

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte PETER SCHEIBLI, PETER AESCHLIMANN,  
URS LEHMANN, and MARCEL FRICK

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Appeal No. 2004-1067  
Application No. 09/773,292

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ON BRIEF

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Before GARRIS, PAK, and KRATZ, Administrative Patent Judges.  
GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claims 25-28 which are all of the claims remaining in the application.

The subject matter on appeal relates to a dye mixture which comprises at least one reactive dye of a particular formula (2) and at least one reactive dye of a particular formula (3). Further details of this appealed subject matter including the

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particular dye formulae are set forth in representative independent claim 25. A copy of this claim taken from the appellants' brief is appended to this decision.

The reference set forth below is relied upon by the examiner as evidence of obviousness:

Luttringer et al. (Luttringer)            5,071,442            Dec. 10, 1991

Claims 25-28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Luttringer.<sup>1</sup>

We refer to the brief and to the answer for a complete discussion of the opposing viewpoints expressed by the appellants and by the examiner concerning the above noted rejection.

OPINION

We are in complete agreement with the findings of fact, conclusions at law and rebuttals to argument expressed by the examiner in her answer. Accordingly, we hereby adopt these findings, conclusions and rebuttals as our own. We add the following comments for emphasis only.

The examiner has found (e.g., see page 3 of the answer) and the appellants have conceded (e.g., see page 6 of the brief) that

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<sup>1</sup>As indicated on page 4 of the brief, the appealed claims have been grouped and argued separately. Therefore, in assessing the merits of the rejection before us, we have individually considered each of the appealed claims.

Luttringer's formula (5) dye corresponds to the appealed claim 25 formula (3) dye and that Luttringer's formula (7) dye corresponds to the claim 25 formula (2) dye. According to the examiner, it would have been obvious for an artisan with ordinary skill to combine patentee's formula (5) dye with his formula (7) dye, thereby achieving the appealed independent claim dye mixture, in view of Luttringer's teaching of "dyeing or printing cellulosic textile fibre materials . . . from an aqueous liquor with at least one red or reddish brown dyeing dye . . . and at least one yellow or orange dyeing dye . . . and at least one blue dyeing dye of formula" (emphasis ours) (5), (6) or (7) (see the abstract; also see the paragraph bridging column 1 and 2 as well as patent claim 1). We share the examiner's conclusion of obviousness and her rationale in support thereof.

The appellants concede that "[o]ne could argue that the wording *at least one* may suggest to use two or more than two dyes" (brief, page 9, first full paragraph). Nevertheless, it is the appellants' contention that "the teachings of the patent would not have *motivated the artisan* to select blue dyeing dye mixtures in general, much less the specific mixtures containing the narrow genres of claims 26 and 27" (*id.*). As correctly explained by the examiner, however, the artisan would have been

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motivated to form a blue dyeing mixture of Luttringer's formula (5) dye and his formula (7) dye by virtue of patentee's express teaching of dyeing materials from an aqueous liquor with "at least one blue dyeing dye of formula" (5), (6) or (7) (abstract).

Additionally, there is no persuasive merit in the appellants' argument that "the host of possible combinations" (brief, page 9, second full paragraph) disclosed by Luttringer forestalls an obviousness conclusion with respect to the specific dye combination proposed by the examiner. According to patentee's disclosure, all such combinations are effective, and the fact that the patent discloses a multitude of such effective combinations does not render less obvious the particular combination identified by the examiner. See Merck & Co. v. Biocraft Labs, Inc., 874 F.2d 804, 807-08, 10 USPQ2d 1843, 1846 (Fed. Cir.), cert. denied, 493 U.S. 975 (1989).

We also are unconvinced by the appellants' argument that nonobviousness is evinced by Luttringer's failure to disclose dye formula (7) as a preferred embodiment (see the paragraph bridging pages 9 and 10 of the brief). This is because an obviousness inquiry under Section 103 requires consideration of the entire prior art disclosure including unpreferred as well as preferred embodiments. Id. For similar reasons which are more thoroughly

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presented in the answer, the appellants' argument regarding dependent claim 26 is likewise not persuasive.

Finally, we discern no convincing merit in the appellants' position that "[p]atentee neither teaches nor suggests that blue reactive dyes of the specific formula (2) [i.e., which is recited in claim 25 and which corresponds to Luttringer's formula (7)] are compatible with blue reactive dyes of the specific formula (3) [i.e., which is recited in claim 25 and which corresponds to Luttringer's formula (5)]" (brief, page 10, last paragraph). We agree completely with the examiner's well taken point (see the first full paragraph on page 7 of the answer) that patentee's above discussed disclosure concerning the use of at least one of formula (5), (6) or (7) would have suggested the compatibility of all these dyes with one another.

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Under the circumstances set forth above and in the answer, it is our ultimate determination that the examiner has established a prima facie case of obviousness which the appellants have failed to successfully rebut with argument and/or evidence of nonobviousness. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). We shall sustain, therefore, the examiner's Section 103 rejection of claims 25-28 as being unpatentable over Luttringer.

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The decision of the examiner is affirmed.

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

AFFIRMED

BRADLEY R. GARRIS	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
CHUNG K. PAK	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
PETER F. KRATZ	)	
Administrative Patent Judge	)	

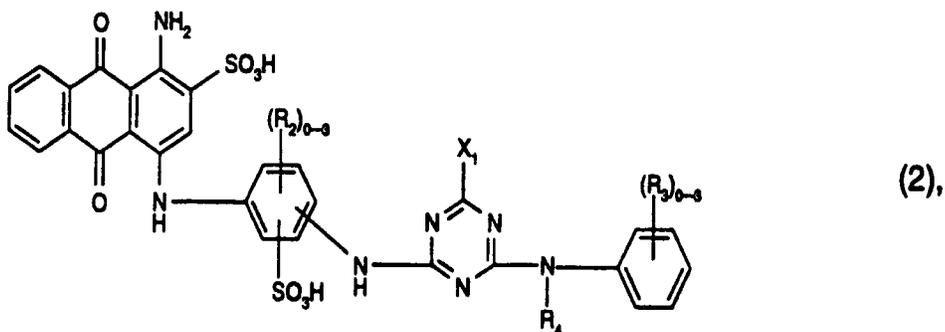
BRG/hh

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APPENDIX

25. A dye mixture which comprises at least one reactive dye of the formula (2)



in which

$(R_2)_{0-3}$  is 0 to 3  $C_1-C_4$  alkyl radicals which are identical or different from one another and

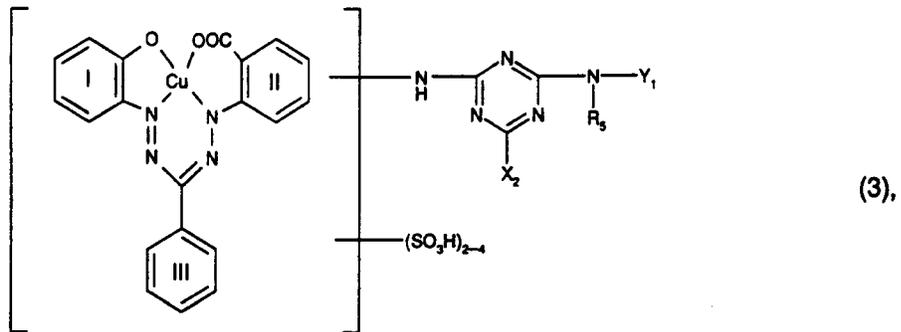
$(R_3)_{0-3}$  is 0 to 3 substituents, which are identical or different from another, from the group consisting of  $C_1-C_4$  alkyl,  $C_1-C_4$  alkoxy, halogen, carboxyl and sulfo,

$X_1$  is chlorine or fluorine and

$R_4$  is hydrogen or  $C_1-C_4$  alkyl which is unsubstituted or substituted by hydroxyl, sulfo or sulfato,

and at least one reactive dye of the formula (3)

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in which

$R_5$  is hydrogen or  $C_1$ - $C_4$  alkyl which is unsubstituted or substituted by hydroxyl, sulfo or sulfato,

$X_2$  is chlorine or fluorine,

$Y_1$  is hydrogen,  $C_1$ - $C_8$  alkyl which is unsubstituted or substituted by hydroxyl, sulfo or sulfato and uninterrupted or interrupted by oxygen, or phenyl or naphthyl which are unsubstituted or substituted by  $C_1$ - $C_4$  alkyl,  $C_1$ - $C_4$  alkoxy, halogen, carboxyl or sulfo, and the benzene nuclei I, II and III contain no further substituents or are further substituted by  $C_1$ - $C_4$  alkyl,  $C_1$ - $C_4$  alkoxy, halogen or carboxyl.