

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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 CHUNSHAN SONG, JIAN-PING SHEN,
and LAWRENCE D. LILLWITZ

Appeal No. 2005-1436
Application No. 09/771,876

ON BRIEF

Before CAROFF, GARRIS, and JEFFREY T. SMITH, Administrative Patent Judges.

CAROFF, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-8, 10-11, 13-19, 21-23, 25-26, 39-40, and 42-43. Of all the other pending claims in appellants' application, the examiner has indicated that claims 45-46 are allowable, claims 15, 40 and 44 would be allowable if amended as

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suggested by the examiner, and claims 28-38 and 41 stand withdrawn from consideration, pursuant to a restriction requirement, as being directed to a non-elected invention. The claims on appeal relate to an aluminosilicate zeolitic catalyst which contains one or more additional metals, i.e., Fe, Ga, Ti, and/or Co, and also relate to a process for preparing the catalyst.

Claim 1, which is one of three independent claims, is representative of the subject matter embodied in the appealed claims.

1. A catalyst for methylating a naphthalenic feedstock, said catalyst comprising: a zeolitic material incorporating Al and one or more additional metals selected from the group consisting of Fe, Ga, Ti, and Co, and mixtures thereof, wherein the ratio of additional metal(s) is between about 1:10 and 2.5:1, and between 5 and 95 weight percent of a binder.

The prior art references relied upon by the examiner are:

Absil et al. (Absil)	4,837,397	Jun. 6, 1989
Suzuki et al. (Suzuki)	4,994,254	Feb. 19, 1991
Skeels et al. (Skeels)	5,098,687	Mar. 24, 1992
Iwamoto et al. (Iwamoto)	5,207,893	May 4, 1993
Farnos et al. (Farnos)	5,614,079	Mar. 25, 1997

The following rejections are before us for review:

1. Claims 1-8, 10-11, 13-19, 21, and 39-40 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

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2. Claims 1-8, 10, 21-22 and 42 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Iwamoto.

3. Claims 1, 3, 5-6, 10-11, 14, 16-18 and 21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Suzuki.

4. Claims 1-8, 10-11 13-14, 16-19, 21-23, 25-26, 39, and 43 stand rejected under 35 U.S.C. § 103(a) for obviousness in view of Skeels taken with Farnos or Absil.

We have carefully considered the entire record in light of the respective positions taken by the examiner and the appellants. Having done so, we find ourselves in substantial agreement with the examiner's position with respect to all of the rejections at issue.

Accordingly, we adopt the examiner's position as our own. Indeed, the examiner's answer includes an exceptionally thorough analysis and treatment of all the issues on appeal. For that reason, we offer only a few additional comments for emphasis.

With regard to the 35 U.S.C. § 112, rejection, appellants primarily rely upon an amendment, apparently filed with their brief, to overcome the rejection. However, the examiner's answer indicates that the amendment has not been entered.

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Therefore, since appellant has not raised any serious objections to the rejection on the merits, and since appellants' amendment has not been entered, the rejection is summarily affirmed.

With regard to the anticipation rejection based on Iwamoto, we note that appellants' process claims require preparation of the catalyst under conditions effective for substituting aluminum, viz. replacing some aluminum, in the aluminosilicate zeolitic material with another metal, i.e., Fe, Ga, Ti, and/or Co. As accurately noted by the examiner, the examples and data provided in Iwamoto (cols. 7-10; Table 1) are indicative of a decrease in aluminum content of the zeolite, reflecting the substitution of iron for aluminum in the zeolite (examiner's answer, p. 11). This is also suggested by the discussion in col. 3, ll. 7-20, of Iwamoto. Appellants have not presented any persuasive argument or evidence to the contrary. Cf. In re Best, 562 F.2d 1252, 1254-55, 195 USPQ 430, 433-34 (CCPA 1977).

With respect to other arguments raised by appellants in regard to Iwamoto, we find that those arguments have been thoroughly addressed and rebutted in the examiner's answer.

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Further comment on our part is therefore unnecessary. The same applies to the arguments raised by appellants in regard to Suzuki.

With regard to the obviousness rejection, we again find that the examiner has thoroughly addressed and rebutted appellants' arguments. Indeed, we note that appellants do not challenge the basis of the rejection which is premised on a finding that it would have been obvious, within the purview of 35 U.S.C. § 103, to combine the Skeels catalyst with a binder in view of the teaching by Farnos or Absil that doing so imparts strength to zeolite catalysts.

For the foregoing reasons, and for the reasons set forth in the examiner's answer, the decision of the examiner 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)(1)(iv)(effective Sep. 13, 2004; 69 Fed. Reg. 49960 (Aug. 12, 2004); 1286 Off. Gaz. Pat. Office 21 (Sep. 7, 2004)).

AFFIRMED

MARC L. CAROFF)	
Administrative Patent Judge)	
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JEFFREY T. SMITH)	
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