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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 46

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte JOHN A. RIPPON

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Appeal No. 96-1957
Application 07/423,472[1]

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HEARD: DECEMBER 9, 1997

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Before KIMLIN, WEIFFENBACH and WARREN, *Administrative Patent Judges.*

WARREN, *Administrative Patent Judge.*

Decision on Appeal

This is an appeal under 35 U.S.C. § 134 from the decision of the examiner finally rejecting claims 1, 4 through 18 and 21 through 40. Claim 40 was canceled subsequent to the final rejection leaving claims 1, 4 through 18 and 21 through 39 for our consideration on appeal Claim 1[2] is illustrative of the claims on appeal:

1. A method of applying an anionic dye to keratin fibres which comprises pretreating the fibres by contacting them with an alkaline solution of an amphoteric surfactant, said solution having a pH of not greater than 11, and thereafter applying dye to the pretreated fibres as an acidic dye medium.

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[1] Application for patent filed September 25, 1989.

[2] We have entered the amendment of March 27, 1995 (Paper No. 35) which the examiner has indicated "OK to enter."

The references relied on by the examiner are:

Elliot et al. (Elliot) 4,063,877 Dec. 20, 1977

Teutelink 2 031 469 Apr. 23, 1980
(published United Kingdom Pat. Application)

The examiner has rejected claims 1, 4 through 18 and 21 through 39 on appeal under 35 U.S.C. § 103 as being unpatentable over Teutelink in view of Elliot. We reverse.

Rather than reiterate the respective positions advanced by the examiner and appellant, we refer to the examiner's answer and to appellant's main and reply briefs for a complete exposition thereof.

Opinion

The issue in this appeal is whether the combination of references applied by the examiner (answer, pages 3-4) would have placed the step of pretreating keratin fibres by contacting them with an alkaline solution of an amphoteric surfactant prior to dyeing these fibers in an acidic dye medium within the ordinary skill in this art. Upon carefully reviewing the record, we must agree with appellant that the examiner has not satisfied his burden of establishing a *prima facie* case of obviousness with respect to this issue by showing that some objective teachings or suggestions in the prior art taken as a whole or that knowledge generally available to one of ordinary skill in the art would have led that person to combine the relevant teachings of the applied references in the proposed manner to arrive at the claimed invention without recourse to the teachings in appellant's disclosure. *See generally In re Dow Chemical*, 837 F.2d 469, 473, 5 USPQ2d 1529, 1531-32 (Fed. Cir. 1988); *In re Fine*, 837 F.2d 1071, 1074-76, 5 USPQ2d 1596, 1598-1600 (Fed. Cir. 1988).

It is known in the prior art that an amphoteric surfactant can be added directly to a dye containing acid bath to dye keratin (wool) fibers in the same manner as nonionic, anionic and cationic surfactants as admitted by appellant (specification, paragraph bridging pages 1-2). In a modification of this process, Elliot discloses that where the wool fiber has a cationic charge on the fiber from treatment with a resin (e.g., col. 1, lines 20-21), a pretreatment with an amphoteric surfactant auxiliary product at a pH of between 6 and 6.25 produces a temporary partial blocking of that cationic charge which amphoteric surfactant auxiliary product is then replaced by a dyestuff molecule during dyeing from an acid bath (e.g., col. 1, lines 39-42, and col. 18, lines 11-

16).

Contrary to the contention of the examiner (answer, pages 3-4), we find no teaching in Elliot that would have reasonably suggested to one of ordinary skill in this art that Leveller N-R® can be used in an alkaline solution for the specific purpose of pretreating treated wool prior to dyeing with acid dyes in an acid medium. As appellant points out (main brief, pages 10-12 and 14-15),[3] the single disclosure of an alkaline pH with respect to Leveller N-R® in Elliot (col. 1, lines 59 to 62) is not repeated elsewhere in this reference *vis-à-vis* the use of this auxiliary in the pretreatment step which requires an acid pH range as we noted above. We observe that an alkaline pH range is not disclosed in any respect in Elliot's teaching that the Albegal® amphoteric surfactant auxiliaries can be used in place of Leveller N-R® in the pretreatment step (e.g., col. 2, lines 5-10). Indeed, the only disclosure of an alkaline treatment involved with the dyeing processes of Elliot is with respect to the completion of the reaction of the wool fiber with the fiber reactive dyes in the acid dye bath and the removal of unreacted dyestuff (e.g., col. 18, lines 3-6, and col. 19, lines 51-54). Thus, in considering the import of the disclosure in Elliot relied on by the examiner within the context of that reference as it would have been interpreted by one of ordinary skill in this art, we conclude that such disclosure would not have reasonably suggested to one of ordinary skill in this art to use Leveller N-R® or any other amphoteric surfactant in an alkaline solution to pretreat the treated wool fibers. *See In re Salem*, 553 F.2d 676, 682-83, 193 USPQ 513, 518 (CCPA 1977).

Even if it could be said that the disclosure in Elliot would have suggested the use of an alkaline solution for the pretreat-ment step as taught in that reference, we are of the view that there would have been little, if any, motivation in that suggestion to use an amphoteric surfactant as the "wetting agent" in Teutelink because of the distinctly different mechanisms involved with the pretreatment steps of Teutelink and Elliot. Indeed, Teutelink pretreats untreated wool fibers with an alkaline solution containing a "wetting agent" in order to neutralize the synthetic thickener of a printing paste that in the neutral to alkaline pH range has a viscosity higher than in the acid

[3] Appellant contends at page 16 of the main brief that three specific publications are "of record." However, these documents were submitted with the amendment of March 2, 1995, (Paper No. 30) which was refused entry by the examiner in the advisory action of March 22, 1995 (Paper No. 32) and were not resubmitted with the main brief. Thus, these documents are not before us.

pH range (page 1, lines 29-37, 62-65 and 87-88) while Elliot pretreats treated wool fibers with an amphoteric surfactant at an acidic pH to block the cationic charge on a resin layer on the wool fibers as we set forth above.

Furthermore, the term "wetting agent" is used in Teutelink without exemplification, and indeed, neither amphoteric nor other kinds of surfactants are disclosed. While the term may be generic to surfactants *per se*, there is no reasonable suggestion to one of ordinary skill in this reference to select an amphoteric surfactant rather than a nonionic, anionic or cationic surfactant as the "wetting agent." Indeed, on this record, the only apparent utility for an amphoteric surfactant in a dyeing process involving keratin fibers is with respect to acidic dye baths as acknowledged by appellant (specification, paragraph bridging pages 1-2) and to acid pretreatments as in Elliot. Thus, at best, one of ordinary skill in this art would have found it obvious to try an amphoteric surfactant as the "wetting agent" in the alkaline solution used in the pretreatment step of the process of Teutelink which is an impermissible standard under 35 U.S.C. § 103. *In re O'Farrell*, 853 F.2d 894, 904, 7 USPQ2d 1673, 1681 (Fed. Cir. 1988).

Thus, based on the consideration of the scope of the teachings of the applied references as combined by the examiner, as well as separately, we find no reasonable direction to one of ordinary skill in this art to use an amphoteric surfactant in the alkaline pretreatment step in the method of using an aqueous acidic printing paste in Teutelink or to render alkaline the acidic pretreatment step in the method employing an acid dye bath in Elliot. *Fine*, supra. Accordingly, the record before us supports the inference that the examiner relied on information gleaned from appellant's disclosure in formulating the ground of rejection on appeal. *Dow Chemical*, supra.

The examiner's decision is reversed.

Reversed

EDWARD C. KIMLIN Administrative Patent Judge	)	
CAMERON WEIFFENBACH Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
CHARLES F. WARREN Administrative Patent Judge	)	

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