

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte FRIDOLIN BABLER and KENNETH SCHUMANN

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Appeal No. 2003-1740  
Application No. 09/801,301

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ON BRIEF

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Before KIMLIN, OWENS and JEFFREY T. SMITH, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-23.

Claim 1 is illustrative:

1. A colored seed having an exterior surface coated with a composition wherein at least 95 percent of the pigment particles in the composition have a particle size in the range from 0.1  $\mu\text{m}$  to 9 $\mu\text{m}$  with at least 50 percent of the pigment particles having a particle size in the range from 0.5  $\mu\text{m}$  to 3.5  $\mu\text{m}$ , wherein the composition is in either an instant pigment form or pigment concentrate.

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

Gago et al. (Gago)	4,879,839	Nov. 14, 1989
Bäbler (Bäbler)	5,584,922	Dec. 17, 1996
Schmidt et al. (Schmidt)	6,146,455	Nov. 14, 2000

Appellants' claimed invention is directed to a colored seed wherein the seed is coated with a pigment composition having the recited particle size ranges for the pigment particles.

Appealed claims 1-7, 10-16, 18, 19, 21 and 22 stand rejected under 35 U.S.C. § 103 as being unpatentable over Bäbler in view of Schmidt. Claims 8, 9, 17, 20 and 23 stand rejected under 35 U.S.C. § 103 as being unpatentable over the stated combination of references further in view of Gago.

We have thoroughly reviewed the respective positions advanced by appellants and the examiner. In so doing, we find that the examiner has failed to establish a prima facie case of obviousness for the claimed subject matter. Accordingly, we will not sustain the examiner's rejections.

In essence, we concur with appellants that there would have been no motivation or suggestion in the cited prior art for one of ordinary skill in the art to utilize the stir-in organic pigments of Bäbler for coating seeds. As noted by appellants, Bäbler provides no teaching or suggestion that the disclosed

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organic pigments are useful for coloring seeds but, rather, teaches that the pigmented material "can be used for the pigmentation of lacquers, inks and enamel coating compositions . . . [and] are particularly useful for preparing automotive coating paints" (column 5, lines 41-45). In addition, Bähler teaches that the organic materials which are colored according to the disclosed invention are a variety of polymeric plastic and rubber materials. Although the examiner relies upon Schmidt for its teaching that a specific pigment is suitable for pigmenting plastics, printing inks, and coloring seeds, the examiner has not established the requisite correlation between the specific pigment of Schmidt and the stir-in organic pigments of Bähler. Also, appellants correctly point out that the material coated in Bähler is in the form of a solution. In relevant part, Bähler discloses that "the mixing simply involves blending the stir-in pigment into the solution or suspension of the high-molecular-weight organic material until a uniform dispersion is achieved" (column 2, lines 43-46). This teaching does not suggest that the stir-in organic pigments can be used effectively to coat solid seeds.

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Appellants also maintain that "[t]he state of the art, particularly as shown in Gago, indicates that seeds are colored using aqueous systems" (page 5 of Brief, second paragraph), whereas "[a]ll of the coating systems in Bähler are based on organic systems" (id.). In response, the examiner states that "Bähler does in fact teach a coloring agent that is suitable for aqueous pigment preparations (Bähler Col. 1 lone [sic, lines] 12-13, Col. 6, line 4, and Col. 4, line [sic, lines] 53-55)" (page 5 of Answer, second paragraph). However, the Bähler disclosure at column 1, lines 12-13 refers to prior art, not the Bähler composition, and the disclosure at column 6, line 4 does not mention aqueous systems. Also, the disclosure at column 4, lines 53-55 pertains to how the pigment compositions are made, not how they are applied in aqueous system.

The Gago disclosure cited by the examiner for other features of the appealed claims does not remedy the basic deficiency discussed above for the combination of Bähler and Schmidt.

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

REVERSED

EDWARD C. KIMLIN	)	
Administrative Patent Judge	)	
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	)	
	)	
TERRY J. OWENS	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
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	)	
JEFFREY T. SMITH	)	
Administrative Patent Judge	)	

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