

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(2) is not binding precedent of the Board.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. 36

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RAY EDWARDS
and WILLIAM A. MRUK

Appeal No. 1997-3906
Application 08/233,482

ON BRIEF

Before GARRIS, PAK, and SPIEGEL, Administrative Patent Judges.
GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal which involves claims 12 through 14 and 20 through 25. The other claims in the application, which are claims 1 through 11 and 15 through 19 stand withdrawn from further consideration by the examiner as

Appeal No. 1997-3906
Application No. 08/233,482

being drawn to a nonelected invention.

The subject matter on appeal relates to a process for the low-temperature extrusion coating of a substrate with a polyethylene film. The process comprises applying a composition to the substrate by extrusion coating at a temperature in the range of 175E up to 290EC. The composition comprises a polyethylene component having a melt index in the range of about 10 up to 100 dg per minute at 190EC and having a sufficiently broad molecular weight distribution so that the resulting composition is capable of being extrusion coated at a temperature in the range of 175EC up to 290EC. This composition also includes a hydrocarbon tackifying resin and a thermally sensitive, hygroscopic or hydrophilic additive. Further details of this appealed subject matter are set forth in illustrative independent claim 12¹, a copy of which taken from the appellants' brief is appended to this decision.

The following references are relied upon by the examiner

¹In clause (c) of claim 12 and claim 25, it appears that "190EC" is a typographical error which should read --290EC-- as reflected by the amendments filed November 30, 1992 and January 21, 1992 in parent application Serial No. 07/681,801. This apparent error should be verified and if necessary corrected in any further prosecution that may occur.

Appeal No. 1997-3906
Application No. 08/233,482

as evidence of obviousness:

Edwards	4,526,919	Jul. 2, 1985
Uno et al. (Uno)	4,650,747	Mar. 17, 1987
Canadian patent	798908	Nov. 12, 1968

All of the claims on appeal are rejected under 35 U.S.C. § 103 as being unpatentable over Edwards alone or taken with the Canadian patent and Uno.

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

OPINION

For the reasons set forth below, this rejection cannot be sustained.

The appealed claim 12 process distinguishes over Edwards in a variety of respects including the formation of a polyethylene film via extrusion coating at the here claimed temperature range of a composition comprising a polyethylene component having a melt index in the range of about 10 up to 100 dg per minute at 190EC and having a sufficiently broad molecular weight distribution so that the resulting

Appeal No. 1997-3906
Application No. 08/233,482

composition is capable of being extrusion coated at the claimed temperature range. Instead, the process of Edwards comprises the extrusion coating of a polypropylene blend. Although this polypropylene blend may include up to 20 percent low density polyethylene, this last mentioned component of patentee's composition has a melt index below the appellants' claimed range. Moreover, we agree with the appellants that Example 9 of Edwards teaches away from a composition having more than 20 percent of this low density polyethylene component.

In apparent recognition of this above noted distinction, the examiner sets forth the following rationale in support of his obviousness conclusion in the paragraph bridging pages 2 and 3 of the answer:

Process of claims differs from process of Edwards in the type of polyethylene composition (PEC) used. The substitution of PEC of claimed process would be obvious because parameters required in extrusion coating does not differ significantly when PEC with similar or related physical makeup is employed[,] see column 2, column 4 of Edwards. Where significant differences might exist a skilled person in this art could carry out appropriate adjustments for extrusion coating by adjusting temperature so coating is uniformly applied.

We perceive no evidentiary support for the examiner's

Appeal No. 1997-3906
Application No. 08/233,482

obviousness conclusion. Certainly, Edwards contains no disclosure which would have suggested replacing his polypropylene based composition with a composition comprising a polyethylene component having the melt index and molecular weight distribution required by the independent claims on appeal. As previously indicated, the only polyethylene component disclosed by Edwards is unquestionably different from the appellants' claimed polyethylene component. Further, the examiner points to nothing specific and we find nothing independently in the Canadian patent or Uno which would have suggested modifying Edwards' process so as to result in use of a composition comprising the polyethylene component under consideration for extrusion coating at a temperature in the range of 175E up to 290EC as required by the appealed claims.

Under the foregoing circumstances, we cannot sustain the examiner's section 103 rejection of the appealed claims as being unpatentable over Edwards alone or taken with the Canadian patent and Uno.

Appeal No. 1997-3906
Application No. 08/233,482

The decision of the examiner is reversed.

REVERSED

	Bradley R. Garris)	
	Administrative Patent Judge)	
)	
)	
)	
	Chung K. Pak)	BOARD OF
PATENT)	
	Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
	Carol A. Spiegel)	
	Administrative Patent Judge)	

tdl

Appeal No. 1997-3906
Application No. 08/233,482

Mark A. Montgomery
Eastman Chemical Co.
P.O. Box 511
Kingsport, TN 37662

APPENDIX

12. A process for the low-temperature extrusion coating of a substrate with a polyethylene film having a thickness of at least about 0.0075mm, said process comprising applying a composition to at least one surface of said substrate by extrusion coating at a temperature in the range of 175E up to 290EC said composition comprising:

(a) a polyethylene component having a melt index in the range of about 10 up to 100 dg per minute at 190EC and having a sufficiently broad molecular weight distribution so that the resulting composition is capable of being extrusion coated at a temperature in the range of 175EC up to 290EC,

(b) in the range of about 0.5 up to 15 weight percent, based on the weight of the total of (a) plus (b), of a hydrocarbon tackifying resin having a RBSP in the range of about 90E up to 150EC, and

(c) at least one thermally sensitive additive that is not sensitive at a point within the range of 175E to 190EC [sic, 290EC] at relatively high loadings of additives that contain a sufficient amount of volatiles that create unsatisfactory imperfections at relatively high temperatures, and a concentration in excess of about 10 weight percent based on the total wherein said thermally sensitive additive is a hygroscopic or hydrophilic additive.