

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board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. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ROBERT W. RAY, JR.

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Appeal No. 1998-0485  
Application 08/365,378

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HEARD: January 10, 2001

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

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claims 1 through 13 and 15 through 21, which are all of the claims pending in the application.

The subject matter on appeal relates to a device for inhibiting atmospheric ice accumulation on an aircraft structure comprising a flexible ice protector, an intermediate layer bonded to the protector and a pressure sensitive adhesive layer bonded to the intermediate layer and to the aircraft structure. This appealed subject matter also relates to a method for attaching a flexible ice protector to an aircraft structure via a bonding step that includes the use

of the aforementioned intermediate layer and adhesive layer. This appealed subject matter is adequately illustrated by independent claim 1 which reads as follows:

1. A device for inhibiting atmospheric ice accumulation on an aircraft structure, comprising:

a flexible ice protector;

an intermediate layer bonded to said flexible ice protector, said intermediate layer having a lesser modulus of elasticity than said flexible ice protector;

a pressure sensitive adhesive layer bonded to said intermediate layer, said pressure sensitive adhesive layer defining a bonding surface that bonds to the aircraft structure.

The prior art set forth below is relied upon by the examiner as evidence of obviousness:

Townsend	4,246,303	Jan. 20, 1981
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The admitted prior art described on page 1 of the subject specification

All of the claims on appeal stand rejected under 35 U.S.C. § 103 as being unpatentable over the admitted prior art in view of Townsend. On page 5 of the Answer, the examiner describes his basic position as follows:

The admitted prior art teaches that adhesive backed flexible ice protectors of the instantly claimed versions are well known (Instant specification, page 1). The admitted prior art fails to suggest the use of a double sided adhesive tape comprising a support having a low modulus of elasticity.

Townsend teaches that double sided adhesive tapes with a foam support layer and acrylic adhesive layers can be used to bond a molding to the outer surface of a vehicle (column 2, lines 30-36). It would have been obvious to one of ordinary skill in the art to use a double sided adhesive tape such as shown by Townsend to bond the ice protector of the admitted prior art to an airplane because Townsend shows the tape to be effective for bonding to exterior

surfaces of moving vehicles and because double sided tapes allow for flexibility in construction due to their ability to be adhered to one object in a factory and then carried on site to the object on which it should be mounted.

We refer to the Brief and Reply Brief and to the Answer for a complete exposition of the opposing viewpoints expressed by the appellant and by the examiner concerning the above-noted rejection.

#### OPINION

This rejection cannot be sustained.

It is well settled that, for obviousness under 35 U.S.C. § 103, the applied prior art must contain a suggestion to modify the prior art so as to result in the claimed invention and must contain evidence for reasonably expecting that the modification would be successful. In re O'Farrell, 853 F.2d 894, 903, 7 USPQ2d 1673, 1680-81 (Fed. Cir. 1988). In the § 103 rejection before us, the prior art applied by the examiner does not contain the requisite suggestion or reasonable expectation of success.

This is because the Townsend reference teaches using a double-sided adhesive tape, referred to by the examiner in the above quotation, only for the purpose of adhering body side moulding to a side of a vehicle body for a decorative purpose and/or a protective purpose such as absorbing the impact caused by a door of another vehicle (e.g., see lines 7 through 62 in column 1). As correctly indicated by the appellant, Townsend contains no teaching or suggestion of using a double-sided adhesive tape for adhering a flexible ice protector to an aircraft structure or of using this tape in a corresponding or at least similar adhering

environment. In this regard, we agree with the appellant that the here claimed environment of a flexible ice protector bonded to an aircraft structure is significantly more hostile than Townsend's environment of moulding adhered to a vehicle body. Plainly, an adhesive tape entirely adequate in the latter environment might be completely inadequate in the former environment.

Under these circumstances, it is our determination that the here applied prior art does not contain a suggestion and a reasonable expectation of success with respect to using the double-sided tape of Townsend for bonding a flexible ice protector to an aircraft structure as proposed by the examiner. Thus, we agree with the appellant that the rejection before us is based upon the inappropriate "obvious to try" standard. In re O'Farrell, 853 F.2d at 903, 7 USPQ2d at 1681. It follows that we cannot sustain the examiner's § 103 rejection of the appealed claims as being unpatentable over the admitted prior art in view of Townsend.

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The decision of the examiner is reversed.

REVERSED

Bradley R. Garris )  
Administrative Patent Judge )  
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Terry J. Owens ) BOARD OF PATENT  
Administrative Patent Judge ) APPEALS AND  
) INTERFERENCES  
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Catherine Timm )  
Administrative Patent Judge )

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Mary Ann Tucker  
The B. F. Goodrich Company  
Patent Law Department  
9921 Brecksville Road  
Brecksville, OH 44141-3289