

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 ANKA TRAJKOVSKA-PETKOSKA, STEPHEN D. JACOBS,
TANYA Z. KOSC, and KENNETH L. MARSHALL

Appeal 2006-2777
Application 10/383,603
Technology Center 1700

Decided: September 20, 2006

Before PAK, WALTZ, and KRATZ, *Administrative Patent Judges*.
WALTZ, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on an appeal from the Primary Examiner's Final Rejection of claims 1 through 4, 7, 9, 11, and 13 through 25. Claims 5, 6, 8, 12 and 26 are the only other claims pending in this application and stand allowed by the examiner (Br. 1). We have jurisdiction pursuant to 35 U.S.C. § 134.

According to Appellants, the invention is directed to a method for making precisely configured flakes, where the flakes are made by heating liquid crystal material in a flexible replica mold, with the flakes being released from the replica

mold by flexing (Br. 2). Claim 1 is illustrative of the invention and is reproduced below:

1. The method of making flakes or platelets of certain configurations which comprises the steps of:

molding said flakes or platelets in a mold of material more flexible than said flakes or platelets when solid and in wells in a surface of said mold having said certain configuration;

flexing said mold to cause said surface to bend when said flakes or platelets become solid therein so as to release said flakes or platelets from said mold; and

said configuration desired for said flakes or platelets is obtained by the step of molding said mold with the aid of a master having projections and trenches of said configurations to provide an inverse replica of said master.

The Examiner has relied upon the following references as evidence of obviousness:

De Brocke	US 2,505,947	May 2, 1950
Morris	US 5,792,411	Aug. 11, 1998
Etzbach	US 6,136,251	Oct. 24, 2000

Claims 1-4, 7, 9, 11 and 13-25 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Etzbach in view of De Brocke and Morris (Answer 3). We REVERSE this rejection for reasons stated below.

OPINION

The Examiner finds that Etzbach discloses making flakes or platelets of certain configurations by molding the flakes in a “mold,” i.e., a flexible screen, which screen the Examiner presumes would be more flexible than the flakes when

solid and is inclusive of “wells” in a surface of the mold (Answer 3). The Examiner further finds that Etzbach fails to show that the mold is flexed or bent to remove the solid flakes and that the mold is made from a master mold having the desired configuration (Answer 3-4, citing col. 13, Example 1, of Etzbach) . The Examiner applies De Brocke for the disclosure of molding ice cubes in a variety of shapes employing a bendable plastic or rubber mold, where the cavities or wells are filled with the molded fluid (water) and the mold is subsequently bent or twisted to remove the solid, frozen cubes (Answer 4). From these findings, “[g]iven that the primary reference [Etzbach] employs a flexible mold or screen,” the Examiner concludes that it would have been obvious to have employed a mold “similar” to that taught by De Brocke to remove the solid material of Etzbach by flexing the mold (Answer 4).

The initial burden rests with the Examiner of establishing some reasoning, motivation, or suggestion to combine the references as proposed to achieve the claimed invention. *See In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). As correctly argued by Appellants (Br. 3-4 and 5-6), we determine that the Examiner has resorted to speculation or impermissible hindsight and failed to establish any basis in the references or knowledge in this art that would have led to this combination of references. *See Dembiczak, supra*.

We determine that the Examiner, on this record, has failed to establish that the “flexible screen” of Etzbach would have been more flexible than the solid flakes formed in the “through openings” of the screen, as required by claim 1 on appeal (Etzbach, col. 1, ll. 33-35). The Examiner only finds that the flexible screen

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of Etzbach “presumably would be more flexible than the flakes when solid” but provides no evidentiary basis for this presumption (Answer 3).

We also determine that the Examiner has failed to establish why one of ordinary skill in the art would have substituted the flexible mold of De Brocke, which has wells or cavities that extend only partially through the mold (see Figs. 2 and 3), for the flexible screen of Etzbach which has voids or openings extending through the net or screen (col. 1, ll. 33-35 and 54-55). The Examiner’s reasoning that “it would not be that much of a stretch” to make the proposed modification does not meet the Examiner’s burden (Answer 6). The Examiner has also failed to establish why one of ordinary skill in the art would have used the flexing method of flake removal taught by De Brocke since Etzbach specifically teaches several alternative methods of flake removal which does not include flexing (col. 12, ll. 60-65).

The Examiner has applied Morris for the teaching of using a master mold with a replicated article molded therefrom as the inverse of the master (Answer 4). Accordingly, Morris does not remedy the deficiencies discussed above.

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For the foregoing reasons, we determine that the Examiner has not established a prima facie case of obviousness based on the reference evidence. Therefore we REVERSE the rejection on appeal.

REVERSED

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TAW/hh