

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MAX A. WEAVER,
EDWARD W. KLUGER
and DAVID J. MOODY

Appeal No. 96-0971
Application 07/888,268¹

HEARD: JUNE 9, 1999

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

LIEBERMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from a final rejection of claims 39 through 46 and 48 through 54, dated January 17, 1995.² An amendment under 37 C.F.R. § 1.116 after the final rejection

¹ Application for patent filed May 22, 1992. According to appellants, this application is a continuation of Application 07/578,107, filed September 5, 1990.

² Claim 47 had previously been canceled in an amendment dated January 24, 1994, but was erroneously included in the final rejection and in appellants Notice of Appeal dated April 17, 1995.

Appeal No. 96-0971
Application 07/888,268

canceling claims 45 and 54 and amending claims 39, 46 and 48 dated February 6, 1995 was entered for purposes of appeal. See the Advisory Action dated February 10, 1995. The examiner refused to allow claims 39 through 44, 46, and 48 through 53 as amended. Accordingly, claims 39 through 44, 46, and 48 through 53 remain for consideration on appeal.

THE INVENTION

Appellants invention is drawn to a colored thermoplastic resin composition having an anthraquinone dye incorporated therein while the resin is in a molten state. The dye has one or more moieties containing repeating ethoxy, propoxy and butoxy groups attached through sulfonamide groups to the anthraquinone ring.

THE CLAIMS

Claim 39 is illustrative of appellants invention and is reproduced below.

39. A colored thermoplastic resin composition which comprises a thermoplastic resin and a colorant incorporated in and distributed throughout the mass of said thermoplastic resin while said resin is in a molten state, whereby said colorant is essentially non-extractable from said resin, said colorant has the formula:



wherein A is an anthraquinone or condensed anthraquinone colored chromophoric radical;

Y is a polymeric substituent having from 4 to 200 residues selected from $-CH_2CH_2O-$, $-CH_2CH(CH_3)O-$, $-CH_2CH(C_2H_5)O-$ and mixtures thereof, and the total of all said residues per colorant molecule is from 4 to 600; and

R_1 is selected from hydrogen, Y, C_{1-12} alkyl, aryl and cycloalkyl, or R_1 in combination with Y

Appeal No. 96-0971
Application 07/888,268

and N completes a 5-7 membered ring.

Appeal No. 96-0971
Application 07/888,268

THE REFERENCE OF RECORD

As evidence of obviousness, the examiner relies upon the following reference of record.

Britain (Ciba-Geigy) (Britain Patent Specification)	1,477,396	June 22, 1977
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THE REJECTION

Claims 39 through 44, 46, and 48 through 53 stand rejected under 35 U.S.C. § 103 as unpatentable over Ciba-Geigy.

OPINION

Appellants have not stated in their brief whether claims 39 through 44, 46 and 48 through 53 stand or fall together. Accordingly, we shall treat the claims as standing or falling together. We select claim 39 as representative of appellants' claimed subject matter and limit our discussion thereto. See 37 C.F.R. § 1.192 (c)(5)(1994).

We have carefully considered all of the arguments advanced by the appellants and the examiner and agree with appellants that the aforementioned rejection is not well founded. Accordingly, we do not sustain the rejection.

The claimed subject matter before us is drawn to a composition which provides for the incorporation of a colorant, "while said resin is in a molten state." However, there is no disclosure or suggestion in Ciba-Geigy for incorporation of their anthraquinone dye in the molten state.

Appeal No. 96-0971
Application 07/888,268

Furthermore, the anthraquinone dyes of Ciba-Geigy differ from those of the claimed subject matter by a minimum of one carbon atom. Patentee's dyes necessarily contain only one carbon atom between the sulfonamide nitrogen and the alkoxy groups. In contrast, the corresponding dyes of the claimed subject matter contain a minimum of two carbon atoms between the sulfonamide nitrogen and the alkoxy groups. Moreover, the examiner has not explained why it would have been obvious for one of ordinary skill in the art to substitute appellants' dyes for those of Ciba-Geigy.

Based upon the above analysis, we have determined that the examiner's legal conclusion of obviousness is not supported by the facts. "Where the legal conclusion [of obviousness] is not supported by the facts it cannot stand." In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967).

Appeal No. 96-0971
Application 07/888,268

DECISION

The rejection of claims 39 through 44, 46, and 48 through 53 stand rejected under 35 U.S.C. § 103 as unpatentable over Ciba-Geigy is reversed.

The decision of the examiner is reversed.

REVERSED

CHARLES F. WARREN)
Administrative Patent Judge)
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) BOARD OF PATENT
TERRY J. OWENS)
Administrative Patent Judge) APPEALS AND
)
) INTERFERENCES
)
PAUL LIEBERMAN)
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Appeal No. 96-0971
Application 07/888,268

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Appeal No. 96-0971
Application 07/888,268

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