

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* DALE G. WATSON, GEORGE TERHUNE and  
DAVID S. MC ATEE

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Appeal No. 95-1110  
Application 07/983,173<sup>1</sup>

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HEARD: OCTOBER 15, 1997

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Before KIMLIN, WARREN and OWENS, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

*DECISION ON APPEAL*

This is an appeal from the examiner's refusal to allow claims 1-16 as amended after final rejection. These are all of the claims in the application.

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<sup>1</sup> Application for patent filed January 30, 1992.

*THE INVENTION*

Appellants claim a forage product sealed with tallow and a method wherein forage is coated with tallow. Claims 1 and 12 are illustrative and read as follows:

1. A method of storing forage product in a mass having exposed surfaces comprising:

coating all of the exposed surfaces with a melted tallow composition;

and allowing the composition to cool to form a seal thereon.

12. A weather-resistant mass of forage product the exposed surfaces of which are sealed with a tallow composition forming a protective layer thereon at least 1/4 inch thick.

*THE REFERENCES*

Chandler et al. (Chandler)	3,468,667	Sep. 23, 1969
Fassauer	3,485,635	Dec. 23, 1969
Wolrab	4,327,537	May 4, 1982
Evans	5,156,870	Oct. 20, 1992
Ikeda et al. (JP '752) <sup>2,3</sup> (Japanese Kokai patent publication)	61-104752	May 23, 1986

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<sup>2</sup>During prosecution, this reference was referred to by its application number, 59-223850.

<sup>3</sup>Our discussion of this reference is based on an English translation thereof, a copy of which is provided to appellants with this decision.

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*THE REJECTION*

Claims 1-16 stand rejected under 35 U.S.C. § 103 as being unpatentable over either Wolrab or Fassauer, each taken with JP '752, Chandler and Evans.

*OPINION*

We have carefully considered all of the arguments advanced by appellants and the examiner and agree with appellants that the aforementioned rejection is not well founded. Accordingly, this rejection will be reversed.

Wolrab discloses sealing a forage product such as bales of hay with "a sealer such as corn oil, soybean oil, digestible paraffin or plastic in a liquid form" (col. 3, lines 40-42). Fassauer discloses sealing silage from forage crops with microcrystalline wax (col. 3, lines 34-42) or a blend of low molecular weight polyethylene and paraffin wax (col. 5, lines 8-14), and teaches that oil can be added to the sealant (col. 5, lines 15-17).

Neither Wolrab nor Fassauer discloses sealing the forage product using tallow. To remedy this deficiency, the examiner relies upon the combined teachings of JP '752, Evans and Chandler.

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JP '752 discloses covering pet foods "such as cereals, meats, meat by-products, dairy products, refined sugars, vegetable oil lees, vitamins, minerals, and the like" (page 2) with "[a]nimal oils and fats such as tallow, chicken fat, and the like, and vegetable oils such as soybean oil" after the foods have had their water contents adjusted by steam heating (page 3). The purpose of the animal oils and fats is to improve the taste of the pet foods. *See id.*

Evans discloses combining phosphoric acid or phosphate and polyphosphate salts with cane molasses which is added to animal feed such as whole oats and flaked grains to increase their palatability (col. 1, lines 23-25 and 55-66). Evans teaches that the addition of the phosphoric acid or phosphate and polyphosphate salts results in the feed having a uniform golden brown color rather than the spotted, dark brown color usually obtained when cane molasses is added to the feed, and improves the free-flowing characteristics of the feed (col. 1, line 66 - col. 2, line 3). Evans further teaches that the addition of fats such as soybean oil, tallow or soapstock to the feed, which are desirable for increasing the nutritional value and free-flow

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characteristics of the feed, does not inhibit the formation of the golden brown color (col. 1, lines 38-44; col. 2, lines 3-7).

Chandler discloses controlling dust from animal feed by applying to the feed "a mixture of one or more food grade straight chain aliphatic fatty acids or their salts, glyceryl lactopalmitate in a surface-active effective amount and an unctuous, safely ingestible liquid vehicle" (col. 1, lines 66-70). Chandler teaches that commercial fatty acids are used, which are "produced by the hydrolysis of such naturally occurring oils as tallow, soybean oil, coconut oil, and cottonseed oil" (col. 2, lines 37-39). Thus, the material applied to the feed does not include tallow but, rather, includes a fatty acid derived from tallow.

The examiner argues that the applied references indicate that it was well known in the art to use tallow in food coating materials to effect preservation (answer, page 3). This argument is not well taken because none of the applied references which disclose tallow teach that the tallow is applied to the food for this purpose.

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The examiner argues that it would have been obvious to one of ordinary skill in the art, in view of the teachings of JP '752, Evans and Chandler, to coat the forage products of Wolrab and Fassauer with tallow to improve their appearance and palatability (answer, pages 3-4). We are not persuaded by this argument because the examiner has provided no evidence that such a person would have considered improved appearance and increased palatability to be desirable properties of the surface of a mass of forage.

The examiner argues that any coating would inherently act as a barrier to climatic conditions for some time (answer, pages 7-8). We do not find this argument to be convincing because, as discussed above, the examiner has provided no evidence which indicates that one of ordinary skill in the art would have been motivated to coat a mass of forage with tallow.

For the above reasons, we conclude that the examiner has not carried his burden of establishing a *prima facie* case of obviousness of appellants' claimed invention.

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*DECISION*

The rejection of claims 1-16 under 35 U.S.C. § 103 as being unpatentable over either Wolrab or Fassauer, each taken with JP '752, Chandler and Evans, is reversed.

*REVERSED*

EDWARD C. KIMLIN	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
CHARLES F. WARREN	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
TERRY J. OWENS	)	
Administrative Patent Judge	)	

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