

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. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* CARLO E. MUSCO

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Appeal No. 2002-0306  
Application No. 08/911,983

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ON BRIEF

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Before GARRIS, WALTZ, and MOORE, *Administrative Patent Judges*.  
MOORE, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the final rejection of claims 14 and 15. Claims 1-13 and 16-22 have been canceled. Thus, claims 14 and 15 are before us on appeal.

REPRESENTATIVE CLAIMS

Claims 14 and 15 read as follow:

14. A process for making coextruded film comprising:

a) coextruding a film comprising a core layer comprising a polyamide; two intermediate layers, disposed on opposite surfaces of the core layer, comprising an adhesive; and two outer layers, each disposed on a surface of the respective intermediate layer, comprising an ethylene/alpha olefin copolymer; and

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b) blowing the film by a hot blown process up to a blow-up ratio of between 2.0:1 and 3.0:1;

whereby the film has a tear propagation (ASTM D-1938) value of less than 350 grams in the longitudinal direction, and less than 500 grams in the transverse direction.

15. The process of claim 14 wherein the core layer comprises:

- a) a first polyamide layer,
- b) a second polyamide layer, and
- c) a third layer, disposed between the first and second layers, comprising a polymeric adhesive.

#### The References

In rejecting the claims under 35 U.S.C. § 103(a), the examiner relies upon the following references:

Shah	4,724,185	Feb. 09, 1988
Wood et al. (Wood)	5,419,795	May 30, 1995
Walton et al. (Walton)	5,591,390	Jan. 07, 1997

#### The Rejections

Claims 14 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wood or Shah in view of Walton.

#### The Invention

The invention relates to a coextruded easy open tear film compatible with current commercial packaging systems. The film is said to have not only easy tear properties, but also good dimensional stability and abuse resistance. (Appeal Brief, page 8, last three lines). For further aspects of the claimed

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invention, refer to claims 14 and 15 reproduced above.

The Rejection of Claim 14 Under 35 U.S.C. § 103 (a)

The examiner has found that Wood teaches a multilayer film laminate having a core EVA copolymer layer, polymeric adhesive layers, and outer ethylene alpha olefin copolymer layers. The film can be extruded or hot blown and any suitable number of layers may be used (Paper #15, page 2, line 17 - page 3, line 6).

The examiner has additionally found that Shah discloses a coextruded multilayer film with a polyamide containing core layer, polymeric adhesives, and polyethylene layers, which can be heated and blown. (Id., page 3, lines 7-19).

Finally, the examiner has found that Walton discloses a process for making multilayer shrink wrap film using a high blow up ratio to achieve good machine and transverse direction shrink wrap characteristics (Id., page 3, line 22 - page 4, line 20).

The examiner then concludes that it would have been obvious to have used the production techniques of Walton in the films of Wood or Shah to fabricate films having blow up ratios of greater than or equal to 2.5:1 or more in order to provide good machine and transverse direction shrink characteristics. (Id., page 4, line 21 - page 5, line 2).

The appellant, on the other hand, argues that Walton's blow-up ratio is in the context of a specific, unique film. (Appeal

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Brief, page 11, lines 13-14).

We disagree with the appellant's narrow reading of Walton. A fair reading of Walton's disclosure teaches one of ordinary skill in the art that the high-blow up ratio or the so-called double bubble method may be used upon the polymers of Walton with particular benefit. Walton also teaches general suitability of the processes as well for the same benefit in other polymers - e.g. for increased shrinkage (See, e.g. column 13, lines 18-44).

The appellant further contends that Walton is concerned with the shrink characteristics, not the tear characteristics. (Appeal Brief, page 11, line 28 - page 12, line 6).

While this is true, we observe that the motivation in the prior art to combine the references need not be identical to that of the applicant to establish obviousness. See In re Kemps, 97 F.3d 1427, 1430, 40 USPQ2d 1309, 1311 (Fed. Cir. 1996), citing In re Dillon, 919 F.2d 688, 693, 16 USPQ2d 1897, 1901 (Fed. Cir. 1990) (en banc). Because Walton suggests an improvement to be attained by the claimed blow-up ratio, it would have been obvious to make the combination advanced by the Examiner, even if for a different purpose than the appellants. We also observe that Shah has as a stated object producing a shrink-wrap film (column 2, line 66 - column 3, line 2); thus, viewed as a whole, the combined art has a similar purpose.

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The appellant further urges that the materials of Walton, Shah, and Wood are dissimilar and made by different processes. (Appeal Brief, page 12, lines 10-23). We disagree. Again, both Shah and Wood disclose films which are similarly structured (Shah - a coextruded multiple layer film, abstract, line 1; Walton - an extruded multiple layer film, column 6, lines 54-60), for similar purposes, i.e. use as shrink wrap. The appellant is focusing on dissimilar examples and not considering the references, and the art, as a whole.

By way of more specific example, Shah discloses a polyamide containing core layer 10 (column 4, lines 40-42) surrounded by polymeric adhesive layers (column 4, lines 49-51) which is clad in outer layers which contain ethylene alpha olefin (column 4, lines 57-65). The film is formed by extrusion and is also further processed in conventional ways, e.g. collapsed, stretched, and oriented (column 3, lines 19-28). One object of the invention is to provide an oriented film with good shrink properties (column 2, line 66 - column 3, line 2). Further, Shah's tear propagation is well within the claimed range (column 6, lines 55-61).

The appellant additionally urges that there is no motivation to combine the teachings of Walton with respect to high blow-up ratio with Wood or Shah to obtain a film with the properties of claim 14. (Appeal Brief, page 13, lines 1-4). We disagree. Both

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Shah and Walton are concerned with similarly structured shrink films, as noted above. The appellant's statement that Shah is limited to a cast film is incorrect. Shah clearly teaches a coextruded film (see, e.g. abstract, line 1) as claimed, which may then be cast. Walton suggests a high blow-up ratio as claimed to improve the shrinkage properties. We therefore agree with the examiner that such a combination as claimed would have been obvious to one of ordinary skill in the art at the time the invention was made.

The Rejection of Claim 15 Under 35 U.S.C. § 103 (a)

The examiner has observed that:

Appellant's comment regarding claim 15 is equally unpersuasive. The two polyamide layers claimed with an adhesive layer there-between merely amount to an obvious duplication of the core layer and adhesive layer found in each primary reference. To include two of each such layers as part of the film for additional strength would certainly be well within the skill of the routineer in this art (Examiner's Answer, page 4, lines 3-7).

The record is devoid of any evidence to support this conclusion, which appears for the first time in the Examiner's Answer. Accordingly, we are constrained to reverse this rejection.

Summary of Decision

The rejection of Claim 14 under 35 U.S.C. § 103(a) as being unpatentable over Wood or Shah in view of Walton is sustained.

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The rejection of Claim 15 under 35 U.S.C. § 103(a) as being unpatentable over Wood or Shah in view of Walton is reversed.

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

**AFFIRMED-IN-PART**

BRADLEY R. GARRIS	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
THOMAS A. WALTZ	)	
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
	)	
JAMES T. MOORE	)	
Administrative Patent Judge	)	

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