQ 692 (CCPA 1966); *In re de Montmollin*, 344 F.2d 976, 145 USPQ 416 (CCPA 1965). Based upon the disclosure in their specification of the same dyestuff compounds containing the same diazo and coupler components substituted with the same fiber-reactive and water solubilizing groups and having the same properties of dyeing and printing the same fibers with the same resultant properties as disclosed in

¹⁸ Specification, page 9, lines 8 to 10 and 14 to 15.

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Hegar, appellants would appear to have done no more than follow the teachings of the reference in deriving the claimed compounds.

With respect to evidence of unobviousness, appellants argue that they have selected fiber-reactive dyestuffs within the teaching of Hegar which are unexpectedly superior to other fiber-reactive dyestuffs specifically shown in this reference as demonstrated directly by evidence in Declaration D and indirectly in Declarations A and B.¹⁹ At the same time, appellants distinctly point out that²⁰

During the prosecution, the claims have been amended in a number of important respects. Specifically, the present claims do [sic - claim 3 does] not allow for X' to be either SO₃H or hydrogen. Accordingly, Hegar has emerged as clearly the closest prior art [emphasis in the original].

It is well settled that where evidence of obviousness is based on the presumption that structurally similar compounds would have similar properties, evidence of unobviousness may take the form of factual evidence demonstrating that the claimed compounds possess a superior property which would have been unexpected by one of ordinary skill in the relevant art. See, generally, *In re Soni*, 54 F.3d 746, 750, 34 USPQ2d 1684, 1687

¹⁹ Appellants do not discuss Declaration C in their brief or reply brief.

²⁰ Brief, page 5, sole full paragraph.

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(Fed. Cir. 1995); *Dillon, supra*; *Zeidler, supra*; *Payne*, 606 F.2d at 315-16, 203 USPQ at 256; *Heyna, supra*; *de Montmollin, supra*.

I am of the view that the factual evidence presented in Declarations A, B and D are of limited probative value on the record as it stands before us. Turning first to the matter of the evidence in Declarations A and B, for the following reasons I agree with the majority of the panel that this allegedly indirect evidence is of little probative value with respect to determining the differences in properties between the claimed dyestuffs as a whole encompassed by claim 3 on appeal and the closest prior art dyestuffs wherein the sole difference resides in the presence or absence of a fluoro substituent in the "2" position of the pyrimidine fiber-reactive. It is true, as appellants point out, that the dyestuffs compared in each of Declarations A and B differ solely in the fluoro, chloro substituted pyrimidinyl fiber-reactive radical in the same manner as between the claimed fiber-reactive dyestuff and that of Hegar compared in Declaration D. By way of background, and as noted by appellants in the brief, claim 3 on appeal was amended to specifically exclude compounds wherein position "X'" of the coupler component is "H" which dyestuffs are the subject of Declaration B. During

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prosecution²¹, appellants also cancelled claim 2 which encompassed dyestuffs wherein the fiber-reactive radical is linked to the sulphonaphthyl diazo component through an aminomethyl group which are the subject of Declaration A.

However, I find no factual evidence on the record which would establish that comparisons between dyestuffs containing analogous fluoro, chloro substituted pyrimidinyl fiber-reactive radicals but which have a significantly different chromophore as in Declaration A or a different substituent on the coupler component as in Declaration B than the dyestuffs of claim 3 on appeal, would indirectly reliably reflect the actual difference in properties between dyestuffs having the chromophore and coupler substitution possessed by the dyestuffs claimed on appeal and the closest dyestuffs disclosed in Hegar which differ only in containing analogous fluoro, chloro-pyrimidinyl fiber-reactive radicals. *Cf. In re Blondel*, 499 F.2d 1311, 1317, 182 USPQ 294, 298 (CCPA 1974). Indeed, evidence based on comparisons involving dyestuffs differing structurally in the chromophore and substitution on the components of the chromophore by more than the structural difference between the claimed compounds and those of the prior art relied on, which was the thrust of the

²¹ Amendment of March 25, 1992 (Paper No. 11).

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rejection, has failed to establish the criticality of the structurally modification reflected in the claimed compounds. See, e.g., Zeidler, supra; Heyna, supra; see also *In re Burckel*, 592 F.2d 1175, 1179, 201 USPQ 67, 71 (CCPA 1979).

With respect to Declaration D, I do not find that the evidence presented therein establishes the alleged unexpected superiority of the compared claimed fiber-reactive dyestuff *vis-à-vis* the fiber-reactive dyestuff identified as compound No. 29 from the table of Hegar Example 2, with respect to fixation yield on cotton obtained with "the reactive printing process" even though it is stated that the process was "identical for both dyestuffs." The extent of the information as to the methodology employed, the test results and declarant's conclusion appearing on page 3 of the declaration is reproduced here:

Printing of cotton according to the reactive printing process - Determination of fixation yield.

Cotton fabric was printed in the usual way - identical for both dyestuffs- with dyestuffs I [claimed] and II [Hegar] to give before rinsing and soaping - prints in identical color depth (1/1 standard depth) which were set to be 100% (=prints Ia and IIa respectively).

The color depth of the said prints after rinsing and soaping in the usual way (=dyeings Ib and IIb respectively) was determined as 88% (Ib) and 79% (IIb).

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Conclusion:

Quite unexpectedly and unpredictably the fixation yield on cotton of dyestuff I [claimed] in the reactive printing process is much higher than that of dyestuff II [Hegar]. Said property is of substantial technical and economical relevance [emphasis in the original].

There is clearly a paucity of information in the declaration as to the printing process employed to compare the dyestuffs, i.e., "printing of cotton according to the reactive printing process" in "the usual way" followed by "rinsing and soaping in the usual way," as is readily apparent when reviewed in light of the disclosure of the variety of customary chemical and physical treatments which are optional variants in printing and dyeing processes as disclosed in both Hegar and in appellants' specification as quoted above.²² Indeed, according to these disclosures, it was known in the prior art that the demonstrated performance of a fiber reactive dyestuff in the dyeing and printing of cotton may be enhanced by the use of such

²² In the above quoted passages, Hegar teaches that prints obtained with the fiber-reactive dyestuffs disclosed and claimed therein have the property "in particular on cotton, [of] an outstanding fastness to wet processing" which property can be improved by rinsing "the printings obtained thoroughly with cold and hot water, optionally with the addition of an agent which has a dispersing effect and promotes the diffusion of the non-fixed material." Appellants disclose that the claimed dyestuffs provide "wash-fast dyeing and printing of naturally occurring or regenerated cellulose, the treatment of cellulose materials advantageously being carried out in the presence of acid-binding agents and if appropriate by the action of heat in accordance with the processes customary for reactive dyestuffs" [emphasis added].

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auxiliaries as acid-binding agents and dispersing agents, both as to the fixation and diffusion of unfixed dyestuff, and of heat. It is also apparent from these disclosures that the use of these process variables may affect the properties of the resulting dyed and printed cotton in the important property of fastness to wet processing which would include fastness to washing.

Based on this record, I am of the view that even though the tested compounds are stated to be compared in a side-by-side manner, there is inadequate factual basis to support declarant's conclusion that the color depth of 88% achieved by the claimed dyestuff represents a fixation yield on cotton which is "unexpectedly and unpredictably ... much higher" than the fixation yield represented by the color depth of 79% achieved by the prior art dyestuff in "the reactive printing process" and is "of substantial technical and economical relevance."

There is sufficient reason to question the significance and relevance of the comparative data since the printing method is not set forth or discussed and it is clear that it is known in the prior art to vary a number of parameters such as auxiliaries and heat, which variations may affect printing performance as well as wet fastness properties. Thus, in the absence of the recitation of the printing method used and a statement by

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declarant as to why this method represents the "usual way" and the practical implications of the results, it is not apparent that the results establish that the claimed dyestuff possess a common property to substantially superior extent over the closely structurally related dyestuff of Hegar. Indeed, while it is appears that the claimed dyestuff is superior in fixation yield²³ in whatever printing process was performed based on the reported difference in percentage amount of color depth, it is not at all apparent from the record that the demonstrated difference establishes an unexpected result as opposed to a mere improvement in a property that is no more than the similar results which one of ordinary skill in the art would have reasonably expected, even if not absolutely predictable, from dyestuffs which differ only in the use of analogous fluoro, chloro substituted pyrimidinyl fiber-reactive radicals. See *Soni*, 54 F.3d at 751, 34 USPQ2d at 1688 ("Mere improvement in properties does not always suffice to show unexpected results."); *In re Merck*, 800 F.2d 1091, 1099, 231 USPQ 375, 380-81 (Fed. Cir. 1989) ("In the absence of evidence to show that the properties of the compounds differed in such an

²³ The examiner in her answer found the difference in result to "only establish ... that the [claimed] species tested in declaration D is superior in fixation yield on cotton" but did not find this fact convincing of the unobviousness of the claimed dyestuffs (answer, pages 5 to 6). While appellants place great reliance on the use of the word "superior" by the examiner (brief, page 6), it is clear that the word "superior" per se in the context of evaluating properties between two compared products does not connote "unexpected results." See, e.g., *Soni*, 54 F.3d at 749-50, 34 USPQ2d at 1687.

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appreciable degree that the difference was really unexpected, we do not think that the Board erred in its determination that appellant's evidence was insufficient to rebut the prima facie case."); *In re Longi*, 759 F.2d 887, 897, 225 USPQ 645, 651 (Fed. Cir. 1985) ("There is nothing to show that the results attested in the declaration were unexpected."); *In re D'Ancicco*, 439 F.2d 1244, 1248, 169 USPQ 303, 306 (CCPA 1971) ("Whether this difference was 'striking' depends, not alone on the numerical ratio of the quantified value of the property being compared, but on the significance of that difference."); *In re Crouse*, 363 F.2d 881, 884, 150 USPQ 554, 557 (CCPA 1966) ("... although the exact shade of the claimed isomer was unpredictable, it was not unexpected as being a shade somewhere in the family of reddish tints encompassed by Fischer's disclosure."); *see also Ex parte Moiso*, 212 USPQ 294, 296 (Bd. Pat. App. & Int. 1980) ("... there is a normal range of variations in properties that may be expected among a group of closely related compounds. Thus, the mere existence of some difference between the properties of two similar compounds is not necessarily dispositive of patentability" [emphasis in the original].).

It is also not apparent from the record in what manner the demonstrated difference in fixation yield obtained with whatever printing method was employed is of "substantial

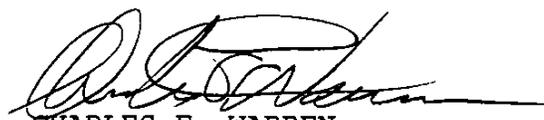
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technical and economical relevance." It is clear from the teaching in Hegar that one of ordinary skill in the art would have varied the auxiliaries used in printing processes in order to improve the fastness to wet processing properties of the printed material through the "diffusion of non-fixed material," which properties were already described as "outstanding." The wet processing property of wash fastness is also prominently disclosed by appellants. Thus, it would appear that the alleged "relevance" of the demonstrated higher fixation yield obtained with the claimed dyestuff vis-à-vis the dyestuff of Hegar must be assessed in light of factual evidence as to the fastness to wet processing, including wash fastness, of the obtained printed cotton product. Cf. *In re Nolan*, 553 F.2d 1261, 193 USPQ 641 (CCPA 1977), and *In re Murch*, 464 F.2d 1051, 175 USPQ 89 (CCPA 1972).

Accordingly, based on consideration of the totality of the record on this appeal, and having weighed the evidence of obviousness with appellants' countervailing evidence of and argument for unobviousness, I must conclude that by a preponderance of the evidence the claimed invention encompassed by claim 3 on appeal as a whole would have been obvious in view of Hegar as a matter of law under 35 U.S.C. § 103.

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Thus, I am of the view that the recommendation by the majority of this panel under 37 CFR § 1.196(c) is inappropriate based on the record before us.

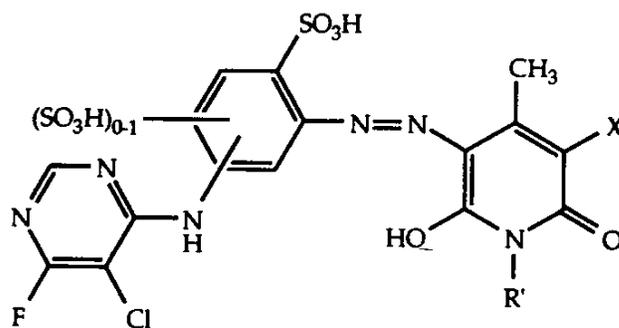
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SPRUNG, HORN, KRAMER & WOODS
660 White Plains Road
Tarrytown, New York 10591-5144

APPENDIX

-3. A dyestuff of the formula



wherein

R' = H, CH₃, C₂H₅, C₃H₇, C₄H₉, CH₂CH₂SO₃H; and

X' = CONH₂ or CH₂SO₃H.--