

1 The opinion in support of the decision being entered today was *not* written
2 for publication and is *not* binding precedent of the Board

3
4 UNITED STATES PATENT AND TRADEMARK OFFICE

5
6
7 BEFORE THE BOARD OF PATENT APPEALS
8 AND INTERFERENCES

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10
11 *Ex parte* BERT KLESCZEWSKI,
12 JOERG HOFMANN and PRAMOD GUPTA

13
14
15 Appeal 2007-1905
16 Reissue Application 10/931,249
17 Patent 6,444,720 B1
18 Technology Center 1700

19
20
21 Decided: June 13, 2007

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23
24 *Before:* MICHAEL R. FLEMING, *Chief Administrative Patent Judge*, and
25 GARY V. HARKCOM, *Vice Chief Administrative Patent Judge*, and
26 EDWARD C. KIMLIN and BRADLEY R. GARRIS, *Administrative Patent*
27 *Judges*, and FRED E. McKELVEY, *Senior Administrative Patent Judge*,
28 and ROMULO H. DELMENDO and SALLY GARDNER LANE,
29 *Administrative Patent Judges*.

30
31 McKELVEY, *Senior Administrative Patent Judge*.

32
33 DECISION ON APPEAL

34
35 **A. Statement of the case**

36 This *ex parte* appeal under 35 U.S.C. § 134(a) is from a rejection of
37 claims 1-14, the only claims remaining in the reissue application on appeal.

38 We affirm.

1 We have jurisdiction under 35 U.S.C. § 6(b).

2 The reissue application on appeal was filed on 31 August 2004.

3 The reissue application seeks to reissue Patent 6,444,720 B1, issued
4 03 September 2002, based on application 09/959,253, filed 11 April 2000.

5 The real party in interest is Bayer Aktiengesellschaft.

6 Appellants [hereafter "Bayer"] claim benefit of an earlier filing date
7 based on (1) PCT/EP00/03218, filed 11 April 2000, and (2) German patent
8 application 199 18 726, filed 24 April 1999.

9 The Examiner rejected claims 1-14 (all of the claims) under 35 U.S.C.
10 § 103(a) as being unpatentable over Okada, Heuvelsland and Coe. (The
11 reader should know that no references to *et al.* are made in this opinion.)

12 The following prior art was relied upon by the Examiner.

13

14	<u>Name</u>	<u>Patent Number</u>	<u>Issue Date</u>
15	Heuvelsland	US 5,010,187	23 Apr. 1991
16	Coe	US 5,177,117	05 Jan. 1993
17	Okada	EP 0,622,388 A1	02 Nov. 1994

18
19 Okada, Heuvelsland, and Coe are prior art under 35 U.S.C. § 102(b).

20

21 **B. Record on appeal**

22 In deciding this appeal, we have considered *only* the following
23 documents:

- 24 1. Reissue specification, including original claims.
25 2. Final Rejection entered 27 April 2006.

1 3. Appeal Brief filed on 26 September 2006 and received on
2 29 September 2006.

3 4. Examiner's Answer entered 02 November 2006.

4 5. Reply Brief filed on 03 January 2007 and received on
5 08 January 2007.

6 6. PTO bibliographic data sheet for the reissue application on
7 appeal.

8 7. U.S. Patent 6,444,720 B1, which is the patent sought to be
9 reissued.

10 8. Okada.

11 9. Heuvelsland.

12 10. Coe.

13 11. Claims 1-14 on appeal.

14

15 **C. Issue**

16 The principal issue on appeal is whether Bayer has sustained its
17 burden of showing that the Examiner erred in rejecting the claims on appeal
18 as being unpatentable under 35 U.S.C. § 103(a) over Okada, Heuvelsland
19 and Coe.

20

21 **D. Findings of fact**

22 The following findings of fact are believed to be supported by a
23 preponderance of the evidence. To the extent that a finding of fact is a
24 conclusion of law, it may be treated as such. Additional findings as
25 necessary may appear in the Discussion portion of the opinion.

26

1 Background of the invention

2 Rigid polyurethane foams are generally prepared from (1) polyols
3 having on average at least three hydroxyl groups per molecule,
4 (2) difunctional isocyanates, (3) catalysts, (4) stabilizers, (5) blowing agents,
5 and (6) other conventional additives. Specification, col. 1:9-13.

6 The polyol component can be a polyether polyol having on average at
7 least three hydroxyl groups with a hydroxyl value of from 100 to 900.
8 Specification, col. 1:14-18.

9 Blowing agents include volatile organic compounds or water.
10 Specification, col. 1:19-20.

11 Water functions as a blowing agent by reacting with the isocyanate to
12 form carbon dioxide. Specification, col. 1:21-23.

13 According to Bayer, a resultant rigid polyurethane foam is "mostly
14 predominantly closed-cell foams." Specification, col. 1:24-25.

15 In order to obtain open-cell foams, "polyols with a high content of
16 oxyethylene groups and/or special silicone stabilisers [sic--stabilizers] and/or
17 additives such as calcium stearate, solids, or oleochemical derivatives are
18 used." Specification, col. 1:25-29.

19 According to Bayer, Okada describes the preparation of open-
20 cell rigid polyurethane foams using polyether polyols. Specification,
21 col. 1:45-53.

22

23

The invention

24 Bayer's invention is said to provide predominantly open-cell rigid
25 polyurethane foams. Specification, col. 1:65-66.

1 The "novelty" in the Bayer foams is the use of a poly(oxyalkylene)
2 polyol which "has an hydroxyl value from 3 to 90, preferably 3 to 60 and
3 contains not more than 15 mmole.kg⁻¹ [millimole per kilogram] preferably
4 not more than 12 mmole.kg⁻¹ of carbon-carbon double bonds."
5 Specification, col. 2:8-11 and col. 2:51-56.

6 The polyols used in the Bayer invention can be made by "polyaddition
7 of alkylene oxides to polyfunctional starter compounds in the presence of
8 caesium [cesium], rubidium, strontium or barium hydroxide or alternative
9 basic catalysts" Specification, col. 2:62-66.

10 Other polyether polyols can be used in combination with polyols
11 having reduced carbon-carbon double bonds. Specification, col 3:64
12 through col. 4:7.

13 The preferred blowing agent is said to be water. Specification,
14 col. 5:12-15.

15 Catalysts which accelerate the reaction between the isocyanate and the
16 polyol may be used. Specification, col. 5:32-51.

17 One catalyst said to be "particularly preferably" useful is
18 N-(dimethylaminoethyl)-N-methylethanolamine. Specification,
19 col. 5:48-49.

20 The "particularly preferably" useful tertiary amine is said to be
21 commercially available under the registered mark Dabco® T from Air
22 Products.

23 The open-cell rigid polyurethane foams made according to the
24 invention are said to be useful *inter alia* as (1) intermediate layers for
25 composite elements, (2) filler substrates for vacuum insulation panels and

1 for foam-filling cavities of cold stores and (3) container construction and
2 energy-absorbing material (*e.g.*, car bumpers). Specification, col. 6: 35-42.

3 Bayer does not tell us precisely what it means by "predominantly"
4 open-cell foams.

5 However, the "EXAMPLES" give us some idea of what Bayer may
6 mean by "predominantly" open-cell foams.

7 In the Examples, Polyols A through E are conventional polyols.

8 Polyol F is a polyol with a "C—C double bond [C=C] content of
9 27 mmole.kg⁻¹", which is higher than 15 mmole.kg⁻¹ and therefore outside
10 the claimed range of "no more than 15 mmole.kg⁻¹."

11 Polyol G is a polyol with a "C—C double bond content of 7.2
12 mmole.kg⁻¹", which is less than 15 mmole.kg⁻¹ and therefore within the
13 claimed range of "no more than 15 mmole.kg⁻¹."

14 Properties of polyurethane foams said to have been made from a
15 mixture of conventional polyols along with either Polyol F or Polyol G are
16 set out in the Examples.

17 Catalyst 1 is an amine catalyst.

18 Catalyst 2 is Bayer's particularly preferred tertiary amine.

19 Stabilizer 1 and Stabilizer 2 are conventional silicone stabilizers used
20 in the preparation of polyurethane foam.

21 For the purpose of deciding the appeal, we will assume that the data
22 set out in the Examples is based on actual experimentation and that the
23 Examples are *not* prophetic.

EXAMPLES

Example No.	1	A	2	B	3	C
Constituents parts by weight						
Polyol A	45	45				
Polyol B			40	40	40	40
Polyol C	15	15	30	30	30	30
Polyol D	15	15				
Polyol E	10	10	10	10	10	10
Polyol F		15		20		20
Polyol G	15		20		20	
Catalyst 1					1.3	1.3
Catalyst 2	1.2	1.2	1.7	1.7		
Stabilizer 1	2	2				
Stabilizer 2			2	2	2	2
Water	4	4	4	4	4	4
Isocyanate	157	157	177	177	177	177
Average % of open cells	78	50	96	77	47	34

1 Claims on appeal

2 Claim 1 on appeal is representative of the claimed foams.

3 Claim 1 reads:

4 An open-cell rigid foam containing a urethane, isocyanurate or
5 urea group produced by reacting

6 a) a diisocyanate or a polyisocyanate

7 with

8 b) a polyol component comprising a polyoxyalkylene
9 polyol having an average of at least two groups which are
10 reactive with an isocyanate group, has a hydroxyl value
11 of from 3 to 90 and contains no more than 15 mmole.kg⁻¹
12 of carbon-carbon double bonds,

13 c) a blowing agent,

14 *and optionally,*

15 *d) a catalyst, and/or*

16 *e) auxiliaries and/or additives.*

17
18 Normally in assessing the scope of a claim, every limitation in the
19 claim should be given some meaning. However, the italicized portion of
20 claim 1, as reproduced above, adds absolutely nothing to limit the scope of
21 the claim or to define the open-cell rigid foam claimed.

22 Claim 7 covers the method for making the open-cell rigid foam.

23 Claim 10 limits the catalyst used in the method of claim 7 to Bayer's
24 particularly preferred tertiary amine catalyst.

1 Okada

2 Okada describes an open-cell rigid polyurethane foam which is
3 similar to the open-cell rigid polyurethane described and claimed by Bayer.

4 The Okada polyurethane foams are made by reacting a polyisocyanate
5 with a mixture of polyols. Page 2:48 through page 3:11.

6 Okada is silent on the carbon-carbon double bond content of its
7 polyols.

8 Okada differs from the foam claimed by Bayer in that Okada does not
9 describe the use of a polyol which contains no more than 15 mmole.kg⁻¹ of
10 carbon-carbon double bonds.

11 In describing the background of its invention, Okada reveals that [a]
12 rigid polyurethane foam has an excellent moldability and processability, and
13 is in wide use as a heat insulating material, structural material or shock
14 absorbing material. Page 2:8-9; page 3:32-36.

15 The open-cell rigid polyurethane foams of Okada are said to have a
16 closed cell content of not more than 10%. Page 3:15-16.

17 An open-cell rigid polyurethane which has a closed-cell content of
18 10% would have an open-cell content of 90%. Appeal Br. 5, first full
19 paragraph, last line.

20 Okada prefers the use of a tertiary amine catalyst. Page 6:23-24.

21 Okada describes foams said to have been made according to its
22 invention and reports closed cell contents of 2, 3, 0, 3, 5 and 2%. *See*
23 Examples 1-6. Page 10.

1 Coe

2 The Examiner has relied upon Coe to establish that Bayer's preferably
3 preferred tertiary amine catalyst is a known catalyst for making polyurethane
4 foams. Col. 6:10.

5
6 Examiner's rejection

7 The Examiner rejected the claims holding that a person having
8 ordinary skill in the art would have found it obvious to use the Heuvelsland
9 polyols in the process described by Okada to make open-cell rigid
10 polyurethane foams.

11 The Examiner found that Heuvelsland teaches that advantageous
12 properties may be obtained through the use of the Heuvelsland polyols to
13 make urethanes.

14 On that basis, the Examiner found that one skilled in the art would
15 have been "motivated" to use the Heuvelsland polyols as part of the polyol
16 mixture used to make open-cell rigid polyurethanes otherwise described by
17 Okada.

18 The use of Bayer's "particularly preferred" tertiary amine catalyst was
19 found to be obvious by the Examiner given that Coe describes its use as a
20 tertiary amine catalyst for making polyurethanes.

21
22 Bayer's contentions

23 Bayer's main contention is that one skilled in the art would not have
24 been "motivated" to use the Heuvelsland polyols to solve Bayer's problem—
25 which is said to be increasing the percentage of open cells in a rigid
26 polyurethane foam.

1 Moreover, according to Bayer, even if the requisite "motivation" was
2 present, the prior art would not have suggested Bayer's alleged "unexpected"
3 result of achieving a greater percentage of open cells.

4
5 **E. Principles of law**

6 A claimed invention is not patentable if the subject matter of the
7 claimed invention would have been obvious to a person having ordinary skill
8 in the art. 35 U.S.C. § 103(a); *KSR Int'l Co. v. Teleflex Inc.*,
9 127 S. Ct. 1727, 82 USPQ2d 1385 (2007); *Graham v. John Deere Co. of*
10 *Kansas City*, 383 U.S. 1 (1966).

11 Facts relevant to a determination of obviousness include (1) the scope
12 and content of the prior art, (2) any differences between the claimed
13 invention and the prior art, (3) the level of skill in the art and (4) any
14 relevant objective evidence of obviousness or non-obviousness. *KSR*,
15 127 S. Ct. at 1734, 82 USPQ2d at 1389; *Graham*, 383 U.S. at 17-18.

16 A person having ordinary skill in the art uses known elements and
17 process steps for their intended purpose. *Anderson's-Black Rock, Inc. v.*
18 *Pavement Salvage Co.*, 396 U.S. 57 (1969) (radiant-heat burner used for its
19 intended purpose in combination with a spreader and a tamper and screed);
20 *Sakraida v. AG Pro, Inc.*, 425 U.S. 273, 282 (1976) (the involved patent
21 simply arranges old elements with each performing the same function it had
22 been known to perform); *Dunbar v. Myers*, 4 Otto (94 U.S.) 187, 195 (1876)
23 (ordinary mechanics know how to use bolts, rivets and screws and it is
24 obvious that any one knowing how to use such devices would know how to
25 arranged a deflecting plate at one side of a circular saw which had such a
26 device properly arranged on the other side).

1 An inventor must show that the results said to be achieved with the
2 invention are actually obtained. It is not enough to show that results are
3 obtained which differ from those obtained in the prior art—any difference
4 must be shown to be an unexpected difference. *In re Klosak*, 455 F.2d 1077,
5 1080, 173 USPQ 14, 16 (CCPA 1972). *See also In re Geisler*, 116 F.3d
6 1465, 1469-70, 43 USPQ2d 1362, 1365 (Fed. Cir. 1997) (party asserting
7 unexpected results has the burden of proving that the results are
8 unexpected).

9 The showing must be clear and convincing. *McClain v. Ortmyer*,
10 141 U.S. 419, 429 (1891) (conclusive evidence needed to show invention
11 performs some new and important function not performed by the prior art);
12 *In re Heyna*, 360 F.2d 222, 228, 149 USPQ 692, 697 (CCPA 1966)
13 (applicant required to submit clear and convincing evidence to support an
14 allegation of unexpected property). *See also In re Passal*, 426 F.2d 409,
15 412, 165 USPQ 702, 704 (CCPA 1970) and *In re Lohr*, 317 F.2d 388, 392,
16 137 USPQ 548, 550-51 (1963) (conclusive proof of unexpected results not
17 submitted by applicant).

18 A showing of unexpected results generally must be commensurate in
19 scope with the breadth of the claimed invention. *In re Greenfield*, 571 F.2d
20 1185, 1189, 197 USPQ 227, 230 (CCPA 1978). *See also In re Harris*, 409
21 F.3d 1339, 1344, 74 USPQ2d 1951, 1955 (Fed. Cir. 2005).

22

23 **F. Discussion**

24 The solving Bayer's problem argument

25 In large measure, Bayer argues that there is no "motivation" to
26 combine teachings of the prior art to solve Bayer's "problem." To the extent

1 Bayer seeks to limit the obviousness inquiry to its "problem," Bayer's
2 argument is foreclosed by *KSR*, 82 USPQ2d at 1398. Moreover, the
3 argument was foreclosed prior to *KSR*. See (1) *In re Dillon*, 919 F.2d 688,
4 16 USPQ2d 1897 (Fed. Cir. 1990) (*en banc*) (diesel composition invented to
5 reduced pollution on burning held obvious because same composition would
6 have been obvious to reduce freezing in valves when diesel pumped during
7 cold weather) and (2) *In re Kemps*, 97 F.3d 1427, 1430, 40 USPQ2d 1309,
8 1311 (Fed. Cir. 1996) (reason to combine prior art references does not have
9 to be identical to that of the applicant to establish obviousness).

10 The Examiner's rejection is adequately supported by the evidence.

11 Bayer has used a known polyol for its intended purpose to make rigid
12 open-cell polyurethane foams in accordance with well-established
13 procedures for making rigid open-cell polyurethane foams. To grant Bayer a
14 patent based on Bayer's use of a known polyol for its intended purpose
15 would mean that one skilled in the art would no longer be able to use a
16 known "tool" for its intended purpose. Bayer, of course, in its pre-*KSR*
17 Appeal Brief and Reply Brief, asserts that "motivation" is lacking in the
18 prior art. *KSR* forecloses any argument that an explicit prior art
19 "motivation" is needed. Nevertheless, *KSR* notes that there is no necessary
20 inconsistency between the *idea* underlying the Federal Circuit's teaching-
21 suggestion-motivation (TSM) test and a *Graham* analysis. *KSR*, 82 USPQ2d
22 at 1397-98. Under *KSR*, where so-called explicit "motivation" is lacking, an
23 invention may still be obvious. However, where the prior art gives one
24 skilled in the art explicit reasons for using a particular element (e.g., the
25 properties one would expect when using Heuvelsland's polyols), that reason,

1 whether characterized as "motivation" or something else, strengthens the
2 Examiner's rationale for holding the claimed invention obvious. The
3 Examiner's reliance on the Heuvelsland properties is manifestly consistent
4 with *KSR*. A person skilled in the art would have recognized that one could
5 obtain polyurethane foams with the benefits which Heuvelsland said its
6 polyol would provide. We cannot imagine why one skilled in the art would
7 not have done so and why Bayer should be granted a patent to keep one
8 skilled in the art from doing so.

9 According to Bayer, the claimed invention achieves results which one
10 skilled in the art would not have expected—a greater percentage of open
11 cells. The Examiner was not impressed. The Examiner found that Bayer
12 has "not demonstrated results that are clearly and convincingly unexpected."
13 Examiner's Answer, page 7; *see also* Final Rejection, page 4.

14 Bayer's Appeal Brief, while relying on unexpected results, has not
15 been particularly helpful in explaining that part of the record which supports
16 its unexpected results argument.

17 A cursory review of the "evidence" appearing in the Examples will
18 immediately confirm that Bayer has failed to meet its clear and convincing
19 burden.

20 *First*, Okada describes open-cell polyurethane foam with no more
21 than 10 percent closed cells and in its examples describes several foams with
22 0 percent closed cells. In this sense, Bayer has not achieved a result not
23 otherwise achieved by the prior art. So, we ask: "Why are Bayer's results
24 unexpected?"

1 *Second*, based on the data in the Examples, we immediately see that
2 Bayer Foam 3, made using a polyol within the scope of claim 1, has an
3 open-cell percent of 47. Apparently, the open cell language in claim 1
4 includes a foam with an open-cell content of 47%. It is somewhat hard to
5 divine how a rigid foam having an open-cell content of 47% is unexpected,
6 when Okada describes open-cell foams having 0 percent closed cells (or
7 100% open cells).

8 *Third*, Bayer invention Foams 1, 2 and 3 were made from a polyol
9 with a carbon-carbon double bond content of $7.2 \text{ mmole.kg}^{-1}$. Accordingly,
10 we cannot assess the open-cell percentage of foams made from a polyol
11 having less than 15 mmole.kg^{-1} (claim 1), or for that matter one having no
12 more than 12 mmole.kg^{-1} (claim 6). Bayer has not shown that the claimed
13 subject matter, as a whole, achieves the results it says it gets through use of
14 the invention.

15 *Fourth*, the specification reveals that open-cell content is a function of
16 other variables, including, *e.g.*, the stabilizer used. Col. 1:24-28. We do not
17 know what effect, if any, the use of Stabilizer 1 and Stabilizer 2 had on the
18 results reported in the Examples. The claims optionally provide for the use
19 of stabilizer. We cannot tell from the evidence what the open-cell content of
20 a polyurethane foam might be if Stabilizer 1 or Stabilizer 2 had not been
21 used to make the foam.

22 The Examiner is absolutely correct in finding that the "showing" in
23 the "Examples" is not commensurate in scope with the breadth of the claims.

24 We have not overlooked two arguments in the Reply Brief. The first
25 is that "[n]o relationship between polyol unsaturation level and open cell

1 content of a foam is taught by any of the cited references." Reply Br. 2. The
2 second is that "[t]he selective picking and choosing from the teachings of the
3 prior art upon which the Examiner's rejection is based does not ... support a
4 proper rejection of ... [the] claims under 35 U.S.C. § 103." *Id.*

5 Unanswered by Bayer's Appeal Brief and Reply Brief is how the
6 claims on appeal limit the invention to the contribution Bayer claims to have
7 been made. Assuming *arguendo* that the claims were limited to the Bayer
8 contribution, then further unanswered is why Heuvelsland and its assignee,
9 as well as other members of the public, should be precluded from making
10 rigid open-cell polyurethane foams using the polyols invented by
11 Heuvelsland. On this record, one skilled in the art should not be deprived
12 from using the Heuvelsland polyols to make polyurethane foams. There is
13 no "picking and choosing" involved in this case. The prior art explicitly
14 teaches the use of the Heuvelsland polyols to make polyurethane foams.
15 There is no reason why one skilled in the art should not be allowed to do so
16 even if there are many other polyols which also might be known for that
17 same purpose. The facts here are remarkably similar to those in *Dillon*.
18 *Dillon* found that use of a particular compound in combination with diesel
19 fuel resulted in less pollution when the diesel fuel was burned. However, it
20 turned out that it would have been obvious to use the same compound in
21 diesel to prevent water entrained in the diesel from freezing in valves when
22 diesel was transported via a pipe system in areas of the country having
23 freezing temperatures during winter months. There was no "teaching" in the
24 *Dillon* prior art concerning reduction of pollution on burning just as we can
25 assume that there may not be any teaching (in the prior art before us)

1 concerning a relationship between the amount of unsaturation in the polyol
2 and the open-cell content of a rigid foam made with the polyol. Whether
3 Bayer can refile its case and present claims which are limited to its discovery
4 is not a matter we need to address at this time.

5 Further not overlooked is Bayer's argument that one skilled in the art
6 "would not be motivated to use Heuvelsland for the purpose of improving
7 foam color because the foam insulation would not be visible during use."
8 Appeal Br. 7. Bayer's argument is based solely on a statement of counsel. A
9 statement of counsel cannot take the place of evidence in the record. *In re*
10 *Cole*, 326 F.2d 769, 773, 140 USPQ 230, 233 (CCPA 1964). The record
11 does not establish that buyers of foam (particularly consumers for home
12 insulation uses) would not be interested in color prior to installation of the
13 foam in its final environment. *Compare In re Webb*, 916 F.2d 1553, 16
14 USPQ2d 1433 (Fed. Cir. 1990) (concern of appearance of hip prosthesis not
15 precluded merely because prosthesis is ultimately "hidden" from view).
16 Contrary to the argument of counsel, the evidence in the record—
17 Heuvelsland—suggests that color and other properties are relevant.

18 Still further not overlooked are Bayer's arguments directed to the use
19 of its "preferably preferred" tertiary amine catalyst (claim 10). The
20 "preferably preferred" tertiary amine is a known catalyst for making
21 polyurethanes. No unexpected result has been established based on the use
22 of the amine. On this record, Bayer appears to have used a known catalyst
23 for its intended purpose to achieve an expected result. The facts are similar
24 to those in *Leapfrog Enterprises, Inc. v. Fisher-Price, Inc.*, ___ F.3d ____,
25 82 USPQ2d 1687, 2007 WL 1345333 (Fed. Cir. May 9, 2007) (the reasons

1 for adding a reader to the Bevan/SSR combination are the same as those for
2 using readers in other children's toys; Leapfrog presented no evidence that
3 the inclusion of a reader was uniquely challenging or difficult for one of
4 ordinary skill in the art).

5

6 **G. Conclusions of law**

7 Bayer has not sustained its burden on appeal of showing that the
8 Examiner erred in rejecting the claims on appeal as being unpatentable under
9 35 U.S.C. § 103(a) over Okada, Heuvelsland and Coe.

10 On the record before us, Bayer is not entitled to a reissue patent
11 containing claims 1-14.

12

13 **H. Decision**

14 ORDERED that the decision of the Examiner rejecting
15 claims 1-14 over Okada, Heuvelsland and Coe is affirmed.

16 FURTHER ORDERED that no time period for taking any
17 subsequent action in connection with this appeal may be extended under
18 37 C.F.R. § 1.136(a)(1)(iv) (2006).

19

20

AFFIRMED

21

Appeal 2007-1905
Reissue Application 10/931,249
Patent 6,444,720 B1

1 Lyndanne M. Whalen, Esq.
2 BAYER MATERIAL SCIENCE LLC
3 100 Bayer Road
4 Pittsburgh, PA 15205-9741
5
6
7
8 hlj