

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

Paper No. 11

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID ALLEN BREWSTER and
ANTHONY ALOYSIUS SCAFIDI

Appeal No. 2003-1713
Application No. 09/853,727

ON BRIEF

Before GRIMES, PAWLIKOWSKI and GREEN, **Administrative Patent Judges.**

PAWLIKOWSKI, **Administrative Patent Judge.**

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1 through 27.

Claim 1 is representative of the subject matter on appeal and is set forth below:

1. A soft solid composition comprising:
 - a) a volatile silicone or a volatile hydrocarbon compound;
 - b) about 1 to about 10% of a structuring wax;

- c) a non-emulsifying silicone elastomer at from about 0.1 to about 30%; and
- d) antiperspirant or deodorant active ingredient.

The examiner relies upon the following reference as evidence of unpatentability:

Edwards et al. (Edwards) WO 98/18438 May 7, 1998

Claims 1 through 27 stands rejected under 35 U.S.C. § 103 as being unpatentable over Edwards.

On page 12 of brief, appellants state that the claims stand or fall together. We therefore consider claim 1 in this appeal. 37 CFR § 1.192 (c)(7) and (8)(2000).

OPINION

For the reasons set forth in the answer, we affirm the rejection. Our comments below are for emphasis only.

On page 13 of the brief, appellants argue that the examples of Edwards use 18% structurant, whereas their claimed invention requires a claimed amount of from "about 1 to about 10%" structurant.

We note that a reference is not limited to its examples, but is available for all that is fairly discloses and suggests. See In re Widmer, 357 F.2d 752, 757, 147 USPQ 518, 523 (CCPA 1965). As correctly pointed out by the examiner, Edwards discloses, on page 3 at lines 33 through 35, that the amount of structurant can be from 5 to 30%. This range overlaps appellants' claimed range "about 1 to about 10%". We also find that on page 3 of Edwards, at lines 13 through 16, Edwards teaches an amount of structurant comprising "up to 40%".

We note that in cases involving overlapping ranges, it has been consistently held that even a slight overlap in

range establishes a prima facie case of obviousness. See In re Woodruff, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990); In re Malagari, 499 F.2d 1297, 1303, 182 USPQ 549, 553 (CCPA 1974). See also In re Geisler, 116 F.3d 1465, 1469, 43 USPQ2d 1362, 1365 (Fed. Cir. 1997). In the instant case, the claimed amount of from "about 1 to about 10%" overlaps Edwards' disclosed amount of "up to 40%" and from "5 to 30%". We therefore determine that the examiner has established a prima facie case. Appellants have not presented evidence, such as unexpected results, or other rebuttal evidence, to overcome the prima facie case.

We therefore affirm the rejection.

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

AFFIRMED

ERIC GRIMES)
Administrative Patent Judge)
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) BOARD OF PATENT
) APPEALS AND
BEVERLY A. PAWLIKOWSKI) INTERFERENCES
Administrative Patent Judge)
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LORA M. GREEN)
Administrative Patent Judge)

BAP/sld

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