

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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 MARION GLEN WAGGONER, STEVE GUST COTTIS,
and MICHAEL ROBERT SAMUELS

Appeal No. 2005-2445
Application No. 10/245,663

ON BRIEF

Before CAROFF, KIMLIN, and GARRIS, Administrative Patent Judges.
CAROFF, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-3, all the claims pending in appellants' application.

All of the appealed claims are directed to a molded "ovenware" part made from a heat resistant liquid crystalline polymer (LCP).

Appellants stipulate on pages 1 and 2 of their brief that claims 1-3 stand or fall together for purposes of this appeal.

Accordingly, we shall limit our consideration to claim 1, the sole independent claim, which reads as follows:

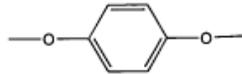
1. A molded part made from a heat resistant liquid crystalline polymer composition comprising:

said molded part being an ovenware part; and

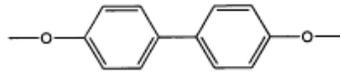
said liquid crystalline polymer composition comprising:

(a) about 10 to about 200 parts per million of an alkali metal;

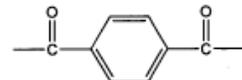
(b) a liquid crystalline polymer consisting essentially of repeat units of the formula:



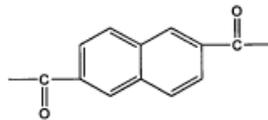
(I)



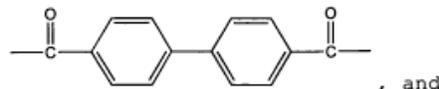
(II)



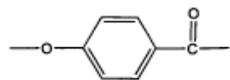
(III)



(IVa)



(IVb)



(V)

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wherein

a molar ratio of (I):(II) is from 65:35 to 40:60;

a molar ratio of (III):(IVa plus IVb) is from
90:10 to 50:50;

a molar ratio of the total of (I) and (II) to the
total of (III) and (IV) is substantially 1:1; and

there are 100 to 600 moles of (V) per 100 moles of
(I) plus (II).

The sole prior art reference relied upon by the examiner is:

Waggoner et al. (Waggoner) 5,397,502 Mar. 14, 1995

The following rejection is before us for review:¹

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

We have carefully considered the entire record in this case
in light of the respective positions taken by the examiner and
the appellants on appeal. Having done so, we conclude that the
examiner's rejection for anticipation should be affirmed.

The basis for our decision is as follows:

Waggoner discloses LCP compositions containing about 15 to

¹The examiner had previously rejected the claims under
35 U.S.C. § 103(a) in view of Waggoner, in addition to rejecting
the claims under 35 U.S.C. § 102(b). The 35 U.S.C. § 103
rejection has been withdrawn in the examiner's answer (p. 4).
The rejection under 35 U.S.C. § 102(b) remains.

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about 3,000 parts per million (ppm) of an alkali metal. The compositions are said to be useful in high temperature applications, and can be used to manufacture heat resistant molded articles (col. 1, ll. 5-25).

There is no dispute that the LCP component of the reference composition includes all the repeat units, in essentially the same molar ratios, as instantly claimed.²

We agree with the examiner that Waggoner is anticipatory of claim 1.

With regard to the alkali metal concentration range, we agree with the examiner that the disclosure of a specific lower-limit value of 15 ppm by Waggoner is an anticipation of the claimed range. The explicit disclosure in the prior art of any specific value within a claimed range represents a disclosure of a discrete embodiment and, thus, is an anticipation of the claimed range. Ex parte Lee, 31 USPQ2d 1105, 1106 (Bd. Pat. App. & Int. 1993).

Moreover, we note that Waggoner apparently discloses two distinct embodiments within the claimed range in working examples

²We note that the molar ratio range of "(III):(IVa plus IVb)" in the reference is narrower than the corresponding range in appellants' claim 1.

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(Table 1: Examples 10-11).

With regard to the Samuels Declaration which has been submitted by the appellants, an alleged showing of criticality cannot overcome a rejection based on an anticipatory reference.

Even assuming, arguendo, that the question at hand was one of obviousness, we are of the opinion that the Samuels Declaration is unpersuasive since the data presented is insufficient to establish that unexpected results are obtained when alkali metal concentration is limited to the claimed range. Reporting results obtained from a comparative specimen having a potassium concentration (500 ppm) well outside the claimed range says nothing about potassium concentration values closer to the claimed range of 10-200 ppm.

Appellants' primary argument (in attempting to distinguish the claimed invention from that of Waggoner) is that Waggoner makes no mention of using the disclosed LCP composition to make an "ovenware" part as claimed. We find this argument unconvincing since we interpret the term "ovenware" as describing a property or function rather than a particular article or structure.

We recognize that the term "ovenware" must be given due weight even though it is of a functional nature. In doing so, we

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find that heat resistant molded parts manufactured in accordance with the Waggoner disclosure would appear to inherently possess the requisite properties, or be capable of performing the function, incident to use as ovenware.

Rejection is proper if a prior art article inherently possesses a property, or the capability of accomplishing a function, recited in the claims even if that property or function is not disclosed. Cf. In re Yanush, 477 F.2d 958, 959-60, 177 USPQ 705, 706 (CCPA 1973); In re Casey, 370 F.2d 576, 579-80, 152 USPQ 235, 237-38 (CCPA 1967).

Further, in the event of further prosecution, the examiner should consider applying or reinstating the grounds of rejection under 35 U.S.C. § 103 since, in our view, it would have been prima facie obvious within the context of 35 U.S.C. § 103 to use the heat resistant LCP composition of Waggoner to construct molded parts for any well known application requiring use of high-temperature materials, e.g., molded articles used in ovens, namely ovenware.

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For the foregoing reasons, 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

MARC L. CAROFF)	
Administrative Patent Judge)	
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Administrative Patent Judge)	INTERFERENCES
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BRADLEY R. GARRIS)	
Administrative Patent Judge)	

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