

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(2) is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DOUGLAS H. HENDERSON

Appeal No. 96-2800
Application 08/149,042¹

ON BRIEF

Before RONALD H. SMITH, SOFOCLEOUS and WARREN, Administrative
Patent Judges.

RONALD H. SMITH, Administrative Patent Judge.

DECISION ON APPEAL

¹ Application for patent filed November 8, 1993. According to appellant, this application is a continuation-in-part of Application 08/011,262, filed January 29, 1993 (abandoned); which is a continuation-in-part of Application 07/783,210, filed October 28, 1991 (abandoned).

Appeal No. 96-2800
Application 08/149,042

This is an appeal from the final rejection of claims 1-11 and 15-22, all the pending claims in the application.

The subject matter relates to an unleaded aviation gasoline composition. Claim 1 is illustrative of the appealed claims and reads as follows:

1. An unleaded aviation gasoline composition which comprises:

- (a) from 85 to 92 volume percent of aviation alkylate;
- (b) from 4 to 10 volume percent of at least one ether selected from methyl tertiary-butyl ether, ethyl tertiary-butyl ether, methyl tertiary-amyl ether, and mixtures of any two or all three of the foregoing ethers;
- (c) from zero to 10 volume percent of one or more other hydrocarbons falling in the aviation gasoline boiling range; and
- (d) from 0.25 to 0.6 gram of manganese per gallon as one or more cyclopentadienyl manganese tricarbonyl compounds; wherein the sum of the amounts of (a) and (b), and also of (c) if present, is 100 volume percent; with the proviso that (a), (b) and (d), and also (c) if present, are proportioned such that said composition has (i) an ASTM D 2382 heat of combustion of at least 18,000 BTU per pound, and (ii) a minimum knock value lean rating octane number of 100 as determined by ASTM Test Method D 2700 and wherein motor method octane ratings are converted to aviation ratings in the manner described in ASTM Specification D 910-90.

The references relied on by the examiner are:

Carmody	2,391,084	Dec. 18, 1945
Evans et al. (Evans)	2,409,746	Oct. 22, 1946
Brown et al. (Brown '351)	3,127,351	Mar. 31, 1964

Appeal No. 96-2800
Application 08/149,042

Brown et al. (Brown '606) 3,272,606 Sep. 13, 1966

Claims 1-11 and 15-22 stand rejected under 35 U.S.C. § 103 as unpatentable over Carmody in view of Evans, the admitted prior art, Brown '351 and Brown '606. Claims 1-11 and 15-22 also stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as unpatentable over claims 2-5 and 18-21 of copending application Serial No. 08/312,048. After a careful consideration of the entire record, including the appellant's position as set forth in the briefs and the examiner's position as set forth in the answer, we have decided to reverse the rejection under 35 U.S.C. § 103 and to affirm the provisional obviousness-type double patenting rejection.

With respect to the rejection under 35 U.S.C. § 103, we find that we are in substantial agreement with appellant's position as set forth in the brief and reply brief. Accordingly, we adopt appellant's position as our own. We agree with appellant that the examiner has not established a prima facie case of obviousness. As pointed out by appellant, Evans expressly teaches that their ethers fail to improve octane ratings (col. 3, lines 1-5) and possess poor BTU

Appeal No. 96-2800
Application 08/149,042

content (col. 1, lines 21-23), thereby teaching away from the claimed invention which specifically requires an octane number of 100 and a heat of combustion of 18,000 BTU per pound.

With respect to the provisional rejection on the ground of obviousness-type double patenting, appellant has not contested the propriety of the rejection. Rather, appellant urges that

"upon favorable action on this appeal, this provisional rejection will be attended to." Accordingly, the obviousness-type double patenting rejection is affirmed.

The decision of the examiner is affirmed.

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

AFFIRMED

Appeal No. 96-2800
Application 08/149,042

	RONALD H. SMITH)	
	Administrative Patent Judge)	
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	MICHAEL SOFOCLEOUS)	BOARD OF
PATENT	Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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)	
	CHARLES F. WARREN)	
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Appeal No. 96-2800
Application 08/149,042

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Appeal No. 96-2800
Application 08/149,042

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