

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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

Appeal No. 1997-1448
Application 08/097,140

ON BRIEF

Before WARREN, WALTZ and LIEBERMAN, Administrative Patent Judges.

LIEBERMAN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the examiner's refusal to allow claims 13 through 15 and 18 which are all the claims in the application. Claims 16 and 17 stand withdrawn from consideration as directed to a non-elected invention. 37

CFR

§ 1.142(b).

THE INVENTION

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The invention is directed to a curable prepreg consisting essentially of at least two superposed sheets of woven reinforcing fabric which are both impregnated with a solid curable resin and contained within a sheet matrix of a solid curable resin composition.

THE CLAIM

Claim 13 is illustrative of appellants' invention and is reproduced below.

13. A curable prepreg consisting essentially of a multiply fabric layer, which comprises at least two superposed sheets of woven reinforcing fabric, impregnated by, and contained within a sheet matrix of, a solid curable resin composition.

THE REFERENCE OF RECORD

As evidence of obviousness, the examiner relies upon the following reference.

Letterman	4,622,091	Nov. 11, 1986
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THE REJECTION

Claims 13 through 15 and 18 stand rejected under 35 U.S.C. § 103 as being unpatentable over Letterman.

OPINION

We have carefully considered all of the arguments advanced by appellants and the examiner, and agree with the appellants that the aforementioned rejection under 35 U.S.C. § 103 is not well founded. Accordingly, we do not sustain the examiner's rejection.

The Rejection under § 103

"[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a prima facie case of unpatentability." See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). On the record before us, the examiner relies upon a single reference to Letterman to reject the claimed subject matter and establish a prima facie case of obviousness. The basic premise of the rejection is that while Letterman does not teach preimpregnating the claimed preform, the portion of the reference entitled BACKGROUND OF THE INVENTION discloses that it is well known to preimpregnate fibrous preforms. See the Office action mailed June 27, 1994, page 3. Presumably, according to the examiner, it would have been obvious to impregnate the preform of Letterman to obtain appellants' claimed subject matter.

Our analysis is not in accord with that of the examiner. We find that Letterman distinguishes over the prior art by preparing a plurality of dry fiber plies layered to create a dry preform. See column 2, lines 35-36. At least one layer of a resin is added to the dry preform. See column 2, lines 40-41. In addition, to a layer of a resin located atop the dry preform, a layer may be located beneath the dry preform. See column 2, lines 47-49. However, Letterman defines the term "dry preform" as one not impregnated

with a resin. See column 3, lines 29-30. Based on our findings, we conclude that Letterman teaches a curable resin composite containing a multi-ply fabric layer which

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comprises at least two superposed sheets of woven reinforcing fabric contained within a sheet matrix of a solid curable resin composition. However, the composite is not a prepreg, since the woven reinforcing fabric is not preimpregnated with a solid curable resin.

Moreover, the entire thrust of Letterman's invention is to teach away from the use of preimpregnated fiber plies. See column 1, line 29 - column 2, line 26. Indeed, Letterman states that, "[t]he invention is directed to avoiding the disadvantage of creating monolithic structures from preimpregnated fibrous layers." See column 2, lines 13-15. Accordingly, we determine that the examiner has not established any motivation for the impregnation of Letterman's dry preforms. Hence a curable prepreg as required by the claimed subject matter is not suggested by Letterman.

In view of the above analysis, we have determined that the examiner's legal conclusion of obviousness is not supported by the facts. "Where the legal conclusion [of obviousness] is not supported by the facts it cannot stand." In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967).

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DECISION

The rejection of claims 13 through 15 and 18 under 35 U.S.C. § 103 as being unpatentable over Letterman is reversed.

The decision of the examiner is reversed.

Charles F. Warren)
Administrative Patent Judge)
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Thomas A. Waltz) BOARD OF PATENT
Administrative Patent Judge) APPEALS AND
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Paul Lieberman)
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