

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 NORMAN C. FAWLEY

Appeal 2006-1207
Application 10/354,491
Technology Center 1700

Decided: APRIL 18, 2007

Before BRADLEY R. GARRIS, PETER F. KRATZ, and LINDA M. GAUDETTE, *Administrative Patent Judges*.¹

GARRIS, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

This is in response to a Request, filed November 20, 2006, for rehearing of our decision, mailed September 20, 2006, wherein we affirmed the Examiner's § 102 and § 103 rejections of claims 14-18, 20-22, and 24.

¹ Judge Gaudette has been substituted for Administrative Patent Judge Franklin who participated in the original decision but is unavailable for participation in the subject Request for Rehearing.

Concerning the affirmed § 102 rejection of claims 14, 15, 17, 18, 21, and 22, the Appellant reasserts his argument that Wilhelm's coating 3 with fibers 4 embedded therein does not satisfy the composite reinforcement limitation of the independent claims. In this regard, Appellant contends that the claim phrase "composite reinforcement" should be interpreted as a combination of materials that performs a reinforcement function (Request 3). According to the Appellant, Wilhelm's coating with fibers does not provide any sort of reinforcement (Request 4).

However, as pointed out on page 6 of our decision, the fibers pressed into Wilhelm's coating are expressly disclosed as being reinforcement fibers (Translation 10). It is reasonable, therefore, to consider Wilhelm's composite or combination of coating and fiber materials to be a composite reinforcement, that is, a composite which performs a reinforcement function. Otherwise, the fibers 4 pressed into coating 3 would not have been expressly described by Wilhelm as reinforcement fibers (*id.*). *See Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Int. 1990). Under these circumstances, it is appropriate to shift to the Appellant the burden of proving his opposing belief. *See In re Scheiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). On the record of this appeal, the Appellant has provided no such proof.

Concerning the § 103 rejection based on Wilhelm in view of Dempster, the Appellant reasserts his argument that Dempster would not have suggested providing Wilhelm's method with the priming step recited in claims 16 and 20. However, for the reasons fully detailed on pages 17 and 18 of our decision, we continue to believe that these references establish a *prima facie* case of obviousness with respect to this priming step. As for

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Appellant's contention that the method of Wilhelm would not be facilitated by priming (Request 5), we reiterate that this assertion is unsupported by the evidence of record and, therefore, necessarily lacks persuasive merit (*see Decision 18*).

In summary, we have fully considered the Appellant's Request but are unconvinced that we should modify our decision.

The Request for Rehearing is DENIED.

BRG/cam

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