

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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 KARL-HEINZ DÖRNER, HUBERT EHBING,
CHRISTIAN HÄSLER, JÜRGEN RAMTHUN, GUNTHER STOLLWERCK,
ROBERT EIBEN, MICHAEL NIEDERMEYER and PETER SCHUSTER

Appeal No. 2005-1856
Application No. 10/047,365

ON BRIEF

Before GARRIS, WARREN and WALTZ, Administrative Patent Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal which involves claims 1-8.

This appealed subject matter relates to a solar module comprising a solar cell and a front side composed of transparent polyurethane. This appealed subject matter is adequately illustrated by claim 1 (the sole independent claim before us) which reads as follows:

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1. A solar module comprising
 - a) at least one solar cell,
 - b) a front side composed of transparent polyurethane, and
 - c) a rear side.

The references set forth below are relied upon by the examiner in the Section 102 and Section 103 rejections before us:

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| Vaverka et al. (Vaverka) | 5,667,595 | Sep. 16, 1997 |
| Shiomi et al. (Shiomi) | 6,245,987 | Jun. 12, 2001 |

Claims 1-3 are rejected under 35 U.S.C. § 102(b) as being anticipated by Vaverka.

Claims 4-6 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Vaverka in view of Shiomi.

Finally, claims 7 and 8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Vaverka alone.

OPINION

For the reasons which follow, none of these rejections can be sustained.

Each of the rejections before us is premised upon the examiner's position that the appealed independent claim 1 requirement "a front side composed of transparent polyurethane" is anticipatorily satisfied by Vaverka even though the front plate of patentee's solar module is made of glass. In this

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latter regard, the examiner (as well as the appellants) fully appreciates that "Vaverka teaches a solar module containing a front glass plate, a rear support plate, solar cells between the plates, and a polyether-polyurethane resin layer between the solar cells and each of the plates" (answer, page 5).

Nevertheless the examiner considers his finding of anticipation to be proper on the grounds that "the polyurethane layers are part of the front side and the rear side of [the] Vaverka solar module" (id.). Our study of the application record leads us to determine that the examiner's finding of anticipation is erroneous.

Contrary to the examiner's apparent belief, the claim language "a front side composed of transparent polyurethane" does not encompass an embodiment wherein the front side comprises transparent polyurethane in combination with a glass plate. This is because the claim phrase "composed of" should be interpreted in the same manner as the phrase "consisting essentially of" thereby excluding elements that would materially affect the basic and novel characteristics of the claimed invention. See AFG Indus., Inc. v. Cardinal IG Co., 239 F.3d 1239, 1245, 57 USPQ2d 1776, 1780-81 (Fed. Cir. 2001). Also see In re Bertsch, 132 F.2d

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1014, 1019-20, 56 USPQ 379, 384 (CCPA 1942). As so interpreted, the claim phrase "composed of" excludes a glass plate for the reasons detailed below.

During examination proceedings, application claims are to be given their broadest reasonable interpretation consistent with the specification. In re Hyatt, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). The examiner's interpretation of the independent claim on appeal, though certainly broad, is not reasonable and consistent with the appellants' specification. This is because the specification disclosure makes it unambiguously clear that a fundamental objective (i.e., a basic and novel characteristic) of the appellants' invention is to avoid the problems of conventional solar modules having a front side made of glass by replacing this glass front side with a transparent polyurethane front side (e.g., see specification pages 1-4). Given this unambiguous objective, it is simply unreasonable and inconsistent with the subject specification to interpret the claim requirement under consideration as being anticipatorily satisfied by Vaverka whose solar module comprises a front glass plate with a polyurethane layer therebehind.

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As previously indicated, the error of the examiner's position taints each of the rejections before us. Therefore, we cannot sustain any of the examiner's rejections of independent claim 1 and of dependent claims 2-8. It follows that we hereby reverse the Section 102 rejection of claims 1-3 as being anticipated by Vaverka, the Section 103 rejection of claims 4-6 as being unpatentable over Vaverka in view of Shiomi and the Section 103 rejection of claims 7-8 as being unpatentable over Vaverka alone.

The decision of the examiner is reversed.

REVERSED

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| BRADLEY R. GARRIS |) | |
| Administrative Patent Judge |) | |
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| |) | BOARD OF PATENT |
| CHARLES F. WARREN |) | |
| Administrative Patent Judge |) | APPEALS AND |
| |) | |
| |) | INTERFERENCES |
| |) | |
| THOMAS A. WALTZ |) | |
| Administrative Patent Judge |) | |

BRG:hh

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