

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 45

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte TAKATOSHI ISHIKAWA, KAZUAKI YOSHIDA,  
HIROSHI FUJIMOTO, JUNICHI YAMANOUCI and TOMOKAZU YASUDA

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Appeal No. 1998-1276  
Application No.08/232,339

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HEARD: March 6, 2001

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Before KIMLIN, KRATZ and TIMM, Administrative Patent Judges.  
KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 6-10, 12, 13 and 15-19, all the claims remaining in the present application. A copy of illustrative claim 17 is appended to this decision:

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The examiner relies upon the following references as evidence of obviousness:

Fujimoto et al. (Fujimoto)	4,965,175	Oct. 23, 1990
Kuse et al. (Kuse) (Japanese Kokai patent application)	53-51742	May 11, 1978

Appellants' claimed invention is directed to a method for processing an exposed silver halide color photographic material having the recited characteristics. The method comprises continuously processing the exposed photographic material with a color developer comprising a chloride ion and a water-soluble high polymer compound. In response to an election requirement by the examiner, appellants elected the third polymeric species listed at page 28 of the present specification, which corresponds to a polymer having at least one repeating unit illustrated at page 17 of appellants' principal brief, i.e., the first repeating unit appearing at column 2 of page 17 of the brief. An example of such a polymer is polyvinyl alcohol.

Appealed claims 6-10, 12, 13 and 15-19 stand rejected under 35 U.S.C. § 103 as being unpatentable over Fujimoto in view of Kuse.

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Appellants state at page 3 of the principal brief that "the pending claims rise or fall together." Accordingly, all the appealed claims stand or fall together with claim 17.

We have thoroughly reviewed each of appellants' arguments for patentability, as well as the declaration evidence relied upon in support thereof. However, we are in complete agreement with the examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Accordingly, we will sustain the examiner's rejection for essentially those reasons expressed in the Answer, and we add the following primarily for emphasis.

Appellants contend at page 4 of the principal brief that:

Fujimoto and JP <742 do not disclose or suggest a silver halide color photographic material comprising one or more light-sensitive silver halide emulsion layers, at least one layer of which contains a monodisperse emulsion of silver bromochloriodide, silver chloride or silver bromochloride grains containing about 30 mol% or less of silver bromide and having a ratio S/r of 0.20 or less, where the coating amount of silver in the photographic material is 0.75 g/m<sup>2</sup> or less.

However, we agree with the examiner that this statement is not factually correct.

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Indeed, Fujimoto discloses a silver halide color photographic material comprising a monodisperse emulsion of silver chloride grains containing less than 30 mol% of silver bromide, having a ratio S/r of 0.20 or less, wherein the coating amount of silver in the photographic material is less than 0.75 g/m<sup>2</sup>. In particular, Fujimoto discloses that the silver chloride content of the emulsion is not less than 80 mol% and that the emulsion may contain minor amounts of silver bromide, which amount, of course, meets the claimed amount of less than 30 mol% (see column 15, lines 12-20). Fujimoto also discloses that it is preferred to employ a monodisperse silver halide emulsion

(column 15, lines 41 and 42), and that "the value (variation factor) found by dividing the standard deviation of the grain size distribution curve of the emulsion by the average grain size is not more than 20 percent and, preferably, not more than 15 percent" (column 15, lines 42-46). The examiner has made the factual determination that Fujimoto's variation factor of less than 20% meets the claimed ratio S/r of 0.20 or less. We note that while appellants make reference to the examiner's factual determination at page 2 of the Reply Brief,

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second paragraph, appellants have chosen not to refute the finding of the examiner. Accordingly, we will accept the examiner's finding as fact. In addition, Fujimoto discloses that the coating amount of the silver halide emulsion is in the range of 0.8 g/m<sup>2</sup> to 0.3 g/m<sup>2</sup> of silver, which meets the claimed amount of 0.75 g/m<sup>2</sup> or less. Also, although not argued by appellants, Fujimoto discloses the claimed chloride ion content in the color developer of 0.035 mol/l or more (column 2, lines 10-12).

As recognized by the examiner, Fujimoto does not disclose the claimed polymer in the color developer. However, in addition to disclosing preservative agents for the color developer, including a polymer, Fujimoto expressly teaches that the color developer may contain additional organic preservatives, meaning "any and all organic compounds which, when added to a processing solution for color photographic light-sensitive materials, would reduce the rate of degradation of the aromatic primary amine color developing agent" (column 10, lines 63-67). Hence, since Kuse discloses a polymer which corresponds to appellants' elected species which stabilizes a color developing solution for silver halide

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color photographic materials, we agree with the examiner that it would have been obvious for one of ordinary skill in the art to add the relevant polymeric stabilizer of Kuse to the color developer of Fujimoto. While appellants maintain that Kuse teaches that the pertinent polymer must be used in combination with another polymer, and, therefore, "one of ordinary skill in the art would not have been motivated to add **only one** polymer to the developing solution disclosed in Fujimoto" (page 12 of principal brief, first paragraph), the examiner has properly explained that the claim language on appeal does not exclude other polymer stabilizers in addition to those recited. Hence, appellants' argument is not germane to the claimed subject matter on appeal.

Appellants rely upon the Declaration under 37 CFR § 1.132 by Takatoshi Ishikawa, one of the present inventors, to demonstrate unexpected results. However, we agree with the examiner that the declaration evidence is hardly commensurate in scope with the degree of protection sought by the appealed claims. In re Grasselli, 713 F.2d 731, 743, 218 USPQ 769, 778 (Fed. Cir. 1983); In re Clemens, 622 F.2d 1029, 1035, 206 USPQ 289, 296 (CCPA 1980). We say this because the Declaration is

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limited to only a single polymeric species that is representative of the broad class of polymers encompassed by appellants' elected formula, namely, poly(vinyl alcohol) having a degree of saponification of 74.0%. Appellants have not laid the factual foundation to support the conclusion that the limited showing of superior results relative to the Fujimoto polymer would be reasonably extended to the wide variety of polymers encompassed by the presently claimed formula. The burden of showing unexpected results rests on appellants, and appellants have not established on this record that the superior results of the Declaration may be reasonably extrapolated to the class of polymers embraced by the claimed formula. In re Kollman, 595 F.2d 48, 55, 201 USPQ 193, 198 (CCPA 1979). In addition, appellants have not satisfied their burden of establishing that the declaration results would be considered truly unexpected by one of ordinary skill in the art. In re Merck & Co., 800 F.2d 1091, 1099, 231 USPQ 375, 381 (Fed. Cir. 1986); In re Klosak, 455 F.2d 1077, 1080, 173 USPQ 14, 16 (CCPA 1972).

One final point remains. In the event of further prosecution of the subject matter at bar, the examiner should

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consider an obviousness-type double patenting rejection of the appealed claims over the claims of appellants' issued patent, Patent No. 6,096,488. The patented application is a continuation of the present application.

In conclusion, based on the foregoing, the examiner's decision rejecting the appealed claims is affirmed.

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

AFFIRMED

EDWARD C. KIMLIN	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	
PETER F. KRATZ	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
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CATHERINE TIMM	)	
Administrative Patent Judge	)	

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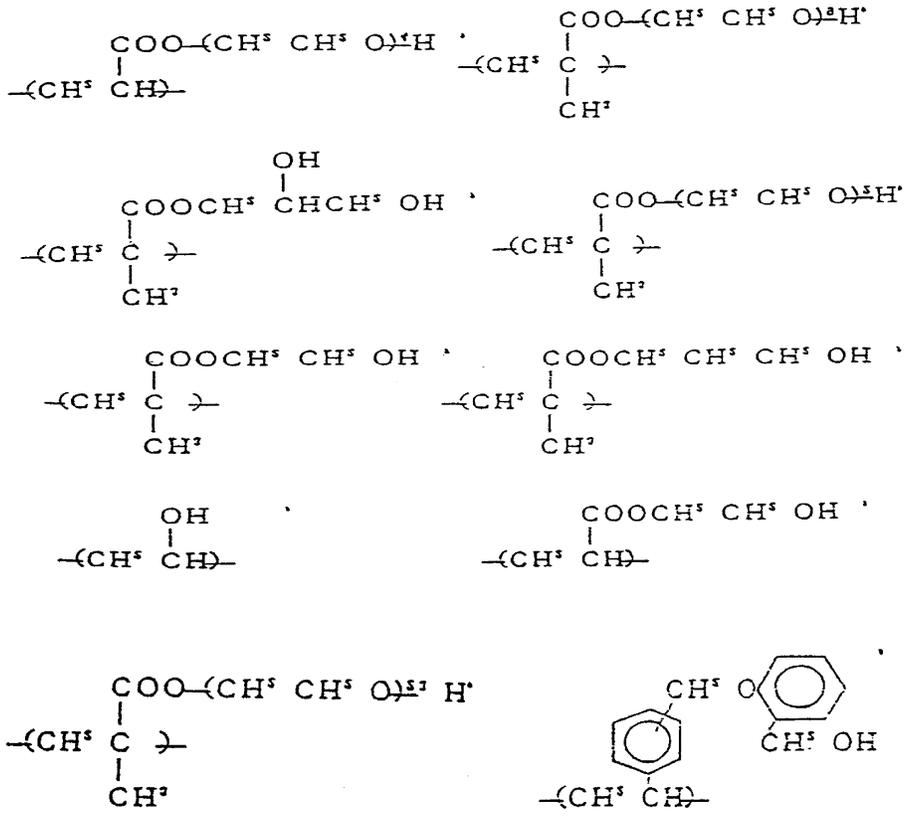
Sughrue, Mion, Zinn, MacPeak & Seas  
2100 Pennsylvania Ave., N.W.  
Washington, DC 20037-3202

APPENDIX

17. A method for processing an imagewise exposed silver halide color photographic material comprising a support having thereon one or more light-sensitive silver halide emulsion layers, at least one layer of which contains a monodisperse emulsion of silver bromochloriodide, silver chloride or silver bromochloride grains containing about 30 mol% or less of silver bromide and having a ratio  $S/r$  of the standard deviation  $S$  of the grain diameter distribution to the average grain diameter  $r$  of 0.20 or below, the coating amount of silver of said photographic material is 0.75 g/m<sup>2</sup> or less, comprising the steps of continuously processing with a color developer having a chloride ion content of 0.035 mol/l or more and containing a water-soluble high polymer compound, followed by desilvering and then one or both of washing and stabilizing, wherein said water-soluble high polymer compound is present in an addition amount of 0.001 to 10 g per liter of the color developer and is a homopolymer or a copolymer consisting essentially of at least one repeating unit selected from the group consisting of

(i) the following repeating units

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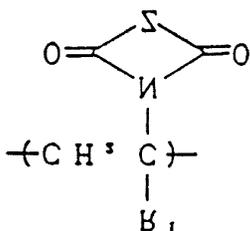


and



wherein R<sup>1</sup> has the same meaning as defined in formula (III) given above, R<sup>13</sup> and R<sup>14</sup> each represent a hydrogen atom or a substituted or unsubstituted alkyl

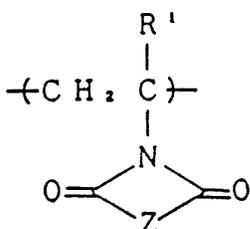
group having 1 to 8 carbon atoms, or they may bond together to form a lactam ring, an oxazolidone ring, or a pyrrolidone ring, which ring structures may be



substituted; and Formula (V)

wherein R<sup>1</sup> has the same meaning as defined in formula (III) given above, and Z represents a group

of atoms required to form a 5- to 7-membered ring structure,



which may be substituted.

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