

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN A. PEDIGO JR.

Appeal 2007-1022
Application 10/778,414
Technology Center 1700

ORDER AND ERRATUM

On March 23, 2007, the Board rendered a Decision on the Appeal in the above-mentioned application. In review of the Decision, the Title page (p. 1) and the top portion of pages 2-5 (Appeal 2007-1018 and Application 10/376,782), respectively, are inconsistent with the body of the Decision (Appeal 2007-1022, Application 10/778,414).

The decision mailed March 23, 2007 is hereby replaced by the Decision mailed with this Order. The correct Appeal number for this Decision is 2007-1022, and the correct Application number is 10/778,414.

Appeal 2007-1022
Application 10/778,414

All time periods in connection with the appeal will be calculated from the date of the Decision and Order mailed herewith. We regret any inconvenience this may have caused.

By the Order of the

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: _____
DALE M. SHAW
Chief Appeals Administrator
(571) 272-9797

DS:ls

Henry S. Jaudon
McNair Law Firm, P.A.
P.O. Box 10827
Greenville, SC 29603-0827

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 JOHN A. PEDIGO JR.

Appeal 2007-1022
Application 10/778,414
Technology Center 1700

Decided: March 23, 2007
Rerailed: April 26, 2007

Before EDWARD C. KIMLIN, CATHERINE Q. TIMM, and
LINDA M. GAUDETTE, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL AND ORDER REMANDING TO EXAMINER

This is an appeal from the final rejection of claims 1-9. Claims 10-12 have been withdrawn from consideration. Claim 1 is illustrative:

1. A webbing having a safety indicator comprising:
synthetic yarns, formed of synthetic material having a known degree of strength loss as a result of exposure to a known amount of ultraviolet light, inter-engaged to form said webbing:

Appeal 2007-1022
Application 10/778,414

said safety device comprises a strip, including phosphorescent material, engaged with said webbing along at least a portion of its length, said phosphorescent material producing a glow when exposed to ultraviolet light, said glow diminishing at a known rate when exposed to a known amount of ultraviolet light;

said phosphorescent material being selected to have said rate of diminishing glow correlated with said rate of strength loss; whereby,

said safety indicator denotes reduced safety of said webbing with reduced glow which signals reduced strength of said synthetic material.

The Examiner relies upon the following reference in the rejection of the appealed claims:

Geisel US 5,674,437 Oct. 7, 1997

Appellant's claimed invention is directed to a webbing comprising synthetic yarns that are known to lose their strength upon exposure to ultraviolet light. The webbing includes a safety indicator engaged with the webbing comprising a strip of phosphorescent material that loses its phosphorescence upon exposure to ultraviolet light. The phosphorescent material is selected to have its rate of diminishing glow correlated with the rate of strength loss of the synthetic yarns. When the safety strip loses its phosphorescence, it is an indication that the synthetic yarns of the webbing have lost their strength.

Appealed claims 1-9 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Geisel.

We have thoroughly reviewed the respective positions advanced by Appellant and the Examiner. In so doing, we find that the Examiner's rejection is not sustainable.

The appealed claims require that the safety strip comprising phosphorescent material be "engaged with" the webbing. We interpret the claim language to mean that the safety strip is separate and distinct, i.e., not one and the same with the synthetic yarns of the webbing. Appellant makes the argument that Geisel "does not teach a safety device or a strip containing phosphorescent material attached to the webbing [but] teaches only a single article formed of material containing phosphorescent material" (Br. 9, fourth para.). The Examiner does not directly address this argument, but essentially reiterates the rejection at page 5 of the Answer regarding "Geisel teaches melt-spinning a yarn with a luminescent pigment or coating a fiber with a luminescent pigment and creating a fibrous material such as a fiber, ribbon, woven, knit, etc." (Answer 5, second para.). While the Examiner's statement is true it does not refute Appellant's reasonable argument that while Geisel teaches a webbing made of phosphorescent synthetic yarns, it does not describe a webbing of synthetic yarns having a safety strip engaged with the webbing. Accordingly, we find that the Examiner has not made out a *prima facie* case of description of the claimed subject matter within the meaning of § 102.

Upon return of this application to the Examiner, the Examiner should consider a rejection of the claimed subject matter under 35 U.S.C. § 103

Appeal 2007-1022
Application 10/778,414

over Geisel, alone, or in combination with other pertinent prior art. The Examiner should consider the obviousness of forming a webbing comprising a mixture of Geisel's phosphorescent synthetic yarns and other known synthetic yarns that are not treated to be phosphorescent. Since Appellant acknowledges that it was known in the art that conventional synthetic yarns lose their strength upon exposure to ultraviolet light at a known rate, and it was known that phosphorescent material loses its glow over time due to exposure to ultraviolet light, the Examiner should consider the obviousness of correlating these two known rates of loss. Also, if the Examiner determines that it would have been obvious to intermingle the phosphorescent fibers of Geisel with non-phosphorescent conventional fibers to form a web, the question arises whether doing so would inherently result in a webbing wherein the diminished glow of the phosphorescent fibers correlates to the loss of strength of the non-phosphorescent fibers to the non-specified degree claimed. We note that the appealed claims do not require that the glow disappear when the fabric reaches a specific, unsafe point of weakness, or any particular degree of weakness.

In conclusion, based on the foregoing, the Examiner's decision rejecting the appealed claims is reversed. Also, the application is remanded to the Examiner for consideration of a rejection of the appealed claims under 35 U.S.C. § 103.

This remand to the examiner pursuant to 37 CFR § 41.50(a)(1) (effective September 13, 2004, 69 Fed. Reg. 49960 (August 12, 2004),

Appeal 2007-1022
Application 10/778,414

1286 Off. Gaz. Pat. Office 21 (September 7, 2004)) is made for further consideration of a rejection. Accordingly, 37 CFR § 41.50(a)(2) applies if a supplemental examiner's answer is written in response to this remand by the Board.

REVERSED AND REMANDED

clj

Henry S. Jaudon
McNair Law Firm, P.A.
P.O. Box 10827
Greenville, SC 29603-0827