

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DREW V. SPEER
And THOMAS D. KENNEDY

Appeal 2008-3681
Application 09/860,388
Technology Center 1700

Decided: October 28, 2008

Before EDWARD C. KIMLIN, CHARLES F. WARREN, and
CATHERINE Q. TIMM, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 22-26.¹ Claim 22 is illustrative:

¹ The claims on appeal are improperly numbered 21-25 in Appellants' Brief.

21. A multilayer thermoplastic film having a first outer thermoplastic surface, and a second outer thermoplastic surface, the multilayer thermoplastic film comprising a layer comprising an oxygen scavenger; wherein the first outer thermoplastic surface comprises

- i) a printed image, and
- ii) a radiation-curable varnish covering at least a portion of the printed image.

The Examiner relies upon the following references as evidence of obviousness:

Humke	4,227,979	Oct. 14, 1980
Speer	5,942,297	Aug. 24, 1999

Appellants' claimed invention is directed to a multilayer thermoplastic film having first and second outer thermoplastic surfaces. The film comprises a layer comprising an oxygen scavenger, and the first outer thermoplastic surface has a printed image with a radiation-curable varnish covering at least a portion of the image.

Appealed claims 22-26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Speer in view of Humke.

The present application was previously before this Board. In a Decision dated February 27, 2006, the Board reversed the Examiner's rejection of claims directed to a radiation-curable varnish coated on a printed image (Appeal No. 2006-0589). The rejection in the prior appeal did not include the Humke reference presently applied by the Examiner.

We have thoroughly reviewed each of Appellants' arguments for patentability. However, we are in complete agreement with the Examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art.

Accordingly, we will sustain the Examiner's rejection for essentially those reasons expressed in the Answer, and we add the following primarily for emphasis.

Appellants do not dispute the Examiner's factual determination that Speer discloses a multilayer thermoplastic film having outer thermoplastic surfaces comprising a layer comprising an oxygen scavenger and a printed image on an outer thermoplastic surface. As acknowledged by the Examiner, Speer does not disclose a radiation-curable varnish which covers at least a portion of the printed image. However, Appellants agree with the Examiner that Humke teaches a radiation-curable varnish for covering printed indicia on paperboard packaging and paper coating materials (Reply Br. 2, last para.). Accordingly, we find no error in the Examiner's legal conclusion that "[i]t would have been obvious to one of ordinary skill in the art to have employed the radiation curable varnish covering including a polymeric UV absorber, as taught in Humke, to the multilayer packaging film of Speer to have provided the printed surface having a protective layer" (Ans. 5, penultimate sentence).

The principal argument advanced by Appellants is that one of ordinary skill in the art would not include a UV curable varnish in a multilayer film comprising an oxygen scavenger because the radiation curing of the varnish would require "triggering" the scavenger prematurely. Appellants state that it would seem that the radiation energy used to cure "inks and varnishes would be fundamentally incompatible with an oxygen scavenging article designed to be triggered at a later point in time by just such radiation" (Principal Br. 8, third para.). Appellants avoid such premature triggering of the scavenging action by curing the varnish on one

side of the article "while the oxygen scavenging layer on the other side is protected" (*id.*).

We are not persuaded by Appellants' argument. Although Humke does not discuss using a radiation curable varnish on a multilayer film comprising an oxygen scavenger, we are convinced that Appellants' approach of positioning the varnish and oxygen scavenger on opposite surfaces of the article would have been obvious to one of ordinary skill in the art. To the extent utilizing a radiation curable varnish in a laminate comprising an oxygen scavenger was a known problem in the art, and Appellants do not argue otherwise, we are of the opinion that such a problem would have been readily observable by one of ordinary skill in the art, and the solution of placing the varnish and scavenger on opposite surfaces would have been a readily apparent solution to the problem. *See In re Ludwig*, 353 F.2d 241, 244 (CCPA 1965). Also, we must emphasize that claim 22 recites no limitation which requires that the varnish and scavenger are on opposite surfaces of the multilayer film.²

As a final point, we note that Appellants base no argument upon objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the inference of obviousness established by the applied prior art.

In conclusion, based on the foregoing and the reasons well stated by the Examiner, the Examiner's decision rejecting the appealed claims is affirmed.

² Appellants have presented no arguments for the separate claims on appeal. Accordingly, all the appealed claims stand or fall together with claim 22.

Appeal 2008-3681
Application 09/860,388

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv)(effective Sept. 13, 2004).

AFFIRMED

cam

CRYOVAC, INC.
P O BOX 464
DUNCAN, SC 29334