

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 27

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RAYMOND SENKUS, CHUNG I. YOUNG,
LEONARD W. BARRETT and YING-YUH LU

Appeal No. 1999-1903
Application No. 08/781,055

ON BRIEF

Before CAROFF, PAK and PAWLIKOWSKI, Administrative Patent Judges.

CAROFF, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection (Paper No. 17) of claims 1-7 and 11-28. Other claims, i.e., claims 8-10, have been objected to, with the examiner indicating that they would be allowable if rewritten so as not to depend on a rejected base claim (Paper No. 15).

Appeal No. 1999-1903
Application No. 08/781,055

Subsequent to the final rejection, appellants filed a Continued Prosecution Application Request (Paper No. 20), resulting in the cancellation of withdrawn claims 29-41, and the addition of claims 42-43 (see the amendment filed on April 21, 1998, which has been entered in the record as Paper No. 18). Accordingly, the rejected claims now before us on appeal are claims 1-7, 11-28 and 42-43.

The appealed claims relate to a permeable, composite article including "active" particulate and pressure-sensitive adhesive (PSA) polymer microparticulate.

Appellants acknowledge on page 3 of their brief that all of the rejected claims stand or fall together for purposes of this appeal. Accordingly, we limit our consideration to claim 1, the sole independent claim, which reads as follows:

1. A permeable, composite structure comprising active particulate bonded to each other with pressure-sensitive adhesive polymer microparticulate.

The references of record relied upon by the examiner are:

Braun et al. (Braun)	5,078,132	Jan. 07, 1992
Young et al. (Young)	5,292,844	Mar. 08, 1994

Claims 1-7, 11-28 and 42-43 stand rejected for obviousness under 35 U.S.C. § 103 in view of Braun taken with or without Young.

Appeal No. 1999-1903
Application No. 08/781,055

Based on the record before us, we agree with appellants that the examiner has failed to establish a prima facie case of obviousness.

Accordingly, we shall reverse the rejection at issue.

Initially, we note that appellants' composite article, as claimed, is composed of "active particulate", which we interpret to mean "particulate materials that interact with fluids by sorbing (adsorbing or absorbing) components from the fluids" as defined in appellants' specification (page 1, ll. 13-15). Also, the microparticulate polymer component of appellants' claimed composite article has "pressure-sensitive adhesive" properties which, according to appellants' specification (page 10, ll. 13-19), means that the polymeric microparticulate material has:

. . . sufficient inherent tack, sufficient loss modulus, and sufficiently low glass transition temperature, to enable the polymer to form a firm bond with a substrate upon contact under light pressure, e.g., finger pressure, at the temperature of use (e.g., room temperature (23°C)), and that can be made in the form of microparticulates. The polymer (dry) requires no activation by water, solvent, or heat in order for it to form such a bond.

Bearing these definitions in mind, we agree with appellants that, first of all, the Braun disclosure, taken alone, is devoid of any meaningful guidance or motivation to select a PSA polymer as a particulate binder material from among the vast multitude of materials encompassed by Braun's generic disclosure of "thermoplastic and thermosetting materials."

Appeal No. 1999-1903
Application No. 08/781,055

Furthermore, the examiner has failed to explain why one of ordinary skill in the art would have been motivated to use Young's PSA beads, as such, as polymer binder particles in the composite structure taught by Braun, considering that the Young disclosure only contemplates ultimate use of the PSA beads, as PSA materials are conventionally used, in the form of a continuous extruded film or dissolved in a solvent system. In this regard, we refer to Young at col. 8, ll. 40-59. Nowhere does Young suggest that a PSA material be applied in microparticulate form to produce a composite article in which the PSA material essentially retains its particulate character.

For the foregoing reasons, the decision of the examiner is reversed.

REVERSED

MARC L. CAROFF)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
CHUNG K. PAK)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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BEVERLY A. PAWLIKOWSKI)	
Administrative Patent Judge)	

Appeal No. 1999-1903
Application No. 08/781,055

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Appeal No. 1999-1903
Application No. 08/781,055

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