

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. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte
Shadi L. Malhotra

Appeal No. 2002-0699
Application 09/401,740

ON BRIEF

Before PAK, WARREN, and OWENS, Administrative Patent Judges.
PAK, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal¹ under 35 U.S.C. § 134 from the examiner's refusal to allow claims 1 through 22, which are all of the claims pending in the present application.

¹ This appeal is related to Appeal No. 2002-0728, Application No. 09/404,570.

APPEALED SUBJECT MATTER

Claim 1, 3, 8, 10, 15 and 17 are representative of the subject matter on appeal and read as follows:

1. An ink composition comprising (a) a styrene polymer or terpene polymer hardening component, (b) a nonpolymeric aromatic viscosity modifier, (c) a colorant, (d) an optional nonpolymeric aromatic ink vehicle, (e) an optional colorant dispersing agent, (f) an optional conductivity enhancing agent, (g) an optional antioxidant, and (h) an optional UV absorber.

3. An ink composition according to claim 1 wherein the ink has a melt viscosity at jetting temperature of no higher than about 25 centipoise.

8. An ink composition according to claim 1 wherein the hardening component is poly (α -methyl styrene), poly (vinyl toluene-co- α -methyl styrene), poly (methyl styrene-co-indene) hydrogenated, poly (styrene-co-allyl alcohol), polylimonene, poly- β -pinene, poly(coumarone-co-indene), or mixtures thereof.

10. An ink composition according to claim 1 wherein the viscosity modifier is a biphenyl compound, a fluorene compound, a phenanthrene compound, a pyrene compound, an adamantane compound, a dibenzo compound, a diphenyl phosphino compound, a phenylsulfonfyl compound, or mixtures thereof.

15. An ink composition according to claim 1 containing an ink vehicle which is 4-hexyl resorcinol, 4-dodecyl resorcinol, 4-(tert-octyl) phenol, 4-bromo-N-dodecyl-1-hydroxy-2-naphthalene carboxamide 2,2-diphenyl-1,4-diazaspiro-4,5,deca-1,3-diene, N,N'-dibenzyl-1,4,10,13-tetraoxa-7,16-diazacyclooctadecane, 1,4-dihydro-9-isopropylidene-1,4-methanonaphthalene, 1,4,4a,8a-tetrahydro-endo-1,4-methanonaphthalene, 1,5-dihydroxy 1,2,3,4-tetrahydronaphthalene, 2,5-difluorophenylhydrazine, or mixtures thereof.

17. An ink composition according to claim 1 containing a colorant dispersing agent which is 2-hydroxyisocaproic acid, 2-hydroxy isobutyric acid, benzylmalonic acid, dibenzoyltartaric acid, methylsuccinic acid, 2-ethyl-2-methylsuccinic acid, 2,2-dimethyl glutaric acid, 3,3-dimethylglutaric acid, 1-hydroxy-1-cyclopropane carboxylic acid, 2,2,3,3-tetramethyl cyclopropane carboxylic acid, 1-benzo cyclobutane carboxylic acid, 3-oxo-1-indan carboxylic acid, 2-oxo-6-pentyl-2H-pyran-3-carboxylic acid, diphenyl carbonate, 1,2-

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diphenylvinylene carbonate, 2-oxazolidone, flavone, 4-methoxy chalcone, 4'-methoxy chalcone, γ -(2-naphthyl)- γ -butyrolactone, diphenyl- γ -butyrolactone, 2,6-dimethyl-4H-pyran-4-one, distyryl ketone, 4-(4-hydroxyphenyl)-2-butanone, 1,3-diacetyl-2-imidazolidinone, 2,6-diphenyl cyclohexanone, flavanone, 1-(2-hydroxyphenyl)-3-phenyl-1,3-propanedione, 1-(2-hydroxy-5-methylphenyl)-3-phenyl-1,3-propanedione, tetramethyl-1,3-cyclobutanedione, 2,5-oxazolidinedione, 5,5-dimethyloxazolidine-2,4-dione, 3,6-dimethyl-1,4-dioxane-2,5-dione, 2,2-dimethyl-1,3-dioxane-4,6-dione, 4,4-dimethyl-1,3-cyclohexanedione, benzylphenyl ketone, di-n-benzyl ketone, diphenyl acetone, poly(vinyl phenyl ketone), poly(vinyl phenyl ketone) hydrogenated, polycyclohexanone, poly(coumarone-co-indene), polycaprolactone, poly(ethylene-co-carbon monoxide), poly(1-vinylpyrrolidone)-graft-(1-triacontene), 3-hydroxybenzaldehyde, 4-hydroxybenzaldehyde, 4-benzyloxybenzaldehyde, 2-carboxybenzaldehyde, 4-nitrobenzaldehyde, 2,3-dihydroxybenzaldehyde, 2,5-dihydroxybenzaldehyde, 3-hydroxy-4-methoxybenzaldehyde, 4-hydroxy-3-methoxybenzaldehyde, 4-hydroxy-3-ethoxybenzaldehyde, 4-hydroxy-3-methylbenzaldehyde, 2-hydroxy-5-nitrobenzaldehyde, 3-hydroxy-4-nitrobenzaldehyde, 4-hydroxy-3-nitrobenzaldehyde, 3,4-dibenzyloxy benzaldehyde, 3,5-dibenzyloxybenzaldehyde, 4-acetoxy-3,5-dimethoxybenzaldehyde, 2-amino-3,5-dibromobenzaldehyde, 2-benzyloxy-4,5-dimethoxybenzaldehyde, 5-bromo-2-hydroxy-3-methoxybenzaldehyde, 4-hydroxy-3,5-dimethoxybenzaldehyde [dimethoxybenzaldehyde], 2,3,5-trichlorobenzaldehyde, 2,3,6-trichlorobenzaldehyde, 2,4,5-trimethoxybenzaldehyde, 2,4,6-trimethoxybenzaldehyde, 3,5-dichloro-2-hydroxybenzaldehyde, 3,5-dibromo-2-hydroxybenzaldehyde, 3,5-diiodo-2-hydroxybenzaldehyde, 3,4-dihydroxy-5-methoxybenzaldehyde, 3,5-dimethyl-4-hydroxybenzaldehyde, 2,6-dimethoxybenzaldehyde, trans-2-nitro cinnamaldehyde, trans-4-(diethylamino) cinnamaldehyde, 4-acetoxy-3-methoxy cinnamaldehyde, 4-hydroxy-3-methoxy cinnamaldehyde, 2-hydroxy-1-naphthaldehyde, 2-methoxy-1-naphthaldehyde, 9-anthraldehyde, 5-bromo-2-furaldehyde, 5-nitro-2-thiophene carboxaldehyde, 9-ethyl-3-carbazole carboxaldehyde, 4-stillbenecarboxaldehyde, 2-hydroxy-5-methyl-1,3-benzene dicarboxaldehyde, terephthal dicarboxaldehyde, 2-(diphenylphosphino) benzaldehyde, 1-(phenylsulfonyl)-2-pyrrolecarboxaldehyde, 1-pyrene

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carboxaldehyde, phenanthrene carboxaldehyde, 2-fluorene-carboxaldehyde, poly ((phenyl glycidyl ether)-co-formaldehyde), poly ((o-cresyl glycidyl ether)-co-formaldehyde), poly (p-toluenesulfonamide-co-formaldehyde), or mixtures thereof.

REFERENCES

The examiner relies on the following prior art reference:

| | | |
|--|-----------|---------------|
| Ball | 4,684,956 | Aug. 4, 1987 |
| Bruder et al. (Bruder) | 5,015,292 | May 14, 1991 |
| Yaegashi et al. (Yaegashi) | 5,270,730 | Dec. 14, 1993 |
| Takazawa et al. (Takazawa) | 5,279,655 | Jan. 18, 1994 |
| Tobias et al. (Tobias) | 5,286,288 | Feb. 15, 1994 |
| Fujioka | 5,397,388 | Mar. 14, 1995 |
| Wickramanayake | 5,531,816 | Jul. 2, 1996 |
| Malhotra et al. (Malhotra '390) | 5,902,390 | May 11, 1999 |
| Malhotra et al. (Malhotra '117) | 5,922,117 | Jul. 13, 1999 |
| Nishizaki et al. (Nishizaki) | 6,022,910 | Feb. 8, 2000 |
| Shawcross et al. (Shawcross) | 6,028,180 | Feb. 22, 2000 |
| Breton et al. (Breton '607) | 6,045,607 | Apr. 4, 2000 |
| Breton et al. (Breton '599) | 6,106,599 | Aug. 22, 2000 |
| Shimomura (Published Japanese Patent Application) | 06-228476 | Aug. 16, 1994 |

REJECTIONS

The appealed claims stand rejected as follows:

- (1) Claims 1, 2, 4, 8, 12 through 14, 16, 21 and 22 under 35 U.S.C. § 103, as unpatentable over the disclosure of Takazawa;
- (2) Claim 3 under 35 U.S.C. § 103 as unpatentable over the combined disclosures of Takazawa and Nishizaki;
- (3) Claim 6 under 35 U.S.C. § 103 as unpatentable over the

- combined disclosures of Takazawa and Tobias;
- (4) Claim 9 under 35 U.S.C. § 103 as unpatentable over the combined disclosures of Takazawa and Ball;
 - (5) Claims 10 and 11 under 35 U.S.C. § 103 as unpatentable over the combined disclosures of Takazawa, Yaegashi, Wickramanayake, Malhotra '117 and Breton '599;
 - (6) Claim 15 under 35 U.S.C. § 103 as unpatentable over the combined disclosures of Takazawa, Shawcross and Bruder;
 - (7) Claim 17 under 35 U.S.C. § 103 as unpatentable over the combined disclosures of Takazawa, Shimomura, Yaegashi and Malhotra '390;
 - (8) Claims 1 through 5, 7 through 9, 13 and 18 through 20 under 35 U.S.C. § 103 as unpatentable over the combined disclosures of Breton '607, Takazawa, Ball and Fujioka;
 - (9) Claim 6 under 35 U.S.C. § 103 as unpatentable over the combined disclosures of Breton '607, Takazawa, Ball, Fujioka and Tobias;
 - (10) Claims 10 and 12 under 35 U.S.C. § 103 as unpatentable over the combined disclosures of Breton '607, Takazawa, Ball and Fujioka, Yaegashi and Wickramanayake; and
 - (11) Claims 16 and 17 under 35 U.S.C. § 103 as unpatentable over the combined disclosures of Breton '607, Takazawa, Ball,

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Fujioka, Shimomura, Yaegashi and Malhotra '390.

OPINION

We have carefully reviewed the claims, specification and applied prior art, including all of the arguments and evidence advanced by both the examiner and the appellant in support of their respective positions. As a result of this review, we have made the determinations which follow.

We turn first to the examiner's rejection of claims 1, 2, 4, 8, 12 through 14, 16, 21 and 22 under 35 U.S.C. § 103, as unpatentable over the disclosure of Takazawa. We find that Takazawa discloses a solid ink composition having, *inter alia*, a specific coloring agent, a wax-like substance, a thermoplastic resin, such as polystyrene and styrene-butadiene copolymer, and a softening agent, such as diethyl phthalate. See column 7, line 58 to column 8, line 23 and column 9, lines 40-49. We find that this solid ink composition, which is capable of being hot melted, has a melting temperature of about 50° to about 150°C, which almost entirely overlaps with the preferred melting temperature range for the claimed hot melt ink composition. Compare Takazawa, column 8, lines 32-39 and column 9, line 60, with the appellant's claim 2.

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The appellant does not dispute the examiner's finding that the polystyrene described in Takazawa acts as a hardening agent. Rather, the appellant argues that the nonpolymeric aromatic compound described in Takazawa is not described as a viscosity modifier. This argument is not well taken.

As indicated *supra*, Takazawa discloses its nonpolymeric aromatic compound, i.e., diethyl phthalate, as a softening agent, i.e., softens the solid ink composition described by Takazawa. Thus, implicit in this teaching is that diethyl phthalate affects or modifies the viscosity of the solid ink composition described by Takazawa. As such, we find that the broad claim language "nonpolymeric aromatic **viscosity modifier**" embraces the diethyl phthalate softening agent described in Takazawa.

The appellant argues that Takazawa does not teach or suggest a hot melt ink composition having the functional characteristic recited in claim 4, i.e., capable of undergoing "a change from a solid state to a liquid state in a period of no more than about 100 milliseconds" at an unspecified heating temperature. See the Brief, pages 17-19. We do not agree.

As indicated *supra*, the solid ink composition described in Takazawa has a melting temperature which almost entirely overlaps with the preferred melting temperature of the claimed ink

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composition. We also take official notice that one of ordinary skill in the art knows that the melting rate (time) of the solid ink composition described in Takazawa is dependent on the heating temperature employed. Thus, it is reasonable to conclude that the functional limitation recited in claim 4 does not distinguish the claimed ink composition from the ink composition described in Takazawa. Compare *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1432 (Fed. Cir. 1997); *In re Yanush*, 477 F.2d 958, 959, 177 USPQ 705, 706 (CCPA 1973); *In re Casey*, 370 F.2d 576, 580, 152 USPQ 235, 238 (CCPA 1967); *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

It follows that Takazawa would have rendered the subject matter defined by claims 1, 2, 4, 12 through 14, 16, 21 and 22 obvious to one of ordinary skill in the art withing the meaning of 35 U.S.C. § 103.

Claim 8, however, is on different footing. There is no teaching or suggestion found in Takazawa to employ the claimed specific hardening component, e.g., poly(α -methyl styrene) in its solid ink composition. The fact that the claimed poly(α -methyl styrene) may be encompassed by the generic language "polystyrene" in Takazawa does not by itself provide a sufficient suggestion to one of ordinary skill in the art to select it from

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a huge number of possible species. See *In re Baird*, 16 F.3d 380, 382, 29 USPQ2d 1550, 1552 (Fed. Cir. 1994); *In re Jones*, 958 F.2d 347, 350, 21 USPQ2d 1941, 1943 (Fed. Cir. 1992).

It follows that Takazawa would not have rendered the subject matter of claim 8 obvious to one of ordinary skill in the art within the meaning of 35 U.S.C. § 103.

We turn next to the examiner's rejection of claim 3 under 35 U.S.C. § 103 as unpatentable over the combined disclosures of Takazawa and Nishizaki. We find that in addition to the above teachings, Takazawa further discloses that its ink composition has a viscosity "of about 10 [to] about 10⁶ cps at a temperature by 30°C. higher than the melting...temperature." See column 8, lines 32-37. We find that the claimed jetting temperature embraces the temperature at which the viscosity of Takazawa's ink composition is measured. Compare the specification, page 36, with Takzawa, column 8, lines 32-37. We find that Takazawa's viscosity range at the jetting temperature, therefore, embraces that recited in claim 3. As our reviewing court stated in *In re Peterson*, 315 F.3d 1325, 1329, 65 USPQ2d 1379, 1382 (Fed. Cir. 2003):

In cases involving overlapping ranges, we and our predecessor court have consistently held that even a slight overlap in range establishes a *prima facie* case

of obviousness. *E.g., In re Woodruff*, 919 F.2d at 1578, 16 USPQ2d at 1936-37 (concluding that a claimed invention was rendered obvious by a prior art reference whose disclosed range ("about 1-5% carbon monoxide) abutted the claimed range ("more than 5% to about 25% carbon monoxide)); *In re Malagari*, 499 F.2d at 1303, 182 USPQ at 553 (concluding that a claimed invention was rendered prima facie obvious by a prior art reference whose disclosed range (0.020-0.035%) overlapped the claimed range (0.030-0.070% carbon)); *See also In re Geisler*, 116 F.3d at 1469, 43 USPQ2d at 1365 (acknowledging that a claimed invention was rendered prima facie obvious by a prior art reference whose disclosed range (50-100 Angstroms) overlapped the claimed range (100-600 Angstroms)).

Accordingly, we conclude that Takazawa alone would have rendered the viscosity range recited in claim 3 obvious to one of ordinary skill in the art within the meaning of 35 U.S.C. § 103.²

We turn next to the examiner's rejection of claim 6 under 35 U.S.C. § 103 as unpatentable over the combined disclosures of Takazawa and Tobias. We concur with the appellant that the examiner has not established a *prima facie* case of obviousness for the reasons set forth at page 23 of the Brief. We wish to emphasize that the examiner has not explained, much less provided evidence, why one of ordinary skill in the art would have been led to impart the conductivity level desirable for an ink

² We need not discuss the content of Nishizaki since Takazawa alone would have suggested the subject matter of claim 3.

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composition used in continuous ink jet printing (taught by Tobias) to an ink composition used in thermal transfer or pressure-sensitive transfer ribbons (taught by Takazawa). The examiner has not referred to any evidence to demonstrate that the conductivity desired in the jet printing ink composition taught by Tobias is equally applicable to those ink compositions used in thermal transfer and pressure-sensitive transfer ribbons, such as the one taught by Takazawa. Accordingly, on this record, we cannot sustain the examiner's decision rejecting claim 6 under 35 U.S.C. § 103.

We turn next to the examiner's rejection of claim 9 under 35 U.S.C. § 103 as unpatentable over the combined disclosures of Takazawa and Ball. We find that in addition to the teachings indicated *supra*, Takazawa further teaches (column 8, lines 2-6) that:

The vehicle of solid ink for the ribbons is preferably a vehicle composed of a wax-like substance as a main component or a vehicle composed of a mixture of a wax-like substance and a thermoplastic resin [polystyrene and styrene-butadiene copolymer] as a main component.

Implicit in this teaching is that the thermoplastic resin, such as polystyrene, can constitute 0 to a significant portion of the vehicle of solid ink described in Takazawa, thus encompassing the percentage of polystyrene recited in claim 9. It follows that

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one of ordinary skill in the art would have been led to use the claimed percentage of polystyrene in the solid ink composition of Takazawa, with a reasonable expectation of successfully using such ink composition in thermal transfer or pressure-sensitive transfer ribbons. See *Peterson, supra*. Accordingly, we determine that Takazawa alone would have rendered the subject matter defined by claim 9 obvious to one of ordinary skill in the art within the meaning of 35 U.S.C. § 103.³

We turn next to the examiner's rejection of claims 10 and 11 under 35 U.S.C. § 103 as unpatentable over the combined disclosures of Takazawa, Yaegashi, Wickramanayake, Malhotra '117 and Breton '599. We concur with the appellant that there is no motivation or suggestion found in the applied prior art references to combine the disparate teachings therein for the reasons articulated in the Brief, pages 28-37. We wish to emphasize that the examiner has not supplied sufficient evidence to demonstrate that substances useful for the ink compositions of Yaegashi, Wickramanayake, Malhotra '117 and Breton '599 are also useful for the solid ink composition of the type described in Takazawa. In this regard, we note that the ink compositions of

³ We need not discuss the content of Ball since Takazawa alone would have suggested the limitation recited in claim 9.

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Yaegashi, Wickramanayake, Malhotra '117 and Breton '599 Y are not only made of mixtures materially different from those employed in Takazawa, but also directed to uses or applications materially different from those described in Takazawa. Accordingly, we reverse the examiner's decision rejecting claims 10 and 11 under 35 U.S.C. § 103.

We turn next to the examiner's rejection of claim 15 under 35 U.S.C. § 103 as unpatentable over the combined disclosures of Takazawa, Shawcross and Bruder. We concur with the appellant that the examiner has not demonstrated that tetrahydronaphthalene and carboxamide useful for the liquid ink compositions of the type described in Shawcross and Bruder are useful for the solid ink composition of the type described in Takazawa. See the Brief, pages 37-43. In other words, the examiner has not carried his or her initial burden of establishing a *prima facie* case of obviousness regarding the claimed subject matter. Accordingly, we reverse the examiner's decision rejecting claim 15 under 35 U.S.C. § 103.

We turn next to the examiner's rejection of claim 17 under 35 U.S.C. § 103 as unpatentable over the combined disclosures of Takazawa, Shimomura, Yaegashi and Malhotra '390. We concur with the appellant that there is no motivation or suggestion to

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combine the disparate teachings of the applied prior art references for the reasons set forth at pages 43-49 of the Brief. We only add that the examiner has not supplied sufficient evidence to demonstrate that 2-oxazolidone, glutaric acid, and 4, α -dimethyl-1,3-cyclohexanedione, which may be useful for the ink compositions of Shimomura, Yaegashi and Malhotra '390, are useful for the solid ink composition of the type described in Takazawa. The ink compositions of Shimomura, Yaegashi and Malhotra '390 not only are made of mixtures different from those employed in Takazawa, but also are used for purposes materially different from those described in Takazawa. Accordingly, we reverse the examiner's decision rejecting claim 17 under 35 U.S.C. § 103.

We turn next to the examiner's rejection of claims 1 through 5, 7 through 9, 13 and 18 through 20 under 35 U.S.C. § 103 as unpatentable over the combined disclosures of Breton '607, Takazawa, Ball and Fujioka. The examiner finds that Breton '670 teaches a hot melt composition useful for acoustic ink jet printing, having, *inter alia*, a melting viscosity of less than 10cP, acoustic-loss value of 5-40 dB/mm and a haze value of 10-30. See the Answer, page 12. According to the examiner, Breton '607 does not teach, *inter alia*, the claimed aromatic viscosity modifier. *Id.*

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To remedy the deficiency in Breton '670, the examiner relies on the disclosure of Takazawa. See the Answer, page 13.

Takazawa, however, teaches using diethyl phthalate as a softening agent for a solid ink composition used in a pressure-sensitive transfer ink ribbon or as a viscosity adjusting agent for a liquid ink composition used in, e.g., fabric ink ribbons. See column 7, lines 2-36 and column 9, lines 40-49. There is nothing in Takazawa which indicates that diethyl phthalate is useful for a hot melt ink composition used in acoustic ink jet printing. See Takazawa in its entirety. Nor does Takazawa indicate that its diethyl phthalate is useful for imparting the desired acoustic-loss value and haze value to the ink composition of the type described in Breton '670.

Since Ball and Fujioka are not relied upon to remedy the deficiencies indicated *supra*, we concur with the appellant that the examiner has not provided sufficient evidence to demonstrate that the claimed subject matter as a whole would have been obvious to one of ordinary skill in the art. Accordingly, we reverse the examiner's decision rejecting claims 1 through 5, 7 through 9, 13 and 18 through 20 under 35 U.S.C. § 103.

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We turn next to the examiner's rejection of claim 6 under 35 U.S.C. § 103 as unpatentable over the combined disclosures of Breton '607, Takazawa, Ball, Fujioka and Tobias. We determine that the examiner does not rely on Ball, Fujioka and Tobias to remedy the deficiencies indicated above. Thus, for the same reasons indicated *supra*, we reverse the examiner's decision rejecting claims 6 under 35 U.S.C. § 103.

We turn next to the examiner's rejection of claims 10 and 12 under 35 U.S.C. § 103 as unpatentable over the combined disclosures of Breton '607, Takazawa, Ball and Fujioka, Yaegashi and Wickramanayake. We determine that Yaegashi and Wickramanayake do not remedy the deficiencies indicated above for the reasons set forth at pages 58-65 of the Brief. Thus, for the same reasons indicated *supra* and the Brief, we reverse the examiner's decision rejecting claims 10 and 12 under 35 U.S.C. § 103.

We turn next to the examiner's rejection of claims 16 and 17 under 35 U.S.C. § 103 as unpatentable over the combined disclosures of Breton '607, Takazawa, Ball and Fujioka, Shimomura, Yaegashi and Malhotra '390. We reverse this rejection for the reasons indicated *supra* and at pages 65-70 of the Brief.

CONCLUSION

In view of the foregoing, we only affirm the examiner's decision rejecting claims 1-4, 9, 12 through 14, 16, 21 and 22 under 35 U.S.C. § 103, as unpatentable over the disclosure of Takazawa. However, pursuant to 37 CFR § 1.196(b) (2001), we denominate our affirmance of the rejections of these claims as involving new grounds of rejection since our reasons for affirmance are materially different from those provided by the examiner.

This decision contains a new ground of rejection pursuant to 37 CFR § 1.196 (b) provides that, new grounds of rejection shall not be considered final for purposes of judicial review."

37 CFR § 1.196(b) also provides that the appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new grounds of rejection to avoid termination of proceedings 37 CFR § 1.197(c) as to the rejected claims:

(1) Submit an appropriate amendment of the claims so rejected or a showing of facts relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the application will be remanded to the examiner

(2) Request that the application be reheard under § 1.197(b) by the Board of Patent Appeals and Interferences upon the same record

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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/§ 196(b)

| | | |
|-----------------------------|---|-----------------|
| Chung K. Pak |) | |
| Administrative Patent Judge |) | |
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| |) | BOARD OF PATENT |
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