

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN P. CURTIS and MICHAEL J. MCGREAL

Appeal No. 1997-1497
Application No. 08/059,693

HEARD: February 20, 2001

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

PAK, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal under 35 U.S.C. § 134 from the examiner's refusal to allow claims 1 through 15, which are all of the claims pending in the above-identified application.

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APPEALED SUBJECT MATTER

Claims 1, 8 and 12 are representative of the subject matter on appeal and read as follows:

1. A dental floss comprised of a plurality of filaments which are a mixture of polytetrafluoroethylene and non-polytetrafluoroethylene filaments, said filaments being twisted together with about 1 to 5 twists per inch.

8. A dental floss comprised of plurality of filaments which are a mixture of nylon filaments and polytetrafluoroethylene filaments, said filaments being twisted together with about 1 to 5 twists per inch.

12. A dental floss comprised of a plurality of filaments which are a mixture of polyester filaments and polytetrafluoroethylene filaments, said filaments being twisted together with about 1 to 5 twists per inch.

PRIOR ART

In support of his rejection, the examiner relies on the following prior art:

Ashton et al. (Ashton) 1976	3,943,949	Mar. 16,
Lorch 1988	4,776,358	Oct. 11,
Blass 1991	4,996,056	Feb. 26,

REJECTION

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Claims 1 through 15 stand rejected under 35 U.S.C. § 103 as unpatentable over Ashton in view of Blass or Lorch.¹

OPINION

We have carefully reviewed the claims, specification and applied prior art, including all of the arguments advanced by both the examiner and appellants in support of their respective positions. This review leads us to conclude that the examiner's § 103 rejection is not well founded. Accordingly, we will not sustain the examiner's § 103 rejection for essentially those reasons set forth in the Brief and Reply Brief. We add the following primarily for emphasis and completeness.

We find that Ashton discloses "a flavored dental floss formed of a plurality of individual filaments..." See column 2, lines 27-28. These filaments "include...nylon...rayon, Dacron, acetate polymers [polyester], polypropylene and the **like** (emphasis supplied)". See column 2, lines 30-33. "It is preferred to twist the individual filaments...to form the

¹ The examiner has withdrawn the § 112 rejection of claims 4, 5, 11 and 15 set forth in the final Office action dated Feb. 7, 1994, Paper No. 4. See Answer, pages 1 and 2.

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floss", "with a preferred twist of about 1.5 to 2.0 turns per inch." See column 2, lines 41-49. As recognized by the examiner, Ashton does not specifically mention using the claimed PTFE filaments in its bundle. See Answer, page 3. To remedy this deficiency, the examiner relies on either Blass or Lorch.

As correctly pointed out by appellants (Brief, Page 4 and Reply Brief, Pages 1 and 2), Blass is directed to using PTFE powder, not PTFE filaments, on nylon or polyester filaments to form its floss. Blass discloses PTFE filaments only in the context of forming a packing material, not a dental floss. See Blass, column 1, lines 21-29 together with Reply Brief, Pages 1 and 2. Therefore, we conclude that the combined disclosures of Ashton and Blass would not have suggested employing a PTFE filament as part of a flavored dental floss, much less using it with nylon or polyester filaments, to form the dental floss of the type described in Ashton.

As also correctly stated by appellants (Brief, Page 5 and 6, and Reply Brief, Page 1), we find that Lorch is directed to forming a flossing tape which has a dentifrice sandwiched between two layers of PTFE. See also Lorch's Abstract. The

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purpose of forming a flossing tape, rather than a thread, is to provide, *inter alia*, a polishing function. See Lorch, column 1. Thus, we find no suggestion that the PTFE flossing tape of the type described in Lorch would be useful as part of the threaded filament type dental floss described in Ashton.

In view of the foregoing, we agree with appellants that the examiner has not established a *prima facie* case of obviousness regarding the claimed subject matter. Accordingly, we reverse the examiner's decision rejecting claims 1 through 15 under 35 U.S. C. § 103 over the applied prior art.

OTHER ISSUES

We note that Blass states that GB 1380032 discloses "a yarn which contains aromatic polyamide filaments and polytetrafluoroethylene [PTFE] filaments." Upon return of this application, the examiner is to review GB 1380032 to determine whether its yarn affects the patentability of the invention recited in the appealed claims.

We also note that U.S. Patents 5,033,488 and 5,209,251 issued to Curtis et al. filed on December 2, 1988 and July 11,

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1991, respectively, describe the advantage of using PTFE filaments as a dental floss. Upon return of this application, the examiner is to determine (1) whether Curtis '488 and '251 are "prior art" within the meaning of 35 U.S.C. § 102(e) and if they are "prior art", whether the combined teachings of Ashton and Curtis '488 or '251 affect the patentability of the invention recited in the appealed claims.

CONCLUSION

In view of the foregoing, the decision of the examiner is reversed and the application is remanded to the examiner for appropriate action consistent with the above instruction.

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

REVERSED/REMANDED

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EDWARD C. KIMLIN)	
Administrative Patent Judge)	
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JOHN D. SMITH)	APPEALS
Administrative Patent Judge)	AND
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APJ KIMLIN

APJ JOHN D. SMITH

DECISION: REVERSED/REMANDED
Send Reference(s): Yes No
or Translation (s)
Panel Change: Yes No
Index Sheet-2901 Rejection(s):
Prepared: September 27, 2001

Draft Final

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PALM / ACTS 2 / BOOK
DISK (FOIA) / REPORT