

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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 RICHARD A. JEWELL and JULIE A. REIMER

Appeal No. 2006-2357
Application No. 10/666,262

ON BRIEF

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

REMAND TO THE EXAMINER

At page 2 of appellants' brief, appellants state that "[t]his Appeal is related to the Appeal in Application No. 10/228,815, filed August 27, 2002." The related application was remanded to the examiner for consideration of specification data that appellants rely upon for demonstrating unexpected results (Appeal No. 2006-1073, remanded March 29, 2006). The examiner's answer in the related appeal did not provide a discussion or rebuttal of the specification data. Likewise, in the present appeal, appellants rely upon specification data that is not

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addressed in the examiner's answer. Accordingly, this application is remanded to the examiner for consideration and analysis of appellants' specification data.

The examiner should give consideration to the points made at page 4 of our remand in the related appeal. Also, while appellants maintain at page 7 of the principal brief that "cellulose fibers treated with what was heretofore considered to be biocidally effective amounts DDAC or DDAB, have required significantly higher energy input for refining and are also subject to considerable degradation during the refining process," the examiner should consider whether the specification results, which assertedly use relatively smaller amounts of DDAC and DDAB, are truly unexpected with respect to requiring less energy. It would appear that one would expect that using lesser amounts of DDAC and DDAB would require less energy and achieve less fiber degradation. It also noteworthy that, as stated by the examiner, Canadian '564 teaches that the total amount of biocidal salt impregnate is at least one percent, which falls within the claimed range of concentration. Accordingly, the examiner should weigh the evidence of obviousness for using the claimed amount of DDAB and DDAC, which may also include a copper salt, against any truly unexpected results, i.e., the examiner must weigh the

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evidence of obviousness against any evidence of nonobviousness.

In re Skoner, 517 F.2d 947, 950, 186 USPQ 80, 82 (CCPA 1975); In re Skoll, 523 F.2d 1392, 1397, 187 USPQ 481, 484 (CCPA 1975); In re Nolan, 553 F.2d 1261, 1267, 193 USPQ 641, 645 (CCPA 1977).

As a result, based on the foregoing and the reason set forth in our remand in the related appeal, the application is remanded to the examiner.

This remand to the examiner pursuant to 37 CFR § 41.50(a)(1) (effective September 13, 2004), 69 Fed. Reg. 49960 (August 12, 2004), 1286 Off. Gaz. Pat. Office 21 (September 7, 2004) is made for further consideration of a rejection. Accordingly, 37 CFR § 41.50(a)(2) applies if a supplemental examiner's answer is written in response to this remand by the Board.

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REMANDED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
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CHUNK K. PAK)	BOARD OF PATENT
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CHARLES F. WARREN)	
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ECK/hh

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