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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte CHRISTOPHER BROWN
and DENNIS PINELLE

_____

Appeal No. 95-3935
Application 08/162,995[1]

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ON BRIEF

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Before WEIFFENBACH, ELLIS and OWENS, *Administrative Patent Judges.*

OWENS, *Administrative Patent Judge.*

DECISION ON APPEAL

This is an appeal from the examiner's refusal to allow claims 1-9 as amended after final rejection. These are all of the claims remaining in the application.[2]

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[1] Application for patent filed December 7, 1993.

[2] Appellants request in their reply brief (page 3) that claim 8 be canceled as redundant. No formal amendment to that effect has been submitted by appellants and the claim has not been canceled. This claim therefore is before us for consideration.

THE INVENTION

Appellants claim a premanufactured, flexible composite sheathing material comprised of a layer of flexible reinforcing material having a coating thereon, wherein the coating includes a flexible matrix comprised of recited amounts of an aggregate, filler and binder, and wherein the binder is sufficiently flexible that the matrix will not crack or crumble when the sheathing material is rolled or folded. Appellants state that the sheathing material can be premanufactured to provide a broad range of aesthetic finishes such as simulated stucco, stone or brick-like finishes (specification, page 2, lines 19-21). Claim 1 is illustrative and reads as follows:

1. A pre-manufactured, flexible, composite sheathing material comprising:

a layer of flexible reinforcing material, said reinforcing layer having an inner surface and a support surface, and

a performance coating applied to the support surface of the reinforcing layer, said performance coating defining an exposed surface and including a flexible matrix comprising a mixture of from about 10% to about 70% of an aggregate, from about 5% to about 80% of a filler and from about 5% to about 30% of a binder, said binder being sufficiently flexible to allow rolling and folding of the sheathing material without cracking or crumbling of the matrix.

THE REFERENCES

Brouessard	4,668,547	May 26, 1987
Webb	4,852,316	Aug. 1, 1989
Randall	4,879,173	Nov. 7, 1989
Sanchez	5,112,405	May 12, 1992

THE REJECTIONS

The claims stand rejected under 35 U.S.C. § 103 as follows: claims 1-5 and 7-9 over Webb in view of Brouessard; claim 6 over Webb in view of Randall and Sanchez.[3]

OPINION

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

Rejection of claims 1-5 and 7-9

Webb discloses a wall panel system which includes, in order, a steel stud frame, phenolic foam insulation, a calcium silicate panel, fiberglass mesh, a layer of "Icote", and a sealing layer (col. 1, lines 59-68). The Icote includes acrylic resin, fibers, vicron (i.e., calcium carbonate), fungicide, coloring agents, cement and water (col. 2, lines 31-33). The proportions of the components of the Icote are not disclosed, and the reference does not indicate that the Icote is flexible. One of the brochures of record states that the fibers give the Icote permanent elasticity,[4] but does not indicate that the elasticity is sufficient to permit

[3] The rejections of claim 2 under 35 U.S.C. § 112, fourth paragraph and of claims 1-5 and 7-9 under 35 U.S.C. § 102(b) over Webb were withdrawn in the examiner's answer (page 2).

[4] ICOTE Insulating Textured Coating for Residential Commercial and Industrial Structures, 07240/ICO, Claremont-ICOTE Inc., third page (undated).

the fiberglass having the Icote thereon to be rolled and folded without the Icote cracking or crumbling.

Brouessard discloses a waterproofing or sealing surfacing for facades of buildings, comprised of a fibrous material having thereon resin droplets over which is applied a polyethylene sheet which protects against rain (col. 1, line 62 - col. 2, line 9). The surfacing composite then can be wound on itself (col. 3, lines 29-37). After the polyethylene sheet has been removed, a smooth finish is applied to the fibrous material having resin droplets thereon (col. 2, lines 40-43).

The examiner argues that Webb discloses the same material for the same purpose as appellants' composite, and that Webb's material therefore inherently is flexible (answer, page 9). This argument is not well taken because Webb teaches that the Icote contains cement and water which are added at the time of mixing (col. 3, lines 10-20), and the teaching that the cement is not added until the time of mixing indicates that the cement would cause premature hardening of the composition if it were added earlier. Thus, the reference indicates that the Icote coating is a hardened coating rather than being a flexible coating as required by appellants' claim 1.

The examiner argues that almost anything will flex if enough pressure is applied (answer, page 8). This argument is unpersuasive because it does not address the requirement in appellants' broadest claim that the binder is sufficiently flexible to allow

rolling and folding of the sheathing material without cracking or crumbling of the matrix.

The examiner argues that Webb's statement that "[t]he composite coating **15** such as 'Icote', can be varied in any number of textures including smooth, rough, gravelled, sand blasted or trowelled and all made in a myriad of colors to suit the architectural design needs of the building to which the panel is attached" (col. 2, line 64 - col. 3, line 1) indicates that Icote was not meant by Webb to be the only material usable in his invention (answer, pages 4-5 and 7-8). This statement, the examiner further argues, would have provided one of ordinary skill in the art with motivation to optimize the proportions of the components of the coating to obtain the desired aesthetic features (answer, pages 4-5). Although Webb refers at the above-noted location to a coating "such as Icote", Webb states that the coating is "a composite coating **15**, (known as "Icote")" (col. 2, lines 30-31) and that "[i]n the present invention, the exterior architectural surface features are provided in a coating known as 'Icote'" (col. 3, lines 39-41). Thus, the reference taken as a whole indicates that the coating material used to make the wall panel system disclosed by Webb is Icote. Webb teaches in the portion quoted above that the texture and color of the coating can be varied, but Webb provides no teaching regarding making the coating flexible.

The examiner argues that in view of the teaching by Brouessard, it would have been obvious to one of ordinary skill in the art to make Webb's coated fibrous material flexible and waterproof (answer, page 5). Brouessard teaches that his resin drops fix the fibers

and consequently eliminate the appearance of barbs, thereby making it possible to produce finishes without sharp relief, avoid premature soiling of the surface, and improve the surface's aesthetic appearance (col. 2, lines 23-28). Brouessard also teaches that his fibrous material having resin drops thereon is sufficiently flexible to be wound into a roll (col. 3, lines 32-35). The examiner has not explained, and it is not apparent, why this teaching 1) would have motivated one of ordinary skill in the art to modify Webb's Icote, which is a very different material than Brouessard's resin drops, such that the modified Icote will not crack or crumble when the fiberglass mesh coated with the modified Icote is rolled or folded, and 2) would have provided such a person with a reasonable expectation that the modification would produce a product which is suitable for use in Webb's wall panel system. *See In re Vaeck*, 947 F.2d 488, 493, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991)*; In re O'Farrell*, 853 F.2d 894, 902, 7 USPQ2d 1673, 1680 (Fed. Cir. 1988); *In re Longi*, 759 F.2d 887, 892-93, 225 USPQ 645, 648 (Fed. Cir. 1985).

For the above reasons, we conclude that the examiner has not established a *prima facie* case of obviousness of the invention recited in appellants' claims 1-5 and 7-9.

Rejection of claim 6

Appellants' claim 6 recites that the fibers are polypropylene fibers. The examiner argues that in view of the teaching by Randall that glass fibers can irritate the skin and

become an airborne irritant (col. 2, lines 45-52), and the teaching by Sanchez that polypropylene fibers can be used instead of glass fibers in lightweight wall panels (abstract; col. 6, lines 16-18 and 68), it would have been obvious to one of ordinary skill in the art to use polypropylene fibers instead of glass fibers in Webb's panel system in order to avoid skin irritation and other health hazards (answer, page 6). We are not convinced by this argument because the examiner has not explained, and it is not apparent, why these references would have fairly suggested, to one of ordinary skill in the art, making a composite which has the flexibility requirement recited in appellants' claim 1, from which claim 6 ultimately depends. The examiner argues that Webb's coated mesh is inherently flexible (answer, page 10). For the reason given above, this argument is not persuasive.

Thus, we conclude that the examiner has not established a *prima facie* case of obviousness of the sheathing material recited in appellants' claim 6.

DECISION

The rejections under 35 U.S.C. § 103 of claims 1-5 and 7-9 over Webb in view of Brouessard and of claim 6 over Webb in view of Randall and Sanchez are reversed.

REVERSED

CAMERON WEIFFENBACH)
Administrative Patent Judge)
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) BOARD OF PATENT
JOAN ELLIS)
Administrative Patent Judge) APPEALS AND
)
) INTERFERENCES
)
TERRY J. OWENS)
Administrative Patent Judge)

McCormick, Paulding & Huber
Cityplace II
185 Asylum Street
Hartford, CT 06103-4102