

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GLEN P. BARKER

Appeal No. 2004-2324
Application No. 10/226,852

ON BRIEF

Before KIMLIN, KRATZ and PAWLIKOWSKI, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-55, all the claims pending in the present application. Claim 1 is illustrative:

1. A marine fairing having a leading edge and a tail portion extending from the leading edge, said fairing made from a material having a specific gravity of approximately 1.0 to 1.2 gr/cc.

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

Loshigian	3,443,020	May 6, 1969
Hale et al. (Hale)	3,611,976	Oct. 12, 1971
Nesbitt	6,369,125	Apr. 9, 2002

(filed Dec. 23, 1999)

Appellant's claimed invention is directed to a marine fairing made from a material, such as a polyether-based thermoplastic polyurethane, that has a number of recited properties, e.g., a specific gravity of approximately 1.0 to 1.2 gr/cc (claim 1). A "fairing" is a generally teardrop shaped device that is attached to cables towed by vessels in water. Fairings ameliorate the detrimental effects of hydrodynamic forces acting on the cable being towed. Rigid fairings maintain their shape while being subjected to such hydrodynamic forces but "are prone to crushing if spooled onto a drum under subsequent layers of cable" (page 2 of Brief, third paragraph). According to appellant, the fairings of the present invention solve the problem by being "made from a material such that the fairing is rigid enough to maintain its shape while in use in the water, but flexible enough to be left on the cable and spooled onto a drum without damage" (page 2 of Brief, last paragraph).

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Appealed claims 1-55 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hale in view of Nesbitt. Claims 1-55 also stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Loshigian in view of Nesbitt.

Appellant submits at page 4 of the Brief that "[a]ll pending claims may be grouped together." Since appellant has not contested the examiner's determination that claims 1-55 stand or fall together, we will treat all the appealed claims as standing or falling with claim 1.

We have thoroughly reviewed each of appellant's arguments for patentability. However, we are in complete agreement with the examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Accordingly, we will sustain the examiner's rejections for essentially those reasons expressed in the Answer, and we add the following primarily for emphasis.

We consider first the examiner's rejection of all the appealed claims over Hale in view of Nesbitt. There is no dispute that Hale, like appellant, discloses a marine fairing made from polyurethane material. As acknowledged by the

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examiner, Hale does not expressly teach the claimed specific gravity of the polyurethane material nor, for that matter, other properties recited by appellant. Indeed, Hale is silent on the specific gravity of the polyurethane used to make the fairing. However, as explained by the examiner, Nesbitt evidences that thermoplastic polyurethanes used by appellant, namely Elastollan™ 1185A and 1195A, were known in the art as exhibiting "excellent low temperature properties, hydrolysis resistance and fungus resistance" (column 13, lines 1-4). Consequently, we concur with the examiner that the known properties of appellant's polyurethane material would have made it obvious for one of ordinary skill in the art to select such polyurethanes for making the fairings of Hale. We find no merit in appellant's argument that Nesbitt is non-analogous art because it is directed to a polyurethane cover for a game ball. While Nesbitt is directed to making game balls, the reference provides objective evidence that the polyurethane material used by appellant for making fairings was known in the art to possess properties that would be suitable for fairings.

As for the § 103 rejection of the appealed claims over Loshigian in view of Nesbitt, we agree with the examiner that

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appellant's argument that Loshigian discloses a faired cable rather than a marine fairing is not convincing. First, we concur with the examiner that "Applicant has not claimed a marine fairing that attaches to a cable" (page 15 of Answer, second paragraph). Furthermore, we subscribe to the examiner's reasoning that "[t]he cable itself in Loshigian is a marine fairing. A faired cable used in a marine environment is a marine fairing" (page 16 of Answer, second paragraph). Moreover, we are satisfied that one of ordinary skill in the art would have found it obvious to apply the principles of the polyurethane faired cable of Loshigian to the design of well-known fairings that are attached to cables.

As a final point, we note that appellant bases no argument upon objective evidence of nonobviousness, such as unexpected results attached to the use of a polyurethane material having the recited properties as a marine fairing.

In conclusion, based on the foregoing and the reasons well-stated by the examiner, the examiner's decision rejecting the appealed claims is affirmed.

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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

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
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PETER F. KRATZ)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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BEVERLY PAWLIKOWSKI)	
Administrative Patent Judge)	

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