

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* WILLIAM G. HARTMAN  
and CHAN U. KO

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Appeal 2008-1187  
Application 10/965,559  
Technology Center 1700

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Decided: March 28, 2008

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Before CHARLES F. WARREN, LINDA M. GAUDETTE, and  
MICHAEL P. COLAIANNI, *Administrative Patent Judges*.

WARREN, *Administrative Patent Judge*.

DECISION ON APPEAL

Applicants appeal to the Board from the decision of the Primary Examiner finally rejecting claims 13 through 15, 17 through 19, 21, 23 through 30, 32, 34, 36, 38 through 40, and 55 through 60 in the Office Action mailed March 2, 2007. 35 U.S.C. §§ 6 and 134(a) (2002); 37 C.F.R. § 41.31(a) (2006).

We reverse the decision of the Primary Examiner.

Claim 13 illustrates Appellants' invention of an adhesive labelstock, and is representative of the claims on appeal:

13. An adhesive labelstock comprising:

(A) a polymer film substrate comprising a mixture of at least one styrene polymer and at least one urethane polymer wherein the polymer film substrate has a moisture vapor transmission rate that permits sufficient moisture to enter the film or labelstock to generate acceptable levels of chorine dioxide, and said substrate has a first surface and a second surface, and

(B) an adhesive layer underlying the second surface of the substrate, wherein the substrate, or the adhesive layer, or both the substrate and the adhesive layer contain an antimicrobial composition which comprises at least one metal chlorite and at least one hydrophilic material capable of reacting with the metal chlorite when exposed to water.

The Examiner relies upon the evidence in these references (Ans. 3):

Holden	3,208,875	Sep. 28, 1965
Fischel-Ghodsian	5,071,704	Dec. 10, 1991
Speronello	6,077,495	Jun. 20, 2000

Appellants request review of the ground of rejection of appealed claims 3 through 15, 17 through 19, 21, 23 through 30, 32, 34, 36, 38 through 40, and 55 through 60 under 35 U.S.C. § 103(a) as being unpatentable over Speronello in view of Holden and Fischel-Ghodsian.<sup>1</sup> App. Br. 3: Ans. 3.

The basic issue in this appeal is whether the Examiner has carried the burden of establishing a *prima facie* case of obviousness. This issue turns on

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<sup>1</sup> The Examiner's omission of claims 57 through 60 in the statement of the rejection is harmless error. *See* Ans. 3 and 6; App. Br. 3.

the threshold issue of the interpretation one of ordinary skill in this art would have made of the following passage in Speronello:

The mixture of the metal chlorite and the Second Material may be used as a powder, used as formed shapes, or packaged and retained for use in any material which is gas permeable.

Preferably, any packaging material for retained use is substantially impervious to liquid water. Examples of such materials include TYVEK® and GORETEX®. These materials enable water vapor to enter into the package and react with the mixture and also enable the resulting chlorine dioxide gas to be released from the package and enter the atmosphere. Such materials are substantially liquid water impervious.

Speronello col. 9, ll. 45-56.

The Examiner finds Speronello would have disclosed the compositions therein “may be used as a powder, used as formed shapes, or packaged and retained for use in any material which is gas permeable, such as porous membranes (sheets) like TYVEK® and GORETEX®.” Ans. 3, citing Speronello col. 9, ll. 46-51. The Examiner relies on this finding to support the conclusion that one of ordinary skill in this art would have added Speronello’s antimicrobial composition, which meets the requirements in claim 13, to Holden’s vapor permeable polymer substrate comprising at least one styrene polymer and at least one urethane polymer, “because Speronello teaches that the antimicrobial composition may be retained for use in any material which is gas permeable.” Ans. 3-4.

Appellants emphasize the disclosure following the recitation of TYVEK® and GORETEX® makes clear that such porous membranes enable the entry of water into the package and the release of chlorine dioxide therefrom, and thus, “[t]here is no teaching or suggestion in Speronello that

the mixture of metal chlorite and second material should be or could be included in the porous material itself.” Reply Br. 2-3.

It is well settled that a reference stands for all of the specific teachings thereof as well as the inferences one of ordinary skill in the art would have reasonably been expected to draw therefrom, *see In re Fritch*, 972 F.2d 1260, 1264-65 (Fed. Cir. 1992); *In re Preda*, 401 F.2d 825, 826 (CCPA 1968), presuming skill on the part of this person. *In re Sovish*, 769 F.2d 738, 743 (Fed. Cir. 1985).

We agree with Appellants’ contentions. Indeed, one of ordinary skill in the art reading the whole of this passage in light of the disclosure of Speronello as a whole would have found no teaching or inference that Speronello’s composition can be included in a vapor permeable membrane. Thus, in the absence of such evidence in Speronello, there is no suggestion in the art to modify Holden’s vapor permeable membrane even if one of ordinary skill in this art would have recognized that it would have been chemically feasible to do so, as the Examiner contends. Ans. 4-5 and 6-7. *See, e.g., KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1741 (2007) (“it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does”); *In re Rouffet*, 149 F.3d 1350, 1358 (Fed. Cir. 1998) (“hindsight” is inferred when the specific understanding or principal within the knowledge of one of ordinary skill in the art leading to the modification of the prior art in order to arrive at appellant’s claimed invention has not been explained); *Fritch*, 972 F.2d at 1266 (“The mere fact that the prior art may be modified in the manner suggested by the Examiner

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does not make the modification obvious unless the prior art suggested the desirability of the modification.”); *In re Dow Chem. Co.*, 837 F.2d 469, 473 (Fed. Cir. 1988) (“The consistent criterion for determination of obviousness is whether the prior art would have suggested to one of ordinary skill in the art that [the claimed process] should be carried out and would have a reasonable likelihood of success viewed in light of the prior art. Both the suggestion and the expectation of success must be founded in the prior art, not in the applicant’s disclosure.” (citations omitted)).

Accordingly, in the absence of a *prima facie* case of obviousness, we reverse the ground of rejection of the appealed claims under 35 U.S.C. § 103(a).

The Primary Examiner’s decision is reversed.

REVERSED

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