

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

Paper No. 40

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* YUKIO YAMAKAWA,  
SOICHIRO TANAKA,  
KOJI ITONAGA,  
and  
YASUSHI NAKAI

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Appeal No. 1997-2073  
Application No. 08/308,639

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ON BRIEF

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Before JOHN D. SMITH, PAK, and ROBINSON, *Administrative Patent Judges*.

PAK, *Administrative Patent Judge*.

*DECISION ON APPEAL*

This is a decision on an appeal from the examiner's refusal to allow claims 3, 5 through 8, 10, 27 and 28 which are all of the claims pending in the application. Claims 12 through

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23 stand withdrawn from consideration by the examiner as being directed to a non-elected invention.

According to appellants, "[c]laims 3, 5-8, 10, 27 and 28 all stand or fall together." Therefore, for purposes of this appeal, we only need to consider the propriety of the examiner's rejection of claim 27 consistent with 37 CFR § 1.192(c)(7) and (c)(8) (1995). Claim 27 is reproduced below:

27. A composite filament yarn which comprises a filament having a polyamide sheath component and a polyurethane core component arranged eccentrically within said polyamide sheath component so that said polyamide sheath component has a thinnest portion, said polyurethane core component having a neck portion extending radially through the thinnest portion of said polyamide sheath component to the surface of the filament where it is exposed at a substantially uniform width of between 2% and 25% of the circumference of the filament and having a standard deviation about a mean value not exceeding 2.0%.

As evidence of obviousness, the examiner relies on the following prior art:<sup>1</sup>

Price et al. (Price)<sup>2</sup>                      2032912                      Jan. 21, 1971  
(Published German Patent Application)

Tanaka et al. (Tanaka)<sup>3</sup>                      63-256719                      Oct. 24,

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<sup>1</sup>Our reference to the foreign prior art patent applications cited herein is to their corresponding English translations of the record.

<sup>2</sup>The examiner refers to this German prior art as "Fincke." See Answer, pages 2 and 3. We will refer to it in our decision as "Price."

<sup>3</sup>The examiner refers to this Japanese prior art as "Kanebo." See Answer, pages 2 and 3. We will refer to it in

1988  
(Published Japanese Kokai Patent Application)

Claims 3, 5 through 8, 10, 27 and 28 stand rejected under 35 U.S.C. § 103 as unpatentable over the combined disclosures of Tanaka and Price.

This is the second appeal of claimed subject matter which is directed to a composite filament drawn yarn. In comparison with the claims considered by the previous merits panel in the decision entered July 21, 1994 (Paper No. 23), the appealed claims as represented by claim 27 now require (1) the polyurethane core exposed to the filament surface to have "a substantially uniform width" rather than "a constant width along the length thereof" as required by previous claim 25. In accordance with page 8 of the specification, we interpret the term "a substantially [exposed] uniform width" as an exposed width having a standard deviation of not exceeding 2%. It then follows that the appealed claims as represented by claim 27 are a little broader or identical to previous claim 25 which was considered in the decision entered July 21, 1994. Appellants, however, have submitted two Rule 132 declarations to clarify the showing in the specification and bolster

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our decision as "Tanaka."

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nonobviousness of the claimed subject matter.

Having evaluated the claims, specification and applied prior art, including all of the arguments and evidence advanced by both the examiner and appellants in support of their respective positions, we agree with the examiner that the claimed subject matter as a whole would have been obvious to one of ordinary skill in the art. Accordingly, we will sustain the examiner's § 103 rejection for essentially those reasons set forth in both the Board's decision entered on July 21, 1994, and the Answer mailed on June 14, 1996. We add the following primarily for emphasis and completeness.

The previous merits panel determined (pages 3 and 4) that:

Both [Tanaka] and Price are directed to self-crimping composite yarns wherein the core component is arranged so as to occupy a similar portion of the surface of the filament. We agree with the examiner that it would have been obvious to provide [Tanaka's] composite filament in the configuration of Price's filament. The similar purpose of the two references in providing self-crimping filaments, coupled with the similar extent of providing the core component at the surface of the filament (i.e.[sic, ,] the core component provides less than 25% of the filament surface) would have provided ample suggestion of the interchangeability of the respective filament cross-section configurations. *In re Winslow*, 365 F.2d 1017, 151 USPQ 48 (CCPA 1966); *In re Antle*,

444 F.2d 1168, 170 USPQ 285 (CCPA 1971); **In re Wood**, 582 F.2d 638, 199 USPQ 137 (CCPA 1978). Moreover, it would have been apparent to a worker of ordinary skill in the art that the Price configuration, wherein the sheath effectively

grips

the core, would also provide the improved adhesion between polyamide and polyurethane components

attributed to [Tanaka's] configuration. Appellants acknowledge that the Price components are recognized to not be compatible and to share the problem of poor adhesion as addressed by the Kanebo composite filament (Appellants' Brief, page 7).

We adopt this determination as our own. Moreover, we note that Tanaka teaches that its crimped composite fiber has a boiling water shrinkage rate of 5-17%, the property disclosed and recited in one of the claims. See page 6.

Appellants argue that Tanaka is incapable of producing the claimed substantially uniform width, i.e., a standard deviation about a mean value not exceeding 2.0%. Appellants then go on to rely on the Rule 132 declarations dated November 14, 1994, and November 6, 1995. We are not persuaded by either appellants' argument or declarations. As is apparent from page 24 of the appellants' own specification, Tanaka's method is capable of forming a crimped composite fiber having an exposed polyurethane core component having the claimed substantially uniform width, i.e., a standard deviation about

a mean value of 1.7% and 2.1%, respectively.<sup>4</sup> See comparative Y<sub>6</sub> and Y<sub>7</sub>. Appellants have not

demonstrated that one of ordinary skill in the art desiring to obtain a crimped composite fiber having the consistent property along its length, i.e., a substantially uniform width, would not have been led to the claimed crimped composite fiber in view of the combined disclosures of Tanaka and Price.

Appellants argue that the claimed subject matter as whole imparts unexpected results. In support of their position, appellants rely on the Rule 132 declarations dated November 14, 1994 and November 6, 1995, together with the examples and Table 1 of the specification. Having evaluated the showing in the declarations and the specification, we conclude that

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<sup>4</sup>Appellants have evinced that Tanaka cannot produce a crimped composite fiber comprising the polyurethane core component exposed on its surface having a substantially uniform width of between 2 and 25% of the circumference of the filament with a standard deviation about a mean value not exceeding 1.3%. See specification, page 24, together with *Ex parte Jackson*, 110 USPQ 561, 562 (Bd. App. 1956). However, the claims on appeal are not limited to these types of crimped composite fibers.

appellants have not carried their burden of proof. *In re Klosak*, 455 F.2d 1077, 1080, 173 USPQ 14, 16 (CCPA 1972) (the burden of proving unexpected results rests on the party who asserts them). In other words, appellants have not demonstrated that the showing is commensurate in scope with the degree of protection sought by the appealed claims. *In re Greenfield*, 571 F.2d 1185, 1189, 197 USPQ 227, 230 (CCPA 1978). While the showing is limited to a crimped composite fiber comprising the polyurethane core component exposed on its surface having a substantially uniform width of between 2 and 25% of the circumference of the filament with a standard deviation about a mean value not exceeding 1.3% or those fibers produced by the specific method and spinneret used in the

showing, the appealed claims are not so limited. On this record, there is no evidence that the desired properties attributable to those fibers produced by the specific method and spinneret are attributable to the claimed crimped composite fiber.

Determining patentability on the totality of the record,

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after due consideration of appellants' arguments and evidence, we find that the preponderance of evidence weighs in favor of obviousness within the meaning of 35 U.S.C. § 103.

Accordingly, we affirm the examiner's decision rejecting all of the appealed claims under 35 U.S.C. § 103.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

*AFFIRMED*

JOHN D. SMITH	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
CHUNG K. PAK	)	APPEALS AND
Administrative Patent Judge	)	INTERFERENCES
	)	
	)	
DOUGLAS W. ROBINSON	)	
Administrative Patent Judge	)	

CKP:hh

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