The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JERZY Z. MYDLARZ, JOHN D. LEWIS,
ROGER L. KLAUS, and RAYMOND S. EACHUS

Appeal No. 2006-1866
Application No. 10/639,537

ON BRIEF

Before KIMLIN, PAK, and KRATZ, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-23. Claim 1 is illustrative:

1. A radiation-sensitive emulsion comprised of silver halide grains (a) containing greater than 50 mole percent chloride, based on silver, (b) having greater than 50 percent of their surface area provided by (100) crystal faces, and (c) having a central portion accounting for up to 99 percent of total silver and containing a first dopant of Formula (I):

(I) $$[RuL_6]^n$$

wherein n is -2, -3 or -4, and L_6 represents bridging ligands which can be independently selected, provided that at least four of the ligands are anionic ligands, and at least one of the ligands is a cyano ligand or a ligand more electro-negative than a cyano ligand; and

a second dopant comprising an iridium coordination complex having ligands each of which are more electropositive than a cyano ligand;

wherein the first dopant and the second dopants are located together in a common dopant band in the central portion of the silver halide grains, where the common dopant band is formed by concurrently introducing the first and second dopants into the silver halide grains after at least 70 percent of the silver has been precipitated for such grains and before 90 percent of the silver has been precipitated for such grains, and wherein the second dopant is present in the silver halide pains in a concentration of at least 10^{-7} mole/mole of total silver.

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

Olm et al. (Olm)	5,360,712	Nov. 1, 1994
Bell	5,474,888	Dec. 12, 1995
Mydlarz et al. (Mydlarz)	5,783,373	Jul. 21, 1998

Appellants' claimed invention is directed to a radiation-sensitive emulsion comprising silver halide grains having a central portion containing first and second dopants comprising ruthenium, and iridium, respectively. The first and second dopants are located together in a common dopant band in the central portion of the grains that is formed by introducing the dopants into the grains after at least 70 percent, but before 90 percent, of the silver has been precipitated for such grains.

Appealed claims 1-18 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Bell. Claims 1-23 stand

rejected under 35 U.S.C. § 103(a) as being unpatentable over Mydlarz, and claims 19-23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bell in view of Mydlarz. In addition, claim 12 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Bell in view of Olm.

We consider first the examiner's rejection of claims 1-18 under § 102 over Bell.[1] We will sustain this rejection for essentially those reasons expressed by the examiner. Bell, like appellants, describes a radiation-sensitive emulsion comprised of silver halide grains that have a first dopant comprising ruthenium and a second dopant comprising iridium in the central portion of the silver halide grains. Also, Bell teaches that the ruthenium-containing dopant is more preferably introduced after at least 70 percent of the silver has been precipitated and, in certain instances, it is desirable that the dopant be incorporated after 90 percent of the silver has been precipitated (see column 3, lines 56 et seq.). Also, Bell teaches that the iridium-containing dopant is preferably introduced after 80-98 percent of the silver has been precipitated, and, optimally, the iridium-containing dopant may

[1] We note that appellants have not separately argued any of the claims rejected under § 102. Accordingly, the rejection of claims 1-18 under § 102 over Bell stands or falls together with claim 1.

be introduced after 90 percent of the silver has been precipitated. Accordingly, inasmuch as Bell fairly describes the introduction of both the first and second dopants after precipitation of amounts of silver that fall within the claimed range of 70-90 percent, we agree with the examiner that Bell meets the claimed limitations with respect to the common dopant band of the two dopants. Significantly, as pointed out by the examiner, the present claims "do not require that the common band needs to be found *only* within the 70-90% range and it is not required that it consist of the 70-90% region" (page 8 of Answer, first sentence). In other words, the appealed claims do not require that all the first and second dopants be introduced after at least 70 percent, and before 90 percent, of the silver has been precipitated. The claims are sufficiently broad to encompass both the first and second dopants to be present in the silver grains outside the recited band, as well. Hence, since Bell describes the presence of both dopants in a substantial portion of the recited band, as well as their presence in a small portion outside the recited band, we perceive no patentable distinction between silver halide grains within the scope of the appealed claims and those fairly described by Bell.

Appellants maintain that the present claims specifically require that the dopants of Formula (I) comprise ruthenium whereas the dopants of Bell may or may not comprise ruthenium. However, as explained by the examiner, Bell expressly discloses that the dopant preferably comprises a transition metal selected from Group 8 of the periodic table, and specifically exemplifies many ruthenium-containing dopants in the table bridging columns 4 and 5 (see also column 4, lines 8-11). As such, we find that Bell describes a first dopant comprising ruthenium within the meaning of § 102.

Regarding the § 103 rejections of the appealed claims, appellants rely upon specification evidence of unexpected results to rebut any prima facie case of obviousness (see the principal brief at page 6, second paragraph, and pages 7-9). We have searched the Examiner's Answer in vain, however, for any discussion of the evidence argued by appellants. Hence, the § 103 rejections are not ripe for decision by the Board. Accordingly, this application is remanded to the examiner to respond to appellants' argument based upon specification data.

In conclusion, based on the foregoing, the examiner's rejection of claims 1-18 under 35 U.S.C. § 102 is affirmed.

In addition to affirming the examiner's rejection of one or more claims, this decision contains a remand. 37 CFR § 41.50(e) (effective September 13, 2004, 69 Fed. Reg. 49960 (August 12, 2004), 1286 Off. Gaz. Pat. Office 21 (September 7, 2004)) provides that:

> Whenever a decision of the Board includes a remand, that decision shall not be considered final for judicial review. When appropriate, upon conclusion of proceedings on remand before the examiner, the Board may enter an order otherwise making its decision final for judicial review.

Regarding any affirmed rejection, 37 CFR § 41.52(a)(1) provides "[a]ppellant may file a single request for rehearing within two months from the date of the original decision of the Board."

The effective date of the affirmance is deferred until conclusion of the proceedings before the examiner unless, as a mere incident to the limited proceedings, the affirmed rejection is overcome. If the proceedings before the examiner do not result in allowance of the application, abandonment or a second appeal, this case should be returned to the Board of Patent Appeals and Interferences for final action on the affirmed rejections, including any timely request for rehearing thereof.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (effective Sep. 13, 2004; 69 Fed. Reg. 49960 (Aug. 12, 2004); 1286 Off. Gaz. Pat. Office 21 (Sep. 7, 2004)).

AFFIRMED AND REMANDED

EDWARD C. KIMLIN Administrative Patent Judge	)	
CHUNG K. PAK Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
PETER F. KRATZ Administrative Patent Judge	)	

ECK:clm

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