

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* GUGLIELMO M. IZZI,  
THOMAS P. HANSCHEN,  
ZHIMING ZHOU, and  
ALBERT I. EVERAERTS

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Appeal 2008-5488  
Application 10/424,218  
Technology Center 1700

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Decided: October 28, 2008

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Before EDWARD C. KIMLIN, JEFFREY T. SMITH, and  
KAREN M. HASTINGS, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-25, 29-32, and  
37. Claim 1 is illustrative:

1. An article comprising  
a backing, the backing comprising a first major surface and a second major surface, wherein the first major surface comprises a microstructured surface comprising microstructure elements; and

a low-flow adhesive layer opposite the microstructured surface,

wherein the low-flow adhesive flows less than 8 micrometers after 24 hours at 70°C as tested according to the Accelerated Adhesive Flow Test.

The Examiner relies on the following references in rejecting the appealed claims:

Desie	5,418,078	May 23, 1995
Mazurek	5,650,215	Jul. 22, 1997

Appellants' claimed invention is directed to an article comprising a backing having first and second major surfaces. The first surface is microstructured and the second surface has a low-flow adhesive thereon.

Claims 1-9, 18-25, 29-32, and 37 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Mazurek. Claims 10-17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Mazurek in view of Desie.

Appellants present separate arguments only for claims 3, 4, and 32. Hence, claims 1, 2, 5-9, 18-25, 29-31, and 37 stand or fall together. Also, Appellants do not separately argue the § 103 rejection, but rely on the arguments against the § 102 rejection.

We have thoroughly reviewed Appellants' arguments for patentability. However, we are in complete agreement with the Examiner that the claimed invention is unpatentable over the cited prior art. Accordingly, we will

sustain the Examiner's rejections for the reasons set forth in the Answer, and we add the following for emphasis only.

There is no dispute that Mazurek, like Appellants, describes an article comprising a backing having a microstructured surface and an adhesive layer on the opposite major surface. The reference is silent regarding the flow properties of the adhesive, and Appellants argue that the reference teaches against the adhesive being low-flow. Appellants stress that the adhesive of Mazurek "must be capable of flowing in order to replicate the features of the microstructures under the conditions of contact" (Main Br. 7, last para.). Appellants contend, therefore, that Mazurek does not describe the claimed low-flow adhesive.

It is well settled that when a claimed composition reasonably appears to be substantially the same as a composition disclosed by the prior art, the burden is on the applicant to prove that the prior art composition does not necessarily or inherently possess characteristics attributed to the claimed composition. In the present case, we agree with the Examiner that there is sufficient correspondence between the adhesives disclosed in Appellants' Specification and those disclosed by Mazurek to require Appellants to establish on the record that the reference adhesives are **not** low-flow. As pointed out by the Examiner, both Appellants and Mazurek disclose that particularly well suited adhesives are styrene-isoprene-styrene block copolymers, and acrylic pressure sensitive adhesives (Mazurek at col. 14, ll. 45 et seq.). Indeed, we find it most significant that both Appellants and Mazurek not only use the same class of adhesives, but exemplify use of the very same adhesive, namely, Kraton D1107 with the same tackifying resin, Wingtack Plus, in essentially the same proportion (*see* Ex. 11 of Mazurek).

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Consequently, we find it reasonable to conclude that the exemplified adhesive of Mazurek is low-flow, and it is reasonable to require Appellants to demonstrate otherwise. However, Appellants have proffered no such objective evidence of record, and it has not escaped us that both Appellants and Mazurek have the same assignee. Manifestly, no one is in better position than Appellants to clarify on this record the flow properties of the adhesive compositions fairly described by Mazurek.

Regarding claims 3 and 4, we agree with the Examiner that there is no meaningful, structural distinction between 2 layers of the same composition and one thicker layer of that composition.

As for the "peel adhesion" property of claim 32, it logically follows from the discussion above that the article of Mazurek would inherently have a peel adhesion that falls within the claimed range.

In conclusion, based on the foregoing and the reasons well stated by the Examiner, the Examiner's decision rejecting the appealed claims 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)(1)(iv).

AFFIRMED

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