

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 36

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TIMOTHY F. BRYANT, SIMON B. DODD, STEPHEN M.
FLITCROFT, WILLIAM S. MILLER, ROGER MORETON and CHRISTOPHER J.
PEEL

Appeal No. 96-2060
Application No. 08/308,205¹

ON BRIEF

Before CAROFF, ELLIS and WALTZ, Administrative Patent Judges.

CAROFF, Administrative Patent Judge.

DECISION ON APPEAL

¹ Application for patent filed September 19, 1994. According to the appellants, the application is a continuation of Application No. 07/888,287, filed May 26, 1992, now abandoned; which is a continuation of Application No. 07/698,391, filed May 10, 1991, now abandoned.

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This is a decision on appeal from the final rejection of claims 10 and 13-18, all of the claims now pending in the involved application.

The claims on appeal relate to a process for treating a composite comprising an aluminum alloy matrix and a particulate ceramic reinforcement material.

Appellants acknowledge in their Brief that the subject claims stand or fall together for purposes of determining their patentability. Accordingly, we will limit our consideration to claim 10, the sole independent claim, which reads as follows:

10. A treatment process for a composite comprising a matrix of a precipitation hardenable aluminum alloy and a particulate ceramic reinforcement, said process comprising the steps of:

providing a composite prepared by hot pressing a blended powder of said precipitation hardenable aluminum alloy and said particulate ceramic reinforcement;

subjecting said composite to an intermediate thermo-mechanical treatment step to produce a treated composite;

subjecting said treated composite to a controlled heating step in which the temperature of said treated composite is raised from ambient temperature to a temperature of from 250 to 450°C at a rate of temperature increase of from 3 to 100°C per hour from ambient temperature to 450°C to produce a temperature treated composite; and

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subjecting said temperature treated composite to a final thermo-mechanical treatment step which includes a solution treatment step.

The examiner relies upon the following prior art reference (combined with acknowledged prior art in appellants' specification) as evidence of obviousness:

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examiner which would provide a person of ordinary skill in this art with the requisite motivation to limit the rate of temperature rise to a relatively slow 3° - 100°C./hour from ambient temperature upward, subsequent to the intermediate thermo-mechanical treatment step. Rioja teaches limiting the heating rate only after the temperature has reached an elevated temperature of 750°F to 800°F.

Simply put, the examiner has not met his burden of explaining why one of ordinary skill in the art would have found it obvious, within the context of 35 U.S.C. § 103, to limit the heating rate from ambient temperature onwards. Merely stating that a claimed feature would have been obvious without adequate explanation or factual support is insufficient to establish a prima facie case of obviousness. See In re Cofer, 354 F.2d 664, 667, 148 USPQ 268, 271 (CCPA 1966).

Because we reverse on the basis of failure to establish a prima facie case of obviousness, we need not reach the issue of the sufficiency of appellants' showing of unexpected results in the declaration of Dr. Flitcroft, as referred to in

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the Brief and in the examiner's Answer. See In re Geiger, 815
F.2d 686, 688,
2 USPQ2d 1276, 1278 (Fed. Cir. 1987).

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For the foregoing reasons, the decision of the examiner
is reversed.

REVERSED

MARC L. CAROFF)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
JOAN ELLIS)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
THOMAS A. WALTZ)	
Administrative Patent Judge)	

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Appeal No. 96-2060

Serial No. 08/308,204

Judge CAROFF

Judge WALTZ

Judge ELLIS

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DECISION: REVERSED

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Panel Change: Yes No

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Remanded: Yes No

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Acts 2: _____

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