

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte NEAL E. MOORE and DANILO O. DE LA CRUZ

Appeal No. 1997-1602
Application No. 08/298,088

ON BRIEF

Before GARRIS, WARREN and LIEBERMAN, Administrative Patent Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claims 1, 2, 4, 5 and 7 which are all of the claims remaining in the application.

The subject matter on appeal relates to a cast extruded plastic film having a layer comprising a blend of a polyester, a copolymer of ethylene and a comonomer selected from the group consisting of various acrylates, and a copolymer of ethylene and a comonomer selected from the group consisting of acrylic acid and methacrylic acid.

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The above-mentioned layer possesses various properties desirable for films used in packaging snack food and other consumer goods and to this layer is vacuum deposited with a specified bond strength, a metal such as aluminum as is also desirable for films used in packaging of the type previously noted. This appealed subject matter is adequately illustrated by independent claim 1, a copy of which taken from the appellants' brief is appended to this decision.

The references relied upon by the examiner as evidence of obviousness are:

Shih	4,010,222	Mar. 01, 1977
Takahashi et al. (Takahashi)	4,859,741	Aug. 22, 1989
Bittscheidt et al. (Bittscheidt)	4,891,406	Jan. 02, 1990
Golder	5,039,744	Aug. 13, 1991
Fukuda et al. (Fukuda)	5,059,470	Oct. 22, 1991
Swisher	5,112,462	May 12, 1992
Nakane et al. (Nakane)	5,173,357	Dec. 22, 1992
Super et al. (Super)	5,209,972	May 11, 1993

All of the appealed claims stand rejected under 35 U.S.C. § 103 as being unpatentable over Bittscheidt or Takahashi or Golder in view of Fukuda and Nakane and Shih and Super and Swisher.

We refer to the brief and to the answer for a thorough discussion of the opposing viewpoints expressed by the appellants and the examiner concerning the above-noted rejection.

OPINION

This rejection cannot be sustained.

As correctly indicated by the appellants in the brief, the teachings of the applied references are disparate and would not have been combined by an artisan with ordinary skill without the benefit of hindsight in the manner proposed by the examiner to thereby obtain a cast extruded plastic film of the type defined by the independent claim on appeal. For example, the primary references such as Bittscheidt are directed to molding compositions for making articles such as building materials that are unrelated to plastic films and the ultimate uses therefor with which the appealed claims and certain of the secondary references are concerned. Thus, contrary to the examiner's position, an ordinarily skilled artisan would not have found it obvious in the absence of hindsight to modify these primary reference molding compositions for making articles such as building materials in such a manner as to yield the here claimed cast extruded plastic film having properties desirable for packaging of the type described earlier by combining the primary reference molding composition teachings with the secondary reference teachings including, by way of exemplification, the cast extruded film teaching of Nakane and the blown extruded film teaching of Shih.

In short, the applied prior art contains no teaching or suggestion for combining the references in the fashion urged by the examiner. From our perspective, therefore,

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it is plain that the rejection under consideration is based upon impermissible hindsight derived from the appellants' own disclosure rather than upon a teaching, suggestion or incentive derived from the prior art. In re W. L. Gore & Assoc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983). As a consequence, we cannot sustain the examiner's § 103 rejection of the appealed claims as being unpatentable over Bittscheidt or Takahashi or Golder in view Fukuda and Nakane and Shih and Super and Swisher.

The decision of the examiner is reversed.

REVERSED

BRADLEY R. GARRIS)	
Administrative Patent Judge)	
)	
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)	BOARD OF PATENT
CHARLES F. WARREN)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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)	
PAUL LIEBERMAN)	
Administrative Patent Judge)	

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APPENDIX

1. A cast extruded plastic film having a layer comprising a blend of about 80 to 92 percent of a polyester, 8 to 20 percent of a copolymer consisting of ethylene and a comonomer selected from the group consisting of methyl acrylate, ethyl acrylate, methyl methacrylate and ethyl methacrylate, and about 1 to 5 percent of a copolymer of ethylene and a comonomer selected from the group consisting of acrylic acid and methacrylic acid, the layer having less than 28 percent haze, more than 50 percent gloss, a coefficient of friction between about 0.1 and 0.8, a heat seal strength, when heat sealed to itself at a temperature between about 240 and 270 degrees F, of at least 500 grams per inch, and a layer of metal vacuum deposited thereon, the bond strength between the layer comprising the blend and the metal layer being at least 300 grams per inch.