

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* RYOKO KITANO, MIKUMI AMO, and MASAMI INOUCHI

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Appeal 2006-3309  
Application 10/311,263  
Technology Center 1700

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Decided: January 18, 2007

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Before EDWARD C. KIMLIN, BRADLEY R. GARRIS, and THOMAS A. WALTZ, *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 claim 11, which is the only claim pending in this application (Br. 1). We have jurisdiction pursuant to 35 U.S.C. § 134.

According to Appellants, the invention is directed to a method of laminating optical disks which comprises the steps of placing a lower disk on a turntable, placing an adhesive agent in doughnut form onto the lower

disk, placing an upper disk on a different turntable, applying an adhesive agent in doughnut form onto the upper disk, laminating the upper disk onto the lower disk, and curing the adhesive agents by irradiation with ultraviolet light (Br. 2). Appellants state that by using a smaller amount of adhesive and a smaller radius of the doughnut form on the upper disk as compared to the lower disk any air bubbles contained in the adhesive will be expelled therefrom (Br. 2-3). Claim 11 on appeal is reproduced below:

11. A method of laminating optical disks comprising the steps of:
  - placing a lower disk single sheet on a turntable;
  - applying an adhesive agent in doughnut form onto the lower disk single sheet;
  - placing an upper disk single sheet on a different turntable;
  - applying an adhesive agent in doughnut form onto the upper disk single sheet, the amount of the adhesive agent applied onto the upper disk single sheet being smaller than the amount of the adhesive agent applied onto the lower disk single sheet and the radius of the doughnut form of the adhesive agent applied onto the upper disk single sheet being smaller than the radius of the doughnut form of the adhesive agent applied onto the lower disk single sheet;
  - laminating the upper disk single sheet onto the lower disk single sheet in a manner such that the adhesive agent on the upper disk single sheet and the adhesive agent on the lower disk single sheet first contact with each other; and
  - curing the adhesive agents provided on the lower and upper disk single sheets by irradiation with ultraviolet light rays to form an integrated, laminated optical disk.



by claim 11 on appeal only from the relative sizes of the annular rings of adhesives in Figure 12 of Kotoyori (*see* the Answer and Final Rejection). Although the Examiner does not state any basis for the finding that the relative *amounts* of adhesive in Figure 12 of Kotoyori meet the claim 11 limitation, we presume the Examiner has again relied on the relative amounts as shown in Figure 12 (*id.*). However, it is well established that patent drawings do *not* define the precise proportions of the elements and may *not* be relied on to show particular sizes if the specification is completely silent on the issue. *See Nystrom v. Trex Co.*, 374 F.3d 1105, 1116-17, 71 USPQ2d 1241, 1250 (Fed. Cir. 2004). *See also* 37 C.F.R. §§ 1.81(1988) and 1.84(k)(2004). The Examiner has not pointed to any text in Kotoyori stating that the drawings are to scale. Therefore we cannot sustain the Examiner's rejection.

Upon the return of this application to the jurisdiction of the Examiner, the Examiner should review the cited prior art and any other relevant prior art in the consideration of the obviousness of the claimed method under § 103(a). Of course, any consideration of § 103(a) would necessarily involve consideration of Appellants' evidence of non-obviousness (see the Evidence Appendix attached to the Brief, including Figures 1 and 2).

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The decision of the Examiner is reversed.

REVERSED

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