

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS CHEN-CHI YU, KENNETH W. POWERS
and HSIEN C. WANG

Appeal No. 95-5097
Application No. 08/072,807¹

HEARD: May 7, 1999

Before JOHN D. SMITH, PAK, and WALTZ, **Administrative Patent Judges.**

WALTZ, **Administrative Patent Judge.**

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 10 through 17, which are the only claims remaining in this application.

¹ Application for patent filed June 7, 1993. According to the appellants, the application is a division of Application 07/923,208, filed July 31, 1992.

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According to appellants, the invention is directed to a polyamide composition having improved impact strength through the inclusion of a certain impact modifier blend (Brief, page 2). Appellants also state that the claims stand or fall together (Brief, page 3). Therefore, in accordance with the provisions of 37 CFR § 1.192(c)(5)(1993), we select claim 10 from the grouping of claims and decide this appeal as to this ground of rejection on the basis of claim 10 alone.² Claim 10 is illustrative of the subject matter on appeal and is reproduced below:

10. A polyamide composition having improved impact resistance comprising:

- (a) a polyamide; and
- (b) an impact modifier comprising:
 - (i) a halogenated copolymer of a C₄ to C₇ isomonoolefin and an alkylstyrene; and
 - (ii) a polyolefin component comprising an elastomeric or crystalline polyolefin or mixtures thereof.

² Claim 10 has been selected from the grouping of claims 10-14 and 16 for the § 102 ground of rejection. For the § 103 ground of rejection of claims 15 and 17, we select claim 15 from the grouping and decide this appeal as to this ground of rejection on the basis of claim 15 alone (as it depends from claim 10). See 37 CFR § 1.192(c)(5)(1993).

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The examiner has relied upon the following references in support of the rejections:

Yu et al. (Yu) 1993 1991)	5,238,990	Aug. 24, (filed Jun. 5,
Keuerleber 1982 (Published German Offenlegungstag)	DE 3101771 A1	Sept. 2,

Claims 10-14 and 16 stand rejected under 35 U.S.C. § 102(e) as anticipated by Yu (Answer, page 3). Claims 15 and 17 stand rejected under 35 U.S.C. § 103 as unpatentable over Yu in view of Keuerleber (*Id.*). We *affirm* both of these rejections for reasons which follow.

OPINION

The polyamide composition recited in appealed claim 10 comprises a polyamide, a halogenated copolymer of a C₄ to C₇ isomonoolefin and an alkylstyrene (hereafter "the copolymer"), and a polyolefin component.

The examiner finds that Yu discloses polyamide compositions comprising a polyamide, a polyolefin component, and the copolymer as recited in appealed claim 10 (see the Final Rejection dated May 20, 1994, Paper No. 5, page 2). The examiner notes that Yu discloses both halogenated and non-

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halogenated copolymers of isomonoolefins and alkylstyrene (*Id.*). Finally, the examiner notes that the "open" language of the claims does not preclude the additional monomer disclosed by Yu.³

Appellants assert that "[t]o be anticipatory a reference must clearly and unequivocally disclose the claimed composition without any need for picking, choosing and combining various parts of its disclosure" (Brief, page 6). Appellants argue that there is no explicit description directed to the halogenated copolymer component of Yu (Brief, pages 9 and 11). Regarding the "open" language of the claimed composition, appellants argue that Yu's grafted polymer is not identical to the halogen-containing copolymer from which Yu made the grafted polymer (Brief, page 13). Appellants submit that Yu requires a grafted polymer and the claimed term "halogenated copolymer" does not literally or otherwise require the presence of a grafted group (*Id.*).

³ Yu teaches that the polyamide and polyolefin are blended with a grafted polymer derived from reacting Reactant A with Reactant B, where Reactant A is the halogenated or non-halogenated copolymer of an isomonoolefin and alkylstyrene and Reactant B is an unsaturated organic compound such as maleic anhydride (see column 1, lines 30-45; column 2, line 20-column 9, line 63).

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"Under 35 U.S.C. § 102, every limitation of a claim must identically appear in a single reference for it to anticipate the claim. [Citation omitted]." *Gechter v. Davidson*, 116 F.3d 1454, 1457, 43 USPQ2d 1030, 1032 (Fed. Cir. 1997). Implicit in our review of the examiner's anticipation analysis is that the claim must first have been correctly construed to define the scope and meaning of each contested limitation. *Gechter v. Davidson, supra; In re Paulsen*, 30 F.3d 1475, 1479, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994).

As a matter of claim construction, it is well settled that the transitory word "comprising" means that the named elements are essential but other elements may be added and still form a construct within the scope of the claim. *Genentech Inc. v. Chiron Corp.*, 112 F.3d 495, 501, 42 USPQ2d 1608, 1613 (Fed. Cir. 1997); *In re Baxter*, 656 F.2d 679, 686-87, 210 USPQ 795, 802-03 (CCPA 1981); *Ex parte Davis*, 80 USPQ 448, 450 (Bd. App. 1948).

It is also well settled that during patent examination, claims must be interpreted as broadly as their terms reasonably allow. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); *In re Sneed*, 710 F.2d 1544, 1548,

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218 USPQ 385, 388 (Fed. Cir. 1983). The term "copolymer", as understood by one of ordinary skill in the art, includes two or more different monomers.⁴ Thus in view of the open term "comprising" and the art-accepted meaning of "copolymer", we find the examiner's construction of the claimed language as including the additional unsaturated organic compound monomer (e.g., maleic anhydride) of

⁴ See the definition of "copolymerization" in *Hackh's Chemical Dictionary*, 3rd ed., p. 672, The Blakiston Co. (1953), and *The Van Nostrand Chemist's Dictionary*, pp. 549-50, Van Nostrand Co. (1953), copies of which are attached to this decision.

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Yu to be reasonable. We note that there is no evidence on this record of any other meaning of the language recited in appealed claim 10.

Appellants' argument that there is no explicit description in Yu regarding the halogenated copolymer (Brief, pages 9 and 11, Reply to Examiner's Supplemental Answer, page 4) is not well taken. Although Yu does not disclose an example directed to the halogenated copolymer, the issue is whether the *total* disclosure of Yu identifies the claimed halogenated copolymer with sufficient specificity to constitute a description thereof within the purview of § 102. See *In re Schaumann*, 572 F.2d 312, 315, 197 USPQ 5, 8 (CCPA 1978). As the examiner notes on pages 2-3 of the Supplemental Examiner's Answer, Yu only discloses two types of copolymer (halogenated and non-halogenated, see Yu, column 1, lines 31-38). We agree with the examiner that the total disclosure of Yu identifies the claimed halogenated copolymer with sufficient specificity to constitute a description thereof under § 102.

Appellants' argument that Yu requires a grafted polymer and the claimed "halogenated copolymer" does not literally or

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otherwise require the presence of a grafted group (Brief, page 13) is not persuasive for reasons noted above regarding the interpretation of the scope of appealed claim 10. Similarly, appellants' comments regarding the scope of the claim and the question of infringement (Brief, pages 12-13) are not persuasive for reasons set forth above regarding claim interpretation. *See Gechter v. Davidson, supra.*

For the foregoing reasons, we determine that all of the limitations of appealed claim 10 are described by the total disclosure of Yu within the meaning of § 102. Accordingly, the rejection of claims 10-14 and 16 under 35 U.S.C. § 102(e) as anticipated by Yu is affirmed.

Appellants do not contest the rejection of claims 15 and 17 under § 103 as obvious over Yu in view of Keuerleber (e.g., see the Reply to Examiner's Answer, page 4). Accordingly, we affirm *pro forma* the rejection of claims 15 and 17 under 35 U.S.C. § 103 as unpatentable over Yu in view of Keuerleber for the reasons set forth by the examiner on page 3 of the Final Rejection (Paper No. 5).

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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

JOHN D. SMITH)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
CHUNG K. PAK)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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)	
THOMAS A. WALTZ)	
Administrative Patent Judge)	

jrg

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Exxon Chemical Co.
P.O. Box 710
Linden, NJ 07036