

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 MIKAEL COCCO

Appeal No. 2007-1703
Application No. 09/729,261
Technology Center 2800

Decided: April 24, 2007

Before HUBERT C. LORIN, JENNIFER D. BAHR, and ROBERT E. NAPPI,
Administrative Patent Judges.

LORIN, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal from a decision of the Examiner rejecting claims 1-51. 35 U.S.C. § 134 (2002). We have jurisdiction under 35 U.S.C. § 6(b) (2002).

We AFFIRM.

Appellant, in the Brief¹, argues the claims as a group.² Pursuant to the rules, the Board selects representative claim 1 to decide the appeal. 37 C.F.R. § 41.37(c)(1)(vii) (2004). Accordingly, all the claims stand or fall with claim 1.

Claim 1 reads as follows:

1. A transaction card for use with a transaction card sensing device, comprising:

a transaction card core of a material capable of passing at least some wavelengths of visible light;

front and back overlaminants of a material also capable of passing at least some wavelengths of visible light applied to the transaction card core; and

an infrared filter provided to at least one of the transaction card core, the front overlaminant, and the back overlaminant which is capable of passing at least some wavelengths of visible light while preventing passage of infrared light in a predetermined range of wavelengths emitted by an infrared light source of the transaction card sensing device, wherein said infrared filter further comprises an infrared filter material that is embedded within a supporting substance of said transaction card core and incorporated as an integral part of said transaction card core.

¹ Our decision will make reference to Appellant's Appeal Brief ("Br.," filed 17 July 2006) and to the Examiner's Answer ("Answer," mailed 17 November 2006).

² The discussion in the Brief with respect to claims 9-11, 20-31, and 33-50 merely points out what the claims recite. (Br. 8-9). "A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim." 37 C.F.R. § 41.37(c)(1)(vii) (2004).

The invention is an electronic transaction card whose presence can be sensed with an infrared light source. (Specification 1). To assure the card's presence is known to the device, the card is provided with an infrared filtering property. This is accomplished by, for example, incorporating or embedding a dye in the card core. (Specification 5, ll. 2-5, and 9).

All the claims (1-51) are finally rejected under 35 U.S.C. § 102(e) as being anticipated by Lasch (U.S. Patent No. 6,581,839).

A. Issue

Appellant contends that Lasch does not anticipate the claimed invention because it does not describe infrared material embedded in the transaction card core. The Examiner disagrees, finding otherwise. The issue is whether the Examiner erred in finding Lasch describes infrared material embedded in the transaction card core.

B. Facts

The record supports the following findings of fact by a preponderance of the evidence.

1. The Examiner provides an element-by-element analysis of the claims showing where in Lasch each claim limitation is described. (Answer 3-4).
2. Appellant argues that Lasch fails to describe the element of embedding the infrared filter material "within a supporting substance of said transaction card core and incorporated as an integral part of said card core" as claimed. (Br. 7).

4. Appellant submits that Lasch does not embed the ink in the card but applies infrared ink to the card by printing or coating, or, in the alternative, mixing infrared compounds in a film to be laminated or adhered to the card instead. (Br. 7).

5. The Examiner responds as follows:

Examiner's position is that Lasch discloses not only printing and coating as Appellant acknowledges, but also embedding the infrared ink to the body of the transaction card. In Lasch (col. 8, lines 1-8), the prepared films or materials can be mixed with a binder to form infrared compound – suggesting that film is not the only embodiment disclosed in Lasch. The embodiments of the material containing infrared compound are film, plastic, fiber, ink, concentrate, thermoplastic or thermoset matrix, thread, planchette and/or other medium (col. 7, lines 3-7). The binder material, then is incorporated in waxes, thermoplastic resins, thermoset resins, rubbers, natural resins or synthetic resins (col. 8, lines 1-8).

Moreover, in Lasch, Example 1 and 2 disclose infrared film lamination (col. 9, lines 34-55). As shown in figures 7A-7F, PVCs (shaded rectangle) make up the core of the transaction card. Another embodiment, however, is disclosed in Example 3 where that infrared concentrate is blended with polyvinylchloride (PVC) plastic (col. 9, lines 57-67). The embodiment shown in Example 3 discloses that the infrared filter material is, in fact, embedded in the card core. A plurality of layers in figures 7A-7F including two most outer layers in figure 7A can be interpreted as front overlaminant and the back overlaminant which can be attached to the card core via lamination.

(Answer 5).

6. We find, in agreement with the Examiner, that Lasch describes blending filtering material with plastic and extruding the blend into sheets from which transaction cards are fabricated (see Example 3).

C. Principles of Law

Anticipation is a question of fact. *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997).

D. Analysis

The facts show that Lasch describes a process of blending infrared filtering material with plastic and extruding the blend into sheets from which transaction cards are fabricated. (FF 6). The resulting transaction card will have the infrared filtering material incorporated and embedded throughout the card. Accordingly, the Examiner did not err in finding that Lasch describes infrared material embedded in the transaction card core.

The rejection is affirmed.

CONCLUSION OF LAW

On the record before us, Appellant has failed to show that the Examiner erred in rejecting the claims over the prior art.

DECISION

The Examiner's rejection of claims 1-51 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). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2004).

AFFIRMED

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