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 AKHLAQ MOMAN, ATIEH ABU-RAQABAH, ORASS HAMED, and RAJU RAGHAVAN

Appeal 2006-2487
Application 10/227,075
Technology Center 1700

Decided: August 24, 2006

Before KIMLIN, PAK, and FRANKLIN, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the Final Rejection of clams 1-3, 8, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 40, 42, 44, 46, and 48. Claim 1 is illustrative:

> 1. A process for homopolymerization of an olefin or copolymerization of at least one olefin with one alpha-olefin to produce polymers which comprises contacting the olefin or the olefin and alpha-olefin in the absence of an electron donor with a catalyst composition in the presence of a cocatalyst, said catalyst composition prepared according to a process consisting essentially of the sequential steps of:

(a) treating PVC-based particles with an organomagnesium compound in an inert hydrocarbon solvent; and

(b) contacting said treated PVC-based particles of step (a) with a transition metal compound selected from the group consisting of $TiCl_4$, VCl_4, and $ZrCl_4$, in the absence of an electron donor.

The Examiner relies upon the following reference as evidence of obviousness:

Sasaki	US 5,051,484	Sep. 24, 1991

All of the appealed claims stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sasaki.

Appellants submit at page 5 of the principal Brief that all the appealed claims "stand or fall together." Accordingly, all the appealed claims stand or fall together with claim 1.

We have thoroughly reviewed each of Appellants' arguments set forth in the principal and Reply Briefs on appeal. However, we are in complete agreement with the Examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of Section 103 in view of the applied prior art. Accordingly, we will sustain the Examiner's rejection as set forth in the Answer, which we incorporate herein, and we add the following for emphasis only.

As explained by the Examiner, Sasaki, like Appellants, discloses a process for polymerizing olefins by contacting the olefin in the absence of an electron donor with a catalyst composition prepared by treating PVC-particles with an organo magnesium compound in a hydrocarbon solvent, and treating the PVC-particles with a transition metal compound, e.g., $TiCl_4$. Consequently, we have no doubt that one of ordinary skill in the art would have found it prima facie obvious

to form a homopolymer or copolymer of an olefin in accordance with processes within the scope of claim 1 on appeal. Appellants submit that Sasaki's disclosure that the porous carrier can be "an organic porous polymer selected from the group consisting of polystyrene, polyacrylic ester, polyacylonitrile; polyvinylchloride and polyolefin" (see claim 1) "encompass thousands of potential carriers" (Br. 5-6). However, as properly pointed out by the Examiner, Sasaki expressly teaches that polymer beads of polyacylonitrile are preferable, and that "those of polystyrene, styrene-divinylbenzene copolymer and polyvinylchloride are more preferable" (col. 8, ll. 45-47). Consequently, inasmuch as PVC is one of the "more preferable" materials taught by Sasaki, we hardly agree with Appellants' characterization of Sasaki as teaching PVC in a laundry list of polymer particles. Clearly, one of ordinary skill in the art is directed by Sasaki to do precisely what Appellants have done, namely, select PVC as a suitable porous polymeric carrier for the catalyst.

We are also not persuaded by Appellants' argument that Example 24 of Sasaki teaches one of ordinary skill in the art that "transition metal compounds are to be added to PVC carriers in conjunction with an electron donor (tetraethoxysilane in the Example 24)" (Br. 6, third paragraph). We find that the Examiner has effectively refuted this argument by pointing out that the first listed method among the five disclosed by Sasaki for making the catalyst comprises treating the porous polymer carrier with an organo magnesium compound, and then treating it with TiCl4 in the absence of an electron donor. We fully concur with the Examiner that one of ordinary skill in the art would have understood that Sasaki teaches the use of an electron donor as an option.

Also, Appellants have not demonstrated that processes within the scope of the appealed claims, performed without an electron donor, achieve the benefits ascribed to the use of an electron donor by Sasaki. It is well settled that the elimination or omission of a feature taught by the prior art along with its attendant function or advantage is a matter of obviousness for one of ordinary skill in the art. *In re Thompson*, 545 F.2d 1290, 1294, 192 USPQ 275, 277 (CCPA 1976); *In re Kuhle*, 526 F.2d 553, 555, 188 USPQ 7, 9, (CCPA 1975). Consequently, even if it were so that Sasaki's processes use an electron donor, Appellants' claimed non-use of an electron donor would have been prima facie obvious to one of ordinary skill in the art.

As a final point, we note that Appellants base no argument on objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the prima facie case of obviousness established by the Examiner.

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

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

AFFIRMED

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