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(2) is not binding precedent of the Board.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. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PAUL COPPENS,
ERIC HOES, LUDOVICUS VERVLOET,
and BRIGITTE PARMENTIER

Appeal No. 1997-1537
Application 08/290,116

HEARD: April 17, 2000

Before KIMLIN, GARRIS, and OWENS, Administrative Patent Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claims 3 through 8 which are all of the claims pending in the application.

The subject matter on appeal relates to a sealed package of at least two sheets of an imaging element characterized in that the package contains between each sheet of the imaging element a paper spacer containing less than 20 ppm by weight of formaldehyde and having a pH of less than 9. This appealed subject matter is adequately illustrated by independent claim 3 which reads as follows:

3. A sealed package of at least two sheets of an imaging element in a packaging material, said imaging element comprising in the order given (i) a hydrophilic base, (ii) an image receiving layer containing physical development nuclei, (iii) an intermediate layer comprising a non-proteinic hydrophilic film-forming polymer or hydrophobic polymer beads having an average diameter not lower than 0.2 Fm and having been prepared by polymerization of an ethylenically unsaturated monomer, and (iv) a photosensitive layer containing a silver halide emulsion being in water permeable relationship with said image receiving layer, characterized in that the surrounding of the imaging element in such a package has at 22EC a relative humidity between 20% and 50% and that said package contains between each sheet of the imaging element a paper spacer having a weight of more than 15 g/m^2, containing less than 20 ppm by weight of formaldehyde and having a pH of less than 9.

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

Sewall	3,561,966	Feb. 9, 1971
Fessenden	3,645,388	Feb. 29, 1972
Asano et al. (Asano)	3,652,278	Mar. 28, 1972
Akao (Akao ‘906)	4,784,906	Nov. 15, 1988

Akao (Akao ‘600) 5,026,600 Jun. 25, 1991
Coppens et al. (Coppens) 5,196,290 Mar. 23, 1993

Birr, “Stabilization of Photographic Silver Halide Emulsions,” The Focal Press, pp. 19-23 and 26, 1974.

All of the appealed claims stand rejected under 35 U.S.C. § 103 as being unpatentable over Coppens, Sewall, Akao ‘600, Akao ‘906, Birr, Asano and Fessenden.

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

OPINION

For the reasons which follow, we cannot sustain this rejection.

At best, the references applied by the examiner merely evince that various features of the independent claim on appeal are generically known in the prior art as being related in some fashion to photographic materials generally though not necessarily in the context of a packaging material for an

imaging element of the type here claimed specifically. Absent from this prior art is the requisite suggestion or motivation for combining the applied reference teachings, based upon a reasonable expectation of success, in such a manner as to result in the appellants' claimed subject matter. In re O'Farrell, 853 F.2d 894, 903-904, 7 USPQ2d 1673, 1680-1681 (Fed. Cir. 1988).

The applied prior art is particularly deficient with respect to the here claimed feature of a paper spacer containing less than 20 ppm by weight of formaldehyde and having a pH of less than 9. We recognize that this prior art broadly teaches that formaldehyde and pH may have a detrimental effect on photographic materials generally. For example, Asano teaches that formaldehyde vapors given off by formalin adhesives contained in plywood furniture cause photographic materials to form a fog. However, none of the references adduced by the examiner contains any teaching or suggestion that paper spacers may contain formaldehyde and pH levels which might cause the development of conditions detrimental to photographic materials of any kind much less imaging elements of the type under consideration. It follows

that none of these references contains any teaching or suggestion of controlling formaldehyde and pH levels in paper spacers so as to be within the ranges defined by the independent claim on appeal.

In light of the foregoing, we cannot sustain the examiner's section 103 rejection of claims 3 through 8 as being unpatentable over Coppens, Sewall, Akao '600, Akao '906, Birr, Asano and Fessenden.

The decision of the examiner is reversed.

REVERSED

Edward C. Kimlin Administrative Patent Judge	)
Bradley R. Garris Administrative Patent Judge	) BOARD OF PATENT APPEALS AND INTERFERENCES
Terry J. Owens Administrative Patent Judge	)

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