

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MUHAMMAD ASLAM, LAWRENCE DEMEJO and DINESH TYAGI

Appeal No. 96-0116
Application No. 08/088,012¹

ON BRIEF

Before JOHN SMITH, GARRIS, and WARREN, Administrative Patent Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the refusal of the examiner to allow claims 1-20 as amended subsequent to the final rejection. These are all the claims in the application.

¹ Application for patent filed July 6, 1993.

Appeal No. 96-0116
Application No. 08/088,012

The subject matter on the appeal relates to an image forming method in an electrostatographic apparatus having a fuser comprising the steps of forming on a receiver a composite toner image which includes an underlay image of underlay toner and an overlay image of overlay toner wherein the underlay toner is adhesive to the fuser at a release temperature and the overlay toner is non-adhesive to the fuser at the release temperature. Further details of this appeal subject matter are readily apparent from a review of representative independent claim 1, a copy which taken from the appellants' Brief is appended to this decision.

The references relied upon by the examiner as evidence of obviousness are:

Aslam et al. ('038) 11, 1991	5,023,038	Jun.
Takashima et al. (Takashima) 7, 1992	5,079,115	Jan.
Ng 1993	5,234,783	Aug. 10,
	(Filed Dec. 16, 1991)	
Aslam et al. ('426) 19, 1993	5,254,426	Oct.
	(Filed Apr. 1, 1992)	
Japanese application 1989	62-294423	May. 26,

Appeal No. 96-0116
Application No. 08/088,012

Color Prints with Uniform Gloss, Xerox Disclosure Journal,
Vol. 16, No. 1 (January/February 1991).

Claims 1, 4-6 and 10-14 are rejected under 35 U.S.C. §
103 as being unpatentable over Ng and Aslam '038 in view of
Aslam '426, and the remaining claims on appeal are similarly
rejected over various combinations of these references and the
other references listed above.

The examiner's rejections on this appeal cannot be
sustained.

The dispositive issue before us is framed by the
examiner's exposition and conclusion of obviousness expressed
on page 4 of the Answer which reads as follows:

Ng and Aslam et al. ('038) discloses [sic] the
claimed invention except for teaching an overlay image on
top of the underlay image in which the overlay toner is
non-adhesive to the fuser at the release temperature
which affects the release temperature of the fuser.

Aslam et al. ('426) teaches that it is known to
separate the contact fusing and fusing member which makes
it possible to use a fusing temperature which is
sufficient to cause the toner particles and the polymer
layer on the support to form a fused color toner image
that is adhesively adhered to the support and the fused
image and polymer layer can then be separated from the
fusing member after cooling when they do not offset onto
the fusing member as set forth at col 3, lines 35-46; col
4, lines 10-27, col 6-7.

Appeal No. 96-0116
Application No. 08/088,012

It would have been obvious to one having ordinary skill in the art at the time the invention was made to add an additional layer, as taught by Aslam et al. ('426) to the image forming method of Ng and Aslam et al. ('038) in order to prevent offset.

The examiner's above quoted conclusion of obviousness is without merit for at least two reasons. First, the Aslam '426 patent is not prior art against the here claimed invention since the inventors named in this patent and in the subject application are identical and since this patent did not issue more than one year prior to the subject application filing date. 35 U.S.C. § 102(b); In re Fout, 675 F.2d 297, 300-301, 213 USPQ 532, 535, footnote 2 (CCPA 1982); Ex parte Imris, 218 USPQ 957 (Bd. Pat. App. & Int. 1982). Second, even if Aslam '426 were prior art, the teachings thereof and the teachings of Ng and Aslam '038, when combined in the above quoted manner proposed by the examiner, would not produce a method corresponding to the method defined by the appealed claims. This is because, as correctly argued by the appellants in their Brief, none of these references contains any teaching or suggestion of the here claimed feature wherein the underlay toner is adhesive to the fuser at a release

Appeal No. 96-0116
Application No. 08/088,012

temperature and the overlay toner is non-adhesive to the fuser at the release temperature.

Under the foregoing circumstances, we cannot sustain the examiner's § 103 rejection of claims 1, 4-6 and 10-14 as being unpatentable over Ng and Aslam '038 in view of Aslam '426. The examiner's other rejections on this appeal also cannot be sustained since we find no teaching or suggestion (and the examiner points to none) in the additional references applied therein concerning the previously mentioned claim feature.

The decision of the examiner is reversed.

Appeal No. 96-0116
Application No. 08/088,012

REVERSED

JOHN D. SMITH)	
Administrative Patent Judge)	
)	
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)	BOARD OF PATENT
BRADLEY R. GARRIS)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
CHARLES F. WARREN)	
Administrative Patent Judge)	

BRG/jlb

Appeal No. 96-0116
Application No. 08/088,012

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Appeal No. 96-0116
Application No. 08/088,012

Appendix

1. An image forming method in an electrostatographic apparatus having a fuser, comprising the steps of:

forming a composite toner image on a receiver, said composite toner image having an underlay image comprising underlay toner and an overlay image comprising overlay toner, said overlay image being imagewise on top of said underlay image, said underlay toner being adhesive to said fuser at a release temperature, said overlay toner being non-adhesive to said fuser at said release temperature;

fixing said composite toner image on said receiver by contacting said composite toner image on said receiver with said fuser; and

releasing said composite toner image on said receiver from said fuser at said release temperature whereby the release temperature of the fuser is higher than if said overlay toner were not on top of said underlay toner.

JoAnne

Appeal No. 96-0116
Application No. 08/088,012

APJ GARRIS

APJ JOHN SMITH

APJ WARREN

REVERSED

Prepared: July 19, 1999