

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 FRAMATOME ANP

Appeal 2006-0009
Reexamination Control 90/005,589
Patent 5,940,464
Technology Center 3600

Decided: July 9, 2007

Before RICHARD E. SCHAFER, ADRIENE LEPIANE HANLON, and
MARK NAGUMO, *Administrative Patent Judges*.

HANLON, *Administrative Patent Judge*.

DECISION ON REHEARING

1 The Appellant requests rehearing of a Decision on Appeal dated
2 May 12, 2006, affirming the rejection of claims 1-4 under 35 U.S.C.
3 § 103(a) as unpatentable over Sabol.

4 A request for rehearing must state with particularity the points
5 believed to have been misapprehended or overlooked by the Board.

1 Arguments not raised in the briefs before the Board and evidence not
2 previously relied upon in the briefs are not permitted in the request for
3 rehearing except as permitted by 37 C.F.R. § 41.52(a)(2) and (3). *See* 37
4 C.F.R. § 41.52(a)(1) (2006).

5 The claimed invention is directed to a tube of zirconium-base alloy
6 containing 0.2% to 0.6% tin.¹ Sabol discloses a tube of zirconium alloy
7 comprising “up to 1.5 percent tin.” Sabol, col. 2, ll. 8-14.

8 The Appellant argues that Sabol does not suggest an amount of tin
9 below 1.0 percent. The Appellant argues that the Board misapprehended or
10 overlooked statements in Sabol emphasizing that zirconium alloys
11 containing 1.0 percent tin exhibit improved corrosion resistance. *See* Sabol,
12 col. 4, ll. 9-11; *see also* Sabol, col. 1, l. 56-col. 2, l. 5. Pointing to Table I,
13 the Appellant also argues that Sabol does not provide any experimental data
14 for a zirconium alloy having a tin concentration below 1.0 percent. *See*
15 Request 3-4.

16 The Board did not misapprehend or overlook any teachings in Sabol.
17 The Board correctly pointed out that a reference is not limited to a preferred
18 embodiment or a specific example but rather must be considered for all that
19 it expressly teaches and fairly suggests to one having ordinary skill in the
20 art. *In re Lamberti*, 545 F.2d 747, 750, 192 USPQ 278, 280 (CCPA 1976).
21 Sabol expressly states that the disclosed alloys contain “up to 1.5 percent
22 tin” and “the minimum amount [of tin and a third alloying element] present
23 would be that sufficient to give the desired corrosion resistance in the

¹ The term “containing” is open-ended. *Mars Inc. v. J.J. Heinz Co.*, 377 F.3d 1369, 1376, 71 USPQ2d 1837, 1843 (Fed. Cir. 2004).

1 articles produced therefrom.” Sabol, col. 2, ll. 8-4 and col. 2, ll. 54-63.
2 Based on these teachings, one of ordinary skill in the art would have
3 understood that the amount of tin (as well as an amount of a third alloying
4 element) in the disclosed alloy is related to the “desired corrosion
5 resistance.”

6 The Board correctly found that “nothing in Sabol suggests that an
7 amount of tin as low as 0.6% would not provide the ‘desired corrosion
8 resistance.’ ” Decision 7. This is especially true where the desired corrosion
9 resistance can also be adjusted by adding an amount of a third alloying
10 element. The Appellant has not directed us to any evidence establishing
11 otherwise.

12 The Appellant also argues that the Board incorrectly interpreted the
13 phrase “up to 1.5 percent tin” as including no tin. See Decision 6 (agreeing
14 with the examiner that “up to” includes zero). The Appellant argues that the
15 alloys disclosed in Sabol must contain some amount of tin to provide the
16 “desired corrosion resistance.” See Request 2.

17 The Appellant did not present this argument in its Brief. Therefore, it
18 is not entitled to consideration on rehearing. *See* 37 C.F.R. § 41.52(a)(1)
19 (2006). Suffice it to say that the Board found that Sabol would have
20 suggested an alloy having some amount of tin, i.e., an amount of tin within
21 the claimed range of 0.2% to 0.6% tin. To the extent that the Board did find
22 that the range of tin disclosed in Sabol includes no tin, it is not necessary to
23 address this finding on rehearing.

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Conclusion

The Appellant's request for rehearing has been granted to the extent that the "DECISION ON APPEAL" dated May 12, 2006, has been reconsidered in light of the Appellant's arguments. However, the request is denied because we decline to modify the decision in any respect.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a) (2006).

REHEARING DENIED

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