

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

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* DWIGHT W. SCHWARK,  
DREW V. SPEER AND  
LARRY B. MCALLISTER

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Appeal 2006-2900  
Application 10/683,531  
Technology Center 1700

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Decided: October 27, 2006

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Before KIMLIN, WALTZ, and GAUDETTE, *Administrative Patent Judges*.  
KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-6, 9-16, and 18-22. Claim 1 is illustrative:

1. A multilayer film comprising:

- a) a first and second outer layer each comprising a polymer; and
- b) an internal layer comprising an oxygen scavenger;

wherein at least one of the first and second outer layers comprises a blend of:

i) a polymer

ii) a siloxane having a viscosity of from  $1 \times 10^7$  centistokes to  $5 \times 10^7$  centistokes, and

iii) an antiblock agent;

wherein the kinetic coefficient of friction (film surface to film surface) of the film is 0.5 or less (ASTM D 1894-99); and

wherein the average oxygen scavenging rate of the film is at least 20 cc/m<sup>2</sup>/day four days after an oxygen scavenging property of the film is activated.

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

Peiffer	US 5,681,650	Oct. 28, 1997
Hauenstein	US 5,708,084	Jan. 13, 1998
Blinka	US 5,834,079	Nov. 10, 1998
Mehta	US 6,080,489	Jun. 27, 2000

Appellants' claimed invention is directed to a multilayer film comprising first and second outer layers and an internal layer comprising an oxygen scavenger. At least one of the outer layers comprises a blend of a

polymer, a siloxane of the recited viscosity and an antiblock agent. The film has the specified coefficient of friction and average oxygen scavenging rate.

Appealed claims 1-6, 9-16, and 18-22 stand rejected under 35 U.S.C. § 103 as being unpatentable over Blinka in view of Peiffer, Hauenstein and Mehta.

Appellants do not present an argument that is reasonably specific to any particular claim on appeal. Accordingly, all of the appealed claims stand or fall together with claim 1.

We have thoroughly reviewed each of Appellants' arguments for patentability. 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 for essentially those reasons expressed in the Answer.

There is no dispute that Blinka, like Appellants, discloses a multilayer film having first and second polymeric outer layers and an internal layer comprising an oxygen scavenger, wherein the outer polymeric layer comprises an antiblocking agent and a lubricant. As recognized by the Examiner, Blinka does not teach the presently claimed siloxane as the lubricant. However, Peiffer teaches a multilayer film wherein the polymeric outer layer contains an antiblocking agent and a siloxane material. While Peiffer does not disclose the claimed viscosity for the siloxane material, we agree with the Examiner that Hauenstein and Mehta evidence the obviousness of selecting a siloxane material having a viscosity within the claimed range for the outer polymeric layer of a multilayer film. Hauenstein teaches that siloxane materials having a viscosity of  $2.5 \times 10^7$  cps improve

the hydrophobicity and processability of polyolefin compositions, whereas Mehta's blend of high molecular weight and low molecular weight poly siloxanes reduces the coefficient of friction of polymeric films.

Appellants do not rebut the Examiner's legal conclusion that it would have been obvious for one of ordinary skill in the art to use the polysiloxane blend of Mehta in the outer layer of Blinka to improve processability and reduce the coefficient of friction. Rather, Appellants explain that conventional packaging films containing antiblock/slip components "have relied on various inorganic antiblock agents in combination with amide wax slip agents,"<sup>1</sup> and that they have "found that conventional amide wax usage in oxygen scavenging films has been shown to degrade the oxygen scavenging performance of the film, e.g., oxygen scavenging rate, and also can negatively affect the organoleptic attributes of the film."<sup>2</sup> Appellants further explain that "although conventional combinations of inorganic antiblock and fatty amide wax slip agents can be effective for producing an oxygen scavenging film with low COF, properties such as oxygen scavenging rate, heat seal, and organoleptics were significantly degraded by the waxes."<sup>3</sup> Hence, Appellants' solution to the stated problem is utilizing the claimed siloxane material in lieu of the amide wax of the prior art.

Appellants' argument fails to address the thrust of the Examiner's rejection, namely, the obviousness of using the claimed polysiloxane as the lubricant in the outer layer of Blinka to improve processability and reduce the coefficient of friction. Indeed, as pointed out by the Examiner, Blinka

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<sup>1</sup> Page 8 of Brief, second paragraph.

<sup>2</sup> Page 8 of Brief, third paragraph.

<sup>3</sup> Page 8 of Brief, fourth paragraph.

does **not** teach the inclusion of an amide wax in combination with the inorganic antiblocking agent. Also, as pointed out by the Examiner, Peiffer teaches that polymeric films containing an antiblocking agent and the amide wax discussed by Appellants have deficient blocking behavior at elevated temperature and are unsatisfactory with respect to their running and heat-sealing properties and block values at elevated temperatures. As a result, we find that the applied prior art would have properly motivated one of ordinary skill in the art, as well as Appellants, to eschew the use of an amide wax in the outer polymeric layer of a multi-layer film. While Appellants submit that none of Peiffer, Hauenstein and Mehta appears to disclose an oxygen scavenger, the use of an oxygen scavenger in an internal layer of a multi-layer film is taught by Blinka.

As a final point, we note that Appellants base no argument upon objective evidence of nonobviousness, such as unexpected results. Although Appellants invite our attention to specification examples and comparative examples as evidence of the benefit of the claimed combination, it is not within the province of this Board to analyze specification data and ferret out results that are favorable to Appellants. Manifestly, the burden of analyzing and explaining data to support an argument of unexpected results rests on the party asserting it. *In re Klosak*, 455 F.2d 1077, 1080, 173 USPQ 14, 16 (C.C.P.A. 1972).

In conclusion, based on the foregoing, the Examiner's decision rejecting the appealed claims is affirmed.

Appeal 2006-2900  
Application 10/683,531

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(iv)(effective Sept. 13, 2004).

AFFIRMED

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CRYOVAC, INC.  
SEALED AIR CORP.  
P.O. BOX 464  
DUNCAN, SC 29334