

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 31

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte VASEEM FIRDAUS
and PRADEEP P. SHIRODKAR

Appeal No. 95-0706
Application 07/820,461¹

ON BRIEF

Before GARRIS, WEIFFENBACH and WARREN, *Administrative Patent Judges*.

WARREN, *Administrative Patent Judge*.

Decision on Appeal and Opinion

This is an appeal under 35 U.S.C. § 134 from the decision of the examiner finally rejecting claims 15, 17 through 22, 24 through 32, 35, 36 and 43 through 48.² Claims 1, 8, 16, 23, 33, 34 and 37 through 42 are also of record and have been withdrawn from consideration by the examiner as being directed to a nonelected invention.

We have carefully considered the record before us, and based thereon, find that we cannot sustain either of the grounds of rejection under 35 U.S.C. § 103 (answer, Paper No. 15, pages 3-5).

¹ Application for patent filed January 14, 1992.

² See, e.g., the amendment of June 5, 1992 (Paper No. 4).

It is well settled that the examiner may satisfy his burden of establishing a *prima facie* case of obviousness under § 103 by showing some objective teachings or suggestions in the prior art taken as a whole or that knowledge generally available to one of ordinary skill in the art would have led that person to combine the relevant teachings of the references in the proposed manner to arrive at the claimed invention as a whole, including each and every limitation of the claims, without recourse to the teachings in appellant's disclosure. *See generally In re Fine*, 837 F.2d 1071, 1074-76, 5 USPQ2d 1596, 1598-1600 (Fed. Cir. 1988); *In re Dow Chem. Co.*, 837 F.2d 469, 473, 5 USPQ2d 1529, 1531-32 (Fed. Cir. 1988); *In re Warner*, 379 F.2d 1011, 1014-17, 154 USPQ 173, 176-78 (CCPA 1967), *cert. denied*, 389 U.S. 1057 (1968). We cannot conclude that the examiner has carried his burden in the case before us.

While we agree with the examiner that the manipulative steps of the claimed processes are those of the well known blown film process and that linear low density polyethylene can be used in this process as evinced by the discussion of the prior art in van der Molen³ (col. 1) as well as the discussions of the prior art and the "cooling" modifications of the known process in Grady (cols. 1-9, and Figs. 1 and 2), Audureau et al. (cols. 1 and 3-4, and Fig. 1) and Keim (cols. 1-5 and Figs. 1 and 2),⁴ we must also agree with appellants that none of the applied prior art discloses

³ van der Molen and other references relied on by the examiner with respect to the grounds of rejection are listed at pages 2-3 of the answer. We refer to these references in our opinion by the name associated therewith by the examiner.

⁴ Appellants' argue (e.g., principal brief, pages 4-6 and 8; reply brief, pages 2-3) that Grady, Audureau et al. and Keim fail to disclose continuous extrusion of linear low density polyethylene resin through an annular die to form a "tube" which has a diameter substantially the same as the annular die diameter and which is expanded to form a "bubble" or a "balloon" that exceeds the annular die diameter and the tube diameter (e.g., claim 15), and the cooling of the outer surface of the tube and expanding tube with a cooling gas (e.g., claims 17 and 18) which gas forms a positive pressure zone (e.g., claim 20) while the pressure in the "bubble" or "balloon" is increased, thus creating a positive pressure differential (e.g., claim 19). These arguments are clearly contrary to a plain reading of these references and thus are without merit. We further note that there is no limitation in the appealed claims which can be read to specify the length or diameter of the "tube" subsequent to the point of extrusion and prior to expansion which would limit the claims to the so-called "long stalk" process (principal brief, pages 6-7; appellants' specification, pages 23-24; see also Cerisano, of record, Papers No. 24 and 26, e.g., cols. 4-6, particularly col. 5, lines 41-42) or to exclude a second cooling point in the blown film process (principal brief, page 8). Indeed, Audureau et al. discloses that linear low density polyethylene can be used in a "long stalk" process (e.g., col. 4, line 9, and Fig. 1).

the use of a copolymer of linear low density polyethylene comprising at least about 80 percent by weight of ethylene units and the remainder an alpha olefin of 3 to 10 carbon atoms and having a molecular weight distribution wherein " M_z/M_w " (specification, pages 2-3) is "greater than 3.5" and that the film produced by the van der Molen process is not "biaxially oriented" as required by appealed claims 15 and 22.

Indeed, the examiner has applied no prior art which separately or together would have reasonably suggested that one of ordinary skill in this art was in possession of the specific linear low density polyethylene resin specified in the appealed claims at the time the claimed invention was made.⁵ Even if we assume, arguendo, that said resin was known and that one of ordinary skill in this art would have used the same in van der Molen (e.g., col. 2, lines 8-11, and col. 3, lines 20-68), we find that the processes of this reference provide "special orientation effects" such that a "degree of orientation this high has not been found in known films on the basis of low-density polyethylene" (e.g., col. 2, line 17, to col. 3, line 19; particularly, col. 2, lines 18-19, and col. 3, lines 17-19) and thus produce film which is "mono-axially oriented" (abstract). In view of this specific disclosure in van der Molen, there is no basis in the other applied references for the examiner's contention that even though "Van der Molen [sic] does not disclose biaxially oriented film, . . . one of ordinary skill in the art would reasonable [sic, reasonably] suspect that Van der Molen [sic] also produce a biaxially oriented film" (supplemental answer, page 2).

Accordingly, it is clear that the examiner has focused on the known use of linear low density polyethylene in the known blown-film process to the exclusion of consideration of other limitations specified in the claims. See *In re Brouwer*, 77 F.3d 422, 425, 37 USPQ2d 1663, 1666 (Fed. Cir. 1996), citing *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 1053, 5 USPQ2d 1434, 1440 (Fed. Cir.) [*cert. denied*, 488 U.S. 825 (1988)].

The examiner's decision is reversed.

REVERSED

⁵ In this respect, see Firdaus et al., of record (Papers No. 24 and 26).

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Administrative Patent Judge)	
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