

1 The opinion in support of the decision being entered today was *not*
2 written for publication and is *not* binding precedent of the Board.
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7 UNITED STATES PATENT AND TRADEMARK OFFICE
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9
10 BEFORE THE BOARD OF PATENT APPEALS
11 AND INTERFERENCES
12

13
14 *Ex parte* BALASUBRAMANIAM RAMALINGAM
15

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17 Appeal No. 2006-0415
18 Application No. 10/267,200
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21 ON BRIEF
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25 Before SCHAFER, TIERNEY, and MOORE, *Administrative Patent Judges*.
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27 MOORE, *Administrative Patent Judge*.
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31 DECISION ON APPEAL

32 This is an appeal under 35 U.S.C. § 134 from the final
33 rejection of claims 27-54. Claims 1-26 have been canceled.
34 (Appeal Brief, Nov. 22, 2005, pages 1-2). Consequently, only
35 claims 27-54 are before us on this appeal.

36 We affirm the rejections of record, and make several
37 additional references of record.
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REPRESENTATIVE CLAIM

The sole independent claim is as follows:

27. A method of preparing a flexible film laminate comprising:

a) mixing an epoxy resin and a curative having at least one active hydrogen contained in a functional group selected from the group consisting of primary amino groups, secondary amino groups, carboxyl groups and combinations thereof to form an adhesive formulation, said epoxy resin and said curative having been selected so as to maintain the viscosity of said adhesive formulation for at least 20 minutes after mixing within the range of 1,000 to 10,000 cps at 40°C and said adhesive formulation being essentially free of solvent, water and isocyanate-functionalized compounds;

b) applying the adhesive formulation to a surface of a first substrate selected from the group consisting of metal foils and polymeric films;

c) pressing said surface of said first substrate having the adhesive formulation applied thereto against a surface of a second substrate selected from the group consisting of metal foils and polymeric films; and

d) curing the adhesive formulation.

1 The References

2 In rejecting the claims under 35 U.S.C. § 103(a), the
3 examiner relies upon the following references:

4	De Keyser et al (De Keyser)	3,840,419	Oct. 08, 1974
5	Waddill (Waddill)	4,420,606	Dec. 13, 1983
6	Tesch et al. (Tesch)	4,607,069	Aug. 19, 1986
7	Marten et. al (Marten)	5,017,675	May 21, 1991
8	Davis (Davis)	5,037,700	Aug. 06, 1991
9	Dubois et al. (Dubois)	5,244,998	Sep. 14, 1993

10 The following new references are discussed in this decision.

11 Kigawa et al. (Kigawa) 5,319,062 Jun. 07, 1994

12
13 Epoxy Resins, Their Applications and Technology, "Adhesives," pp.
14 222-225, Lee & Neville, McGraw Hill, 1957.

15
16 Resin/Hardener Combinations, Pro-Set Laminating Epoxy
17 Resin/Hardener Combinations, February 23, 2000.

18
19 "Preventing Asthma and Death from Diisocyanate Exposure," National
20 Institute for Occupational Safety and Health, Publication 96-111
21 (1996).

22
23 Mark's Standard handbook for Mechanical Engineers, Tenth Edition,
24 page 1-22

25
26 The Rejections

27 A) Claims 27-33, 35-41, 43, 45-46, and 48-54 stand rejected
28 under 35 U.S.C. § 103(a) as being unpatentable over De Keyser in
29 view of at least one of Marten, Tesch, and Waddill.

30 B) Claim 34 stands rejected under 35 U.S.C. § 103(a) as being
31 unpatentable over De Keyser in view of at least one of Marten,
32 Tesch, and Waddill, further in view of Dubois.

33

1 C) Claims 42, 44, and 47 stand rejected under 35 U.S.C.
2 § 103(a) as being unpatentable over De Keyser in view of at least
3 one of Marten, Tesch, and Waddill, further in view of Davis.

4 The Invention

5 The invention relates to flexible packaging laminates for
6 storing products. (Specification, page 1, lines 6-7). A
7 formulation is mixed having an epoxy resin and a curative with at
8 least one active hydrogen contained in a particular functional
9 group. (Id., page 3, lines 13-16). The invention is said to
10 provide a laminating adhesive free of solvent, water, and
11 isocyanate-functionalized compounds (Id., page 3, lines 11-13). A
12 certain viscosity is maintained for a length of time to provide a
13 flexible adhesive when fully cured. (Id., page 3, lines 19-20).
14 (Appeal Brief, page 2, lines 4-11, see also claim 1).

15 A) The Rejection of Claims 27-33, 35-41, 43, 45-46, and 48-54
16 under 35 U.S.C. § 103(a)

17 *i). Claims 27-33, 35-41, 43, 45-46, and 48-54 stand rejected*
18 *under 35 U.S.C. § 103(a) as being unpatentable over De Keyser in*
19 *view of at least one of Marten, Tesch, and Waddill.*

20 The examiner has found that De Keyser describes a method of
21 making a laminated material by coating a film with a solventless
22 adhesive bonding the adhesive coated film with another film
23 between two cylinders and curing the adhesive. The examiner has

1 additionally found that De Keyser describes the exclusion of
2 water-based glues and resins dissolved in at least one volatile
3 organic adhesive. The examiner has further found that De Keyser
4 describes a two-component non-isocyanate reactive component
5 adhesive which react in situ to form a crosslinked adhesive
6 polymer. Finally, the examiner has found that De Keyser describes
7 a solventless adhesive having a low viscosity as a low viscosity
8 is necessary to apply the adhesive (Examiner's Answer, May 20,
9 2005, pages 4-5).

10 Marten, on the other hand, is said to describe an epoxy
11 composition in which water and solvent are optional. The epoxy is
12 described as containing low viscosity bisphenol A resin and a
13 curing agent which includes active hydrogen atoms such as
14 polyamidoamine. The low viscosity is said to enable bulk mixing
15 without use of diluents. (Examiner's Answer, page 6, last
16 paragraph).

17 The examiner then concludes that it would have been obvious
18 to one of ordinary skill in the art at the time the invention was
19 made to use the claimed active hydrogen curing agent in that De
20 Keyser suggests a curing agent having at least two active hydrogen
21 atoms. The examiner also finds it would have been obvious to one
22 of ordinary skill in the art at the time the invention was made to
23 use the claimed active hydrogen curing agents for epoxy-based

1 solventless resins as resins having at least one active hydrogen
2 atom contained in an amino group were well known to those of
3 ordinary skill in the art, citing Marten, Tesch, and Waddill as
4 evidentiary support. (Examiner's Answer, page 8, lines 1-8).

5 The examiner also concludes that the selection of the epoxy
6 resin and curing agent for the claimed viscosity and duration of
7 viscosity would have been obvious to one of ordinary skill in the
8 art at the time the invention was made in that De Keyser describes
9 that a solventless adhesive must have low viscosity for
10 application of the adhesive to the film. The examiner
11 additionally concludes that the selection of the epoxy resin and
12 curing agent for the claimed viscosity and duration of viscosity
13 would have been obvious to one of ordinary skill in the art at the
14 time the invention was made as it was well known in the adhesive
15 art to select the solventless epoxy adhesive in order to obtain a
16 desired low viscosity. As evidentiary support for this
17 conclusion, the examiner again relies upon Marten, Tesch, and
18 Waddill. (Examiner's Answer, page 8, second paragraph)

19 As to the claimed duration of 20 minutes, the examiner
20 concludes that the selection of the epoxy and curing agent is
21 described by De Keyser's teaching that adhesivity is acquired over
22 time varying from a few minutes to several hours. (Examiner's
23 Answer, page 8, second paragraph).

1 The examiner concludes that one of ordinary skill in the art
2 at the time the invention as made would have been motivated to
3 select an epoxy resin and a curative such that the adhesive formed
4 has the claimed viscosity of 1,000 to 10,000 cps at 40°C for at
5 least 20 minutes. According to the examiner, De Keyser describes
6 the optimization of the viscosity for the application of thin
7 films, the avoidance of excessive viscosity, and the use of low
8 viscosity adhesives to manufacture thin adhesive film laminates.
9 (Examiner's Answer, Page 9, first paragraph).

10 The examiner has further found that it would have been
11 obvious to press laminate films together using cylinders as it was
12 well known in the art to laminate films, e.g. by using rolls to
13 improve bonding. (Examiner's Answer, pages 9-10).

14 *ii) The Appellant's Arguments - Claim 27*

15 a) Isocyanate Functionalized Compounds

16 The appellant initially urges that the limitation "said
17 adhesive formulation being essentially free of solvent, water, and
18 isocyanate-functionalized compounds" is not met (Appeal Brief,
19 page 5, lines 19-20). The rationale is that the "preferred"
20 adhesive of the primary reference teaches away from the claimed
21 limitation; the examiner has given no justification in "ignoring"
22 this important teaching, and this is impermissible picking and
23 choosing based on hindsight. (Id., page 6, lines 1-6).

1 This argument is not persuasive.

2 Assuming that appellant is correct that the embodiment is not
3 preferred, we still can not ignore the non-preferred embodiments.

4 All disclosure of the prior art, including unpreferred
5 embodiments, must be considered. *In re Lamberti*, 545 F.2d 747,
6 750, 192 USPQ 278, 280 (CCPA 1976). See also *Ultradent Products,*
7 *Inc. v. Lifelike Cosmetics*, 127 F.3d 1065, 1068, 44 USPQ2d 1336,
8 1339 (Fed.Cir. 1997) (it is error to construe the prior art as
9 limited to preferred embodiments).

10 Additionally, we note that the appellant has misapprehended
11 the grounds of rejection. The examiner need not show that the
12 limitation is precisely shown in the reference; rather, the
13 examiner need only show that the claimed ranges would have been
14 obvious to one of ordinary skill in the art. 35 U.S.C. § 103(a) (A
15 patent may not be obtained if "...the differences between the
16 subject matter sought to be patented and the prior art are such
17 that the subject matter as a whole would have been obvious...").
18 The examiner is not held to a 35 U.S.C. § 102 anticipation-type
19 standard when formulating an obviousness rejection.

20 Moreover, it is also evident that De Keyser teaches an
21 adhesive formulation being essentially free of solvent and water.
22 (Column 1, lines 5-10). We also observe that De Keyser states:

23

1 A typical representative of a solventless adhesive which is
2 preferably used according to the present invention is that
3 known as a two (or multi) reactive component adhesive, the
4 two (or more) components of which react together in situ to
5 form a cross-linked adhesive polymer. Examples of this kind
6 of adhesive polymer **include a hydroxylated polyester or**
7 **polyether which is reacted with a di-or polyisocyanate and an**
8 **epoxy resin which is reacted with compounds containing at**
9 **least two active hydrogen atoms** (Col. 1, lines 25-
10 34) (emphasis added).
11

12 The avoidance of solvent is to "prevent the poisoning of
13 operators by the solvent vapors and to avoid all risk of fire."
14 Water is classified as a solvent to be avoided by De Keyser
15 (column 1, lines 19-24).

16 De Keyser is directed towards the machinery and method for
17 applying the solventless adhesive. Other than keeping away from
18 the solvents, and encouraging the use of multi-component reactive
19 adhesives, contrary to the Appellant's position, De Keyser is
20 silent as to any particular adhesive "preferences." It lists
21 only two types as exemplary of the larger group of potential
22 resins. These two examples form a very small genus.

23 We also note that one of the two adhesive species in this
24 genus is an epoxy resin reacted with compounds containing at least
25 two active hydrogen atoms. This epoxy resin was found by the
26 examiner to be an adhesive without isocyanate-functionalized
27 compounds, in that the epoxy resin is reacted with compounds
28 containing at least two active hydrogen atoms. (Rejection,

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1 October 31, 2003, page 3, lines 9-11) (see also Examiner's Answer,
2 page 6, lines 4-6). The appellant has not contested this finding
3 in any meaningful way. Selection of one species from a genus is
4 not necessarily obvious. *In re Baird*, 16 F.3d 380, 29 USPQ2d
5 1550 (Fed. Cir. 1994) (millions of compounds); *In re Jones*, 958
6 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992) (same). However, in this
7 instance, when the genus is two exemplary types, one species of
8 which is isocyanate-free, the isocyanate-free species is only one
9 out of two and accordingly we conclude that it would have been
10 obvious to select the isocyanate-free species. See also *In re*
11 *Petering*, 301 F.2d 676, 682, 133 USPQ 275, 280 (CCPA 1962) (a
12 disclosure of a limited genus of 20 rendered every species within
13 that genus anticipated).

14 Even were we to conclude otherwise, we additionally observe
15 that the appellant's position that the isocyanate-containing
16 option is "preferred" further ignores the knowledge of one skilled
17 in the two-part reactive adhesives art that isocyanates are a
18 potential health hazard and worker exposure is to be avoided.
19 See, e.g. *Preventing Asthma and Death from Diisocyanate Exposure*,
20 National Institute for Occupational Safety and Health, publication
21 No. 96-111 (1996) (Exhibit D). Isocyanates have been known to be
22 powerful irritants as early as 1955, cause asthma (1973) and death
23 (1988) (*Id.*, page 4). The selection of the non-isocyanate

1 containing species would appear to have been a matter of routine
2 risk reduction to select a less toxic alternative, especially in
3 view of De Keyser's express teaching to avoid poisoning the
4 worker.

5 b) Viscosity of 1K - 10K cps for 20 Minutes at 40°C

6 The appellant urges that the De Keyser reference fails to
7 meet the limitation of selecting the reactants so as to maintain
8 the viscosity of the adhesive formulation for at least 20 minutes
9 after mixing within the range of 1,000 to 10,000 cps at 40°C.
10 (Appeal Brief, page 6, line 18- page 7, line 26). The thrust of
11 this argument is that the selection of the resin and curative in
12 De Keyser for "low viscosity" fails to give weight to the claim
13 limitations including a duration. (Appeal Brief, page 7, lines
14 14-15).

15 We are not persuaded by this contention.

16 The prior art of record teaches the difficulty of spreading a
17 layer of adhesive thinly (De Keyser, column 2, lines 25-32). Low
18 initial viscosity is desirable in order to achieve this thin
19 spreading. (Id., col. 2, lines 21-25). The prior art of record
20 also teaches that the active life of an adhesive in its ready form
21 is limited by the reactivity of its components (Id., column 1,
22 lines 64-66).

23

1 Read in the eye of one of ordinary skill in the art, this
2 description teaches that an epoxy system has a useful range of
3 viscosity from low to high and a useful life span. The question
4 more properly focused is, in the adhesive/film art, would one of
5 ordinary skill in the art have found it obvious to mix the
6 ingredients such that the resulting adhesive would have had a
7 viscosity at the claimed range for the claimed time at the claimed
8 temperature?

9 The examiner has concluded that the claimed ranges are
10 obvious because De Keyser describes an epoxy adhesive musty have
11 an initial low viscosity and thereafter the adhesivity after a few
12 minutes to several hours, (Examiner's Answer, page 5, lines 12
13 et. seq.). Waddill is relied upon to describe that "low viscosity"
14 includes 7300 cps at 25°C. (Id., page 9, lines 16-18) (Waddill,
15 col. 7, lines 1-4 and 65-69). The motivation to use the epoxy
16 resin and curative resulting in the claimed viscosity is said to
17 come from the applied prior art considered as a whole.
18 Furthermore, the examiner has concluded that viscosity is a
19 recognized result effective parameter which is optimized. (Final
20 Rejection, June 2, 2004, page 4).

21 The appellant seems to be urging that "low viscosity" as used
22 in De Keyser and Waddill is somehow different from the claimed
23 range of 1,000 to 10,000 cps. We disagree. Low viscosity is a

1 term of art, meaning that the adhesive may be easily spread.
2 Waddill provides context for that term. At column 7, lines 1-5,
3 test results with one epoxy adduct are characterized as "low
4 viscosity." They include results of 9700, 7750, 8250, 7300, and
5 6500 cps at 25°C. Waddill thus describes a low viscosity, i.e.
6 solventless, adhesive should be in the vicinity of 9700 cps or
7 below at 25°C. (Waddill, column 6, last line).

8 The appellant urges that this value is for an epoxy adduct,
9 not the adhesive formulation. While that observation is true, it
10 does not change the meaning of the term "low viscosity" as
11 understood by one of ordinary skill in the art.¹ Accordingly, it
12 appears to us that the examiner has correctly determined that the
13 appellant has simply claimed the useful range of low viscosity
14 adhesives.

15 The appellant also contends that the references fail to teach
16 a time period for the viscosity to be maintained. We disagree.
17 De Keyser clearly recognizes that adhesivity increases over time
18 with polymerization - from a few minutes to a few hours. (De
19 Keyser, column 2, lines 13-16). This is directly related to an
20 increase in viscosity (Id., column 2, lines 16-19). It also

1 See, e.g. Exhibit C, US Patent 5,319,062, column 5, lines 48-56, where "low viscosity" is considered to be 10,000 centipoise or lower at 40°C.

1 closely tracks the claimed range of "at least 20 minutes."²

2 Accordingly, we agree with the examiner that De Keyser
3 suggests to one of ordinary skill in the art a pot life of from a
4 few minutes to several hours, which is substantially overlaps the
5 claimed time range for the viscosity of the instant claim.
6 Accordingly, we find no error in the examiner's conclusion that
7 the art as a whole renders the claimed viscosity of claim 27
8 obvious.

9 Where the general conditions of the claimed subject matter
10 are disclosed by the prior art, it is not inventive to discover
11 the optimum or workable ranges by routine experimentation. *In re*
12 *Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). In this
13 instance, the evidence supports the conclusion that the viscosity
14 claimed is simply the useful pot life of adhesives for laminating
15 films.

16 For the above reasons, we therefore affirm this rejection as
17 it relates to claim 27.

18

2 We also note that it appears that the selection of epoxy/hardener adhesive formulations for the specific properties of pot life and viscosity were within the skill of one of ordinary skill in the art. See, e.g. Resin/Hardener Combinations, Pro-Set Laminating Epoxy Resin/Hardener Combinations, February 23, 2000. (Exhibit A) which lists several commercial epoxies which are within the claimed viscosity ranges. A pot life on the order of 20 minutes for fluid applications was known. Epoxy Resins, Their Applications and Technology, "Adhesives," pp. 223, McGraw Hill, 1957. (Exhibit B). Furthermore, viscosity, pot life, and temperature are all known to be interrelated variables to be optimized. (Id.).

1 *ii) The Appellant's Arguments - Claim 28*

2 Claim 28 reads as follows:

3 The method of claim 27 wherein the curative contains two or
4 more active hydrogens.

5 The appellant argues that claim 28 contains the further
6 limitation that the "curative contains two or more active
7 hydrogens" and that the examiner has not met his burden of proof
8 by simply stating that the curative was known per se. (Appeal
9 Brief, paragraph spanning pages 7 or 8).

10 This argument is facially without any substantive merit. De
11 Keyser states, expressly, that the epoxy resin is "reacted with
12 compounds containing at least two active hydrogen atoms." (Column
13 1, lines 33-34).

14 We therefore affirm this rejection as it applies to claim 28.

15 *iii) The Appellant's Arguments - Claims 29-33; 35-41; 43;*
16 *45-46; and 48-54*

17 Claim 29 reads as follows:

18 The method of claim 27 wherein the curative is an
19 alkanolamine.

20 The appellant argues, for each of these claims, that they
21 contain a "further limitation" and that the examiner has not met
22 his burden of proof by simply stating that the particular curative
23 or resin was known per se. (Appeal Brief, spanning pages 7 to

1 16.) The appellant also urges, in each instance, that no motive
2 has been provided for selecting the particular resin/curative.

3 Although the claims are each placed in a separate heading,
4 simply separating out each claim in a separate heading does not
5 mean that they have been "separately argued." Meeting a formal
6 requirement by placing purported argument under a separately
7 lettered heading does not establish a separate argument within the
8 meaning of Board Rule 37. Separate argument must include a good
9 faith argument as to why the claims are separately patentable - a
10 statement which merely points out what a claim recites, as each of
11 these purported arguments do, will not be considered an argument
12 for separate patentability of the claim. 37 CFR § 41.73(c).

13 The appellant has simply cut and pasted the same argument for
14 each claim without substantively attempting to traverse the
15 examiner's stated position. The appellant has done this 20 times,
16 covering multiple pages with repetition. This is unpersuasive,
17 wastes both the appellant's money and the Board's time, and does
18 nothing to advance the prosecution of the application.

19 A legitimate argument would assert and explain why, for
20 example, alkanolamines would not have been well-known as curative
21 agents for epoxy adhesives, or what it is about them that sets
22 them apart from standard amines. See Manuel of Patent Examining
23 Procedure (MPEP) ¶ 2144.03C. ("To adequately traverse such a

1 finding, an applicant must specifically point out the supposed
2 errors in the examiner's action, which would include stating why
3 the noticed fact is not considered to be common knowledge or well-
4 known in the art.")³

5 Furthermore, the examiner made a finding that the
6 specifically recited curatives and resins were well-known for
7 these same functions. (Office Action October 31, 2003). Not once
8 since then has the appellant substantively denied that position or
9 pointed to any persuasive evidence that these curatives and resins
10 were not known equivalents. Accordingly, in the absence of an
11 express traversal contradicting the examiner's holding we accept
12 as an operative fact that the recited resins and curatives are
13 well known in the art.

14 As stated in *In re Fout*, 675 F.2d 297, 301, 213 USPQ 532, 536
15 (CCPA 1982) "Express suggestion to substitute one equivalent for
16 another need not be present to render such substitution obvious."
17 It appears that the appellant is simply claiming several well-
18 known alternative curatives and resins.

19 Accordingly, we shall affirm the rejection of these claims as
20 well.

3 The necessity of expressly asserting that the examiner's finding that a claimed feature is well known is incorrect also flows from the duty of disclosure requirements of 37 CFR § 1.56. To merely assert that an alleged well known feature has not been shown in the cited prior art, with actual knowledge that the examiner's statement is in fact correct, withholds material information

1 B) The Rejection of Claim 34 under 35 U.S.C. § 103(a)

2 Claim 34 stands rejected under 35 U.S.C. § 103(a) as being
3 unpatentable over De Keyser in view of at least one of Marten,
4 Tesch, and Waddill, further in view of Dubois.

5 Claims 34 reads as follows:

6 The method of claim 27 wherein the curative is a carboxyl-
7 terminated polyester resin.

8 The examiner has found that it would have been obvious to use
9 a carboxyl-terminated polyester resin as a curative instead of a
10 compound containing at least two primary or secondary amine
11 hydrogen atoms in view of Dubois' discussion of suitable curing
12 agents for epoxy. (Office Action, October 31, 2003, pages 6-7).

13 The appellant urges that Dubois cannot be combined with De
14 Keyser because the Dubois reference contemplates solvents.

15 This argument is unpersuasive. Dubois expressly states that
16 its resins may be cured by any suitable curing agent for curing
17 epoxy resins. (column 18, lines 4-6). Dubois description is not
18 limited by the solvent or solventless nature of the final product.
19 Dubois teaches the equivalence of the carboxyl terminated
20 polyester of the claim.

21 Accordingly, we affirm this rejection.

22

and would be inconsistent with the duty imposed by § 1.56.

1 C) The Rejection of Claims 42, 44, and 47 under 35 U.S.C.
2 § 103(a)

3 Claims 42, 44, and 47 stand rejected under 35 U.S.C. § 103(a)
4 as being unpatentable over De Keyser in view of at least one of
5 Marten, Tesch, and Waddill, further in view of Davis.

6 Claim 42 reads as follows:

7 The method of claim 27 wherein at least one of the first
8 substrate or the second substrate is a polymeric film comprised of
9 a thermoplastic selected from the group consisting of polyethylene
10 terephthalate, polyethylene, polypropylene, and polyvinylidene
11 chloride.

12 The examiner has found that Davis discloses the lamination of
13 films recited in claims 42, 44, and 47. The examiner then
14 concludes that it would have been obvious to use these films in De
15 Keyser's process. (Office Action, October 31, 2003, page 7).

16 The appellant urges that Davis cannot be combined with De
17 Keyser because Davis contemplates the use of solvents. (Appeal
18 Brief, page 17). This argument is unpersuasive.

19 De Keyser expressly states that the films are preferably
20 plastics materials (column 1, line 14) and can be used in
21 packaging. Davis notes that flexible film laminates are currently
22 used in the packaging industry and such laminates are said to be
23 "very often" formed from "polyethylene terephthalate." (column 1,

1 lines 39-45). Although Davis does describe water-borne laminating
2 adhesives, the underlying films are still taught to be appropriate
3 for the packaging art. One having ordinary skill in the art would
4 reasonably have expected Davis' polyethylene terephthalate also to
5 be useful in the De Keyser process. We have not been directed to
6 evidence tending to show that polyethylene terephthalate is not a
7 plastic film as described by De Keyser. Naked attorney argument
8 aside, there is no reason why the Davis films are not capable of
9 being laminated in De Keyser's process.

10 We AFFIRM this rejection as it relates to claim 42.

11 Claim 44 reads as follows:

12 The method of claim 27 wherein both the first substrate and
13 the second substrate have a thickness of from about 10 to about
14 100 microns.

15 The appellant has again urged that Davis relates to solvents.

16 We have found this unpersuasive for the reasons discussed above.

17 However, the appellant also states that the "Davis reference does
18 not appear to discuss 'thickness of from about 10 to about 100
19 microns.'" (Appeal Brief, page 18, lines 14-17). This statement
20 is incorrect at best and misleading at worst.

21 Even a cursory review of Davis reveals several examples of
22 films that are laminated, including 2 mil polyethylene (column 8,
23 line 12) 2 mil polyamide (column 9, line 2) and 0.5 mil polyester.

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1 No time period for taking any subsequent action in connection
2 with this appeal may be extended under 37 CFR § 1.136(a).

3

4

AFFIRMED

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6

/Richard E. Schafer/)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
/Michael P. Tierney/)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
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