

The opinion in support of the decision being entered today is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DONALD VARNER

Appeal 2006-2709
Application 10/254,295
Technology Center 1700

Decided: July 23, 2007

Before EDWARD C. KIMLIN, CHUNG K. PAK, and PETER F. KRATZ,
Administrative Patent Judges.

KRATZ, *Administrative Patent Judge.*

DECISION ON APPEAL

This is a decision on an appeal from the Examiner's final rejection of claims 1-10, the only claims that remain pending in this application. We have jurisdiction pursuant to 35 U.S.C. §§ 6 and 134.

Appellant's application is directed to an invention involving a method of treating a surface with a wax material. Wax with a carrier or solvent is spray applied to a surface that has some crevices or pores; that is, the surface is textured or patterned, such as a painted vehicle surface. Then, a wiper blade is contacted with the surface and drawn across it in a wiping action resulting in partial separation of carrier liquid from the particles of wax while forcing wax particles into surface pores and/or crevices. Claim 1 is illustrative and reproduced below:

1. A method for improving the specularity of a surface, comprising the steps of:
 - (a) applying a wax material suspended in a carrier or solvent by spraying onto the surface, wherein the surface includes at least textures or patterns;
 - (b) providing a wiper blade having a flexible panel including a lip formed along the lower edge; and
 - (c) drawing the lip of the wiper blade across the surface, wiping away the carrier or solvent and leaving the wax material in pores and crevices of the textured or patterned surface.

The Examiner relies on the following prior art references as evidence in rejecting the appealed claims:

Tomingas	US 3,649,987	Mar. 21, 1972
Yeiser	US 6,159,551	Dec. 12, 2000

Claims 1-10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Yeiser in view of Tomingas.

Appellant does not separately argue the rejected claims in the Brief. Thus, we select claim 1, as the representative claim on which we decide this appeal.

We refer to the Brief and Answer for the respective positions of Appellant and the Examiner. We affirm the stated rejection for the reasons set forth in the Answer. Moreover, we are in substantially complete agreement with the Examiner's fact finding and the rebuttal of Appellant's arguments set forth in the Brief, as presented in the Answer. Accordingly, we adopt the Examiner's position, as set forth in the Answer, as our own and add the following for emphasis only.

Under 35 U.S.C. § 103, the factual inquiry into obviousness requires a determination of: (1) the scope and content of the prior art; (2) the differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) any secondary considerations. *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966). “[A]nalysis [of whether the subject matter of a claim is obvious] need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int'l Co. Teleflex, Inc.*, 127 S.Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007) quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1396 (Fed. Cir. 2006); see also *DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1361, 80 USPQ2d 1641, 1645 (Fed. Cir. 2006)(“The motivation need not be found in the references sought to be combined, but may be found in any number of sources, including common knowledge, the prior art as a whole, or the nature of the problem itself.”). The analysis supporting obviousness, however, should be made explicit and should “identify a reason that would have prompted a person of ordinary

skill in the relevant field to combine the elements" in the manner claimed. *KSR*, 127 S. Ct. at 1732, 82 USPQ2d at 1389.

Here, the Examiner has furnished an explicit analysis, including findings of fact, in accord with these principles, including a convincing line of reasoning in support of a determination of a *prima facie* case of obviousness in the Answer.

As for the argued claim 1 requirement for leaving wax in surface pores and crevices, we note that Appellant acknowledges that it is well known in the art that vehicle painted surfaces include pores/crevices (Specification 5 and 22).¹ Furthermore, we agree with the Examiner that using the wiper of Tomingas to dry the vehicle surface of Yeiser after application of sprayed wax particles in a water carrier as a substitute for the towel drying of Yeiser would have been obvious to one of ordinary skill in the art at the time of the invention from the combined teachings of the references. Moreover, this modified method would have been expected to result in applied wax particles being forced into the vehicle painted surface crevices and pores. *See* Answer at pp. 5 and 6.

Appellant's argument that the combined teachings of the applied references would not have suggested the use of a wiper blade instead of a chamois for drying a surface having an aqueous sprayed on wax applied thereto are effectively rebutted by the Examiner (Answer 8). In this regard,

¹ It is axiomatic that admitted prior art, including prior art found in an Applicant's Specification, may be used in determining the patentability of a claimed invention and that consideration of the prior art cited by the Examiner may include consideration of the admitted prior art found in the Specification. *In re Nomiya*, 509 F.2d 566, 570-571, 184 USPQ 607, 611-612 (CCPA 1975); *In re Davis*, 305 F.2d 501, 503, 134 USPQ 256, 258 (CCPA 1962).

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Tomingas teaches that using sponges or chamois as in the prior art to dry surfaces is time consuming and requires repeated strokes in comparison to the single stroke required of the wiper blade taught by Tomingas (Tomingas; col. 1, ll. 5-25). “The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” KSR, 127 S. Ct. at 1739, 82 USPQ2d at 1395.

In further regard to this matter, Appellant asserts that the alleged blunt sponge-like apparatus of Tomingas would not force wax particles into the vehicle surface crevices and pores (Br. 8). This argument is not persuasive for reasons articulated by the Examiner (Answer 11-13). We only add that Appellant has not substantiated this argument with any evidence, much less persuasive and compelling evidence establishing unexpected or unpredictable results for the claimed method over that expected by an artisan of ordinary skill from the applied prior art teachings.

CONCLUSION

The decision of the Examiner to reject claims 1-10 under 35 U.S.C. § 103(a) as being unpatentable over Yeiser in view of Tomingas 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)(1)(iv)(2006).

AFFIRMED

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