

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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 CHARLES A. WICHT

Appeal No. 2006-1356
Application No. 10/375,826

ON BRIEF

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

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-22. Claims 23-31 have been withdrawn from consideration in view of a restriction requirement. Claim 1 illustrative:

1. A process for preventing taint-causing compounds from entering beverages and bonding to taint-causing compounds from within the beverage, comprising:

forming a film onto an article, said film comprising a material that chemically bonds to at least one of said taint-causing compounds in the treated beverage in sufficient quantity as to sufficiently prevent said taint-causing compounds in the treated beverage from being

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detectable by taste or smell, wherein at least a portion of said treated article and said film are exposed to said beverage so as to capture taint-causing compounds within the beverage.

The examiner relies upon the following references in the rejection of the appealed claims:

Mackie et al. (WO '648)	WO 00/64648	Nov. 2, 2000
(Published Intell. Prop. Org. Patent Application)		
Mackie et al. (WO '649)	WO 00/64649	Nov. 2, 2000
(Published Intell. Prop. Org. Patent Application)		

Capone et al. (Capone), "Absorption of chloroanisoles from wine by corks and by other materials," Australian Journal of Grape and Wine Research, 5(3), pp. 91-98 (1999).

Appellant's claimed invention is directed to a process for preventing taint-causing compounds from entering beverages. The process entails forming a film on an article, such as a cork or bottle, wherein the film comprises a material, such as polyethylene, that chemically bonds to the taint-causing compounds. Taint-causing compounds within the beverage are captured by the film on the article.

Appealed calms 1-5, 8-12, 14-16, 19 and 22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by either WO '648 or WO '649. Claims 6, 7, 13, 17 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over WO '648 or WO '649. Claims 20 and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over WO '648 or WO '649 in view of Capone.

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Appellant does not present separate arguments for the groups of claims that are separately rejected by the examiner.

Accordingly, the groups of claims separately rejected stand or fall together.

We have thoroughly reviewed each of appellant's arguments for patentability. However, we are satisfied that the examiner's rejections are supported by the prior art evidence relied upon and in accordance with current patent jurisprudence. Accordingly, we will sustain the examiner's rejections for essentially those reasons expressed in the answer, and we add the following primarily for emphasis.

We consider first the examiner's Section 102 rejection over either WO '648 or WO '649.¹ There is apparently no dispute that WO '648 discloses applying a material, such as a polyethylene-based polymer, to a wine cork, bottle or container for the purpose of absorbing and reacting with taint-causing compounds, such as 2,4,6-trichloroanisole (TCA). It is appellant's contention that the material of the reference acts as a diffusion barrier which prevents taint-causing compounds to enter into the beverage, but the reference does not teach that the film material

¹Since appellant acknowledges that WO '649 is essentially the same as WO '648, we will limit our discussion to the rejection based on WO '648.

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captures taint-compounds within the beverage, as claimed. However, appellant has not refuted the examiner's reasonable conclusion that the polymeric material applied to corks and bottles by WO '648 "will inherently react with taint compounds such as TCA, not [sic, no] matter what their source is" (page 5 of answer penultimate paragraph. It is well settled that when a claimed process reasonably appears to be substantially the same as a process disclosed by the prior art, the burden is on the applicant to prove that the prior art process does not necessarily or inherently possess characteristics attributed to the claimed process. In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990); In re Best, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977). In the present case, appellant has not advanced a convincing rationale why the polymeric materials of WO '648, including the polyethylene-based materials, would not be reasonably expected to absorb taint-causing compounds within the beverage contained in a bottle. Appellant has provided no reason why the polymeric material of the reference, coated on either a cork or a bottle, would not be expected to capture taint-causing compounds within the beverage, as well as to serve as a diffusion barrier for such compounds within the cork or bottle wall.

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Concerning the Section 103 rejection of claims 6, 7, 13, 17 and 18, appellant presents a separate argument only for claim 7, which recites that the "film covers less than all surfaces of said article." We agree with the examiner, however, that it would have been obvious for one of ordinary skill in the art to apply the polymeric material of the references to only some surfaces of the cork or bottle for a variety of reasons, not the least of which is cost reduction.

As for separately argued claim 20 which recites that the polyolefin may be polyethylene, we fully concur with the examiner that Capone's teaching that polyethylene is effective at removing TCA from wine would have motivated one of ordinary skill in the art to use polyethylene as the polymeric material in WO '648. We are not persuaded by appellant's argument of why "would one use the polyethylene taught by Capone as a coating on a cork in the manner taught by the WO 00/64648 and WO 00/64649 references?"

(Page 5 of brief, penultimate paragraph). The answer is quite simple. Since WO '648 teaches a myriad of polymers, including polyethylene based polymers, for interreacting with taint-causing

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compounds, Capone would have motivated one of ordinary skill in the art to select the disclosed polyethylene for the polymeric material of WO '648.

As a final point, we notice that appellant bases no argument upon objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the inference of obviousness established by the applied prior art.

In conclusion, based on the foregoing and the reasons well-stated by the examiner, the examiner's decision rejecting the appealed claims is affirmed.

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

AFFIRMED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
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BRADLEY R. GARRIS)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
CHARLES F. WARREN)	
Administrative Patent Judge)	

ECK/hh

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HOGAN & HARTSON, LLP
ONE TABOR CTR.
STE. 1500
1200 SEVENTEENTH ST.
DENVER, CO 80202