

The opinion in support of the decision being entered today
is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES HAROLD DAVIS, NEZAM MALAKOUTI,
and TERRILL ALAN YOUNG

Appeal 2006-0828
Application 10/252,175
Technology Center 1700

Decided: September 21, 2007

Before EDWARD C. KIMLIN, BRADLEY R. GARRIS,
and CHUNG K. PAK, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellants request rehearing of our Decision of March 9, 2006, wherein we affirmed the Examiner's rejection of claims 1, 4-6, 8-12, 14-16, 18-21, 23, 24, 26-31, and 33-39 under 35 U.S.C. § 103(a) as being unpatentable over Allen in view of Kobylivker.

Appellants assert that we misapprehended and overlooked the limitation of claim 1 which recites that "the second molten stream comprises

a film.” Appellants then go on to mistakenly state that our Decision “appears to hinge on the alleged failure of claim 1 to recite a ‘film’ (see Decision at Page 4)” (Request 2, first para.).

At the outset, our Decision affirming the Examiner’s rejection under § 103 did not hinge on our overlooking of the recitation of “film” in claim 1. As clearly stated in our opinion, “we agree with the examiner that Kobylivker evidences the obviousness of manufacturing an article by joining first and second primary components formed from first and second extruded streams of polymeric material” (Decision 4, second para.). Also, our statement regarding Appellants’ argument not being germane with the claimed subject matter refers to the fact that, although claim 1 recites that “the second molten stream comprises a film,” there is no express requirement that the second primary component that is formed from the second molten stream is in the form of a film when it is joined to the first primary component to form the composite web. In addition, it is not clear on this record that there is, in fact, a patentable distinction between a film and a polymeric sheet.

Furthermore, as stated at page 5 of our Decision, “the alternative embodiment depicted in figure 8 of Allen utilizes a back film sheet.” Moreover, while Appellants conclude that Allen weighed the pros and cons of forming the bottom film *in situ*, but selected the use of a separate dispensing roll, we are not persuaded that such a selection is evidence of the nonobviousness of selecting *in situ* formation as an alternative.

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We remain of the opinion that the prior art cited by the Examiner establishes the obviousness of methods within the scope of the appealed claims.

We have granted Appellants' request to the extent we have reconsidered our decision, but we deny it with respect to making any change therein.

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

DENIED

clj

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