

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(2) is not binding precedent of the Board.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. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RANDALL L. RAHM, KEVIN B. AVERY,
and MARK H. BERGGREN

Appeal No. 1997-1464
Application 08/235,542

ON BRIEF

Before KIMLIN, GARRIS, and WALTZ, 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 through 9 and 19 through 27 as amended subsequent to the final rejection. These are all of the claims remaining in the application.

Appeal No. 1997-1464
Application No. 08/235,542

The subject matter on appeal relates to a method for producing a coal product from raw coal which comprises treating dried coal with a liquid mixture of oil and molasses. The appealed subject matter also relates to a liquid for treating a coal product which comprises a mixture of molasses and a hydrocarbon-based solution. Further details of this appealed subject matter are readily apparent from a review of representative independent claims 1 and 19, a copy of which taken from the appellants' brief is appended to this decision.

The following reference is relied upon by the examiner as evidence of obviousness:

Paersch et al. (Paersch)	4,501,593	Feb. 26, 1985
-----------------------------	-----------	---------------

All of the claims on appeal are rejected under 35 U.S.C. § 103 as being unpatentable over Paersch.

We refer to the brief and reply brief and to the answer and supplemental answer for an exposition of the opposing viewpoints expressed by the appellants and the examiner concerning the above noted rejection.

OPINION

Paersch teaches a process for pelletizing particles of coal by adding thereto a first and second binder which the

Appeal No. 1997-1464
Application No. 08/235,542

examiner explicitly equates to the here claimed liquid ingredients, namely, molasses and oil (appealed claim 1) or hydrocarbon-based solution (appealed claim 19). While the examiner acknowledges that Paersch teaches adding his first and second binders separately, the examiner urges that patentee also teaches at lines 3 through 20 in column 3 adding these binders "in combination" (answer, page 3). More specifically, the examiner considers the Paersch reference to teach adding the first and second binders in combination by virtue of the disclosure "[t]he first and second binders are conveniently added by spraying" at lines 3 and 4 of column 3 (see the paragraph bridging pages 5 and 6 of the answer).

We cannot agree with the examiner's position that patentee teaches adding his first and second binders in combination. The above quoted disclosure at lines 3 and 4 of column 3 does not recite and would not have suggested anything about the two binders being in combination. Moreover, as explained by the appellants in their brief and reply brief, the disclosure of the Paersch reference unambiguously requires that the first and second binders be added to coal particles separately in order to obtain specified desiderata including a

Appeal No. 1997-1464
Application No. 08/235,542

particular distribution and concentration gradient (e.g., see the first paragraph in column 2, the last paragraph in column 4, the paragraph bridging columns 5 and 6 and independent claim 1 of the patent).

In short, the rejection advanced by the examiner on this appeal is fatally premised upon the examiner's erroneous position that the above quoted disclosure of Paersch teaches adding patentee's first and second binders in combination. It follows that we cannot sustain the examiner's section 103 rejection of the claims on appeal as being unpatentable over Paersch.

Other issues

As explained earlier, the invention disclosed and claimed by Paersch clearly adds the first and second binders to coal particles separately rather than in the form of a mixture as required by the appealed claims. Nevertheless, it is significant that Paersch compares his invention of adding the first and second binders separately (see the example in column 5) to a comparative experiment in which the first and second binders are added as a mixture (see Comparative Experiment B in column 6). Thus, an issue is raised as to whether the

Appeal No. 1997-1464
Application No. 08/235,542

liquid mixture defined by, for example, independent claim 19 distinguishes over the liquid mixture described in Comparative Experiment B of the Paersch patent. In this regard, we point out that the liquid mixture of Comparative Experiment B contains 25 grams of molasses which equals about 43% of the total mixture and 33 grams of bitumen emulsion which equals about 57% of the total mixture.¹ In light of the foregoing, the examiner and the appellants should consider whether the disclosure of Comparative Experiment B in the Paersch reference satisfies all of the requirements of at least appealed claim 19.

Summary

The decision of the examiner is reversed.

REVERSED

Edward C. Kimlin)
Administrative Patent Judge)
)

¹This last mentioned point raises the issue of whether the "about 40%" recitation in the last clause of appealed claim 19 concerns the recited "hydrocarbon-based solution" (which corresponds to the above mentioned bitumen emulsion of Comparative Experiment B) or the recited "hydrocarbon portion". The examiner and the appellants should address and resolve this issue in any further prosecution that may occur.

Appeal No. 1997-1464
Application No. 08/235,542

APPENDIX

1. A method for producing a coal product from raw coal, comprising the steps of:

heating the raw coal in a coal dryer;

reducing a moisture content of the raw coal using said heating step to produce dried coal;

cooling the dried coal after said reducing step; and

treating the dried coal after said reducing step and all heating steps involved in producing the coal product from the raw coal with a liquid comprising oil and molasses to produce the coal product, wherein said oil and molasses are mixed together before said treating step to provide said liquid used by said treating step.

19. A liquid for treating a coal product, comprising:

a mixture of molasses and a hydrocarbon-based solution, wherein:

said molasses is present in the amount of at least about 40% of said liquid by weight; and

said hydrocarbon-based solution comprises a hydrocarbon portion which comprises at least about 40% of said liquid by weight, wherein said molasses and said hydrocarbon-based solution are mixed before being used in the treatment of the coal product.