

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte CHARLES HAUMONT and  
ROGER LEGRAS

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Appeal No. 1997-1486  
Application 08/430,752

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ON BRIEF

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Before JOHN D. SMITH, GARRIS, and PAK, Administrative Patent Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claims 26, 28 and 30 through 45, which are all of the claims pending in the application.

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The subject matter on appeal relates to a filtration membrane in the form of a microperforated sheet transparent to wavelengths in the visible and infrared spectrums, said sheet having certain thickness, perforation-density, and mean angle of inclination values. This appealed subject matter is adequately illustrated by independent claim 34, which reads as follows:

34. A filtration membrane in the form of a microperforated sheet transparent to wavelengths in the visible and infrared spectrums, the sheet comprising a material transparent in the non-perforated state having a thickness  $e$  of 0.1  $\mu\text{m}$  to 50  $\mu\text{m}$ , perforations with a mean distance  $l_m$  between circumferences of neighboring perforations of at least 5  $\mu\text{m}$  on each face of the material and a mean angle " of inclination of the perforations through the material not greater than  $10^\circ$  with respect to an axis perpendicular to the sheet of material.

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

Higashimura et al. (Higashimura)	4,778,868	Oct. 18, 1988
Ikushima et al. (Ikushima)	4,909,896	Mar. 20, 1990
Legras et al. (Legras)	4,956,219	Sep. 11, 1990
Grendahl	5,213,721 (filed Dec. 21, 1990)	May 25, 1993

All of the appealed claims stand rejected under 35 U.S.C.

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§ 103 as being unpatentable over Ikushima in view of Grendahl and/or Higashimura alone or further in view of Legras.

We refer to the Brief and to the Answer for a complete exposition of the opposing viewpoints expressed by the appellants and the examiner concerning the above noted rejections.

For a number of reasons, none of these rejections can be sustained.

In the first place, we agree with the appellants for the reasons expressed in the Brief that a reference which is directed to a contact lens such as the here applied Ikushima reference constitutes nonanalogous art pursuant to the test as set forth in, for example, *In re Wood*, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979). It is axiomatic that one with an ordinary level of skill in a particular art would not even be aware of a reference which is from a nonanalogous art. Necessarily, therefore, it would not have been obvious for the artisan to modify such a reference as the examiner proposes to do to the nonanalogous Ikushima reference in the rejections before us.

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Even disregarding the aforementioned issue, the rejections formulated by the examiner still would be improper. This is because the examiner has advanced no acceptable rationale why an artisan with ordinary skill would combine the here applied references in the manner proposed. For example, the examiner has offered no rational, acceptable reasons, and we perceive none independently, why an artisan with ordinary skill would modify the contact lens of Ikushima to have the hole density and angle features said to be disclosed by Grendahl and the thickness feature said to be disclosed by Higashimura or the angle features taught by Legras. Indeed, on the record before us, it is not even clear whether a contact lens would be capable of functioning as such if modified to possess these features.

In light of the foregoing, we are convinced that the examiner's rejections are fatally based upon impermissible hindsight derived from the appellants' own disclosure rather than some teaching, suggestion, or incentive derived from the applied prior art. It follows that we cannot sustain the examiner's

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§ 103 rejections of the appealed claims as being unpatentable over Ikushima in view of Grendahl and/or Higashimura alone or further in view of Legras.

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The decision of the examiner is reversed.

REVERSED

	)	
John D. Smith	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
Bradley R. Garris	)	
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
	)	
Chung K. Pak	)	
Administrative Patent Judge	)	

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