

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. 30

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WOLFGANG WEISE,
WILLI MALIKOWSKI,
DIETER KAUFMANN,
and
HARALD KRAPPITZ

Appeal No. 1998-0813
Application No. 08/273,742

ON BRIEF

Before WALTZ, LIEBERMAN, and DELMENDO, Administrative Patent Judges.
LIEBERMAN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the decision of the examiner refusing to allow claims 1 through 5, 22, 23, and 26, which are all the claims pending in this application. Claims 6 through 15, which are the only other claims pending in this application, stand withdrawn from consideration as directed to a non-elected invention.

THE INVENTION

The invention is directed to a silver alloy brazing filler metal comprising silver, copper, zinc, gallium, tin and indium in a specified amount. The alloy is cadmium free. It has a working temperature of less than 630°C. The scope of the invention is more fully specified in the claim illustrated below.

THE CLAIM

Claims 1 is illustrative of appellants' invention and is reproduced below.

1. A brazing filler metal having a working temperature of less than 630°C and being comprised of a cadmium-free silver alloy having 30 to 80% by weight of silver, 10 to 36% by weight of copper, 15 to 32% by weight of zinc, 1 to 5% of gallium, 0.5 to 7% by weight of tin and 0 to 5% by weight of indium.

THE REFERENCE OF RECORD

As evidence of obviousness, the examiner relies upon the following reference:¹

French Patent Publication (FR '271) FR 2 275 271 Jan. 16, 1976

THE REJECTIONS

Claims 23 and 26 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which appellants regard as the invention.

¹The Answer refers to the application number, (21), in citation of the French reference. We refer to the corresponding publication number, (11), in our decision, and to the English language translation of French 2 275 271 copy attached.

Claims 1 through 5, 22, 23, and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over French Patent Publication 2 275 271 (FR 271).

OPINION

We have carefully considered all of the arguments advanced by appellants and the examiner, and agree with the appellants that the aforementioned rejections of claims 1 through 5, 22, 23 and 26 are not well founded. Accordingly, we do not sustain these rejections.

The Rejection under § 112

"The legal standard for definiteness [under the second paragraph of 35 U.S.C. § 112] is whether a claim reasonably apprises those of [ordinary] skill in the art of its scope." *In re Warmerdam*, 33 F.3d 1354, 1361, 31 USPQ2d 1754, 1759 (Fed. Cir. 1994). The inquiry is to determine whether the claim circumscribes a particular area with a reasonable degree of precision and particularity. The definiteness of the language employed in a claim must be analyzed not in a vacuum, but in light of the teachings of the particular application. *In re Moore*, 439 F.2d 1232, 1235, 169 USPQ 236, 238 (CCPA 1971).

It is the examiner's position that the claimed subject matter is indefinite in that the phrase, "total 100% when summed," is in conflict with the transitional term, "comprised of." We determine, however, that the phrase, "comprised of" permits the presence of

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components other than the alloy, or impurities and neither phrase is in conflict with the other. Accordingly, we do not sustain this ground of rejection.

It is also the examiner's position that claim 26 containing the transitional phrase, "consists essentially of" is indefinite because, "it is unclear what elements are to be included in the alloy when the named elements Ag, Cu, Zn, Ga, and Sn are present at the lower limits of the claimed ranges." See Answer pages 3 and 4. There is however, a body of legal decisions directed to the transitional language, "consisting essentially of." It is well settled that the term "consisting essentially of" includes not only what is specifically recited in appellants' claim, but also any other materials which do not materially affect the basic and

novel characteristics of the claimed composition. See PPG Indus., Inc. v. Guardian Indus. Corp., 156 F.3d 1351, 1354, 48 USPQ2d 1351, 1353-54 (Fed. Cir. 1998); In re Herz, 537 F.2d 549, 551-52, 190 USPQ 461, 463 (CCPA 1976); In re De Lajarte, 337 F.2d 870, 873-74, 143 USPQ 256, 258 (CCPA 1964); In re 137 USPQ 893, 896 (CCPA 1963).

The scope of the claimed subject matter is ordinarily interpreted in light of these decisions and hence the presence of the transitional language together with the proportions set forth in the claimed subject matter does not render the claim indefinite.

Accordingly, we reverse the rejection of the examiner under § 112.

The rejection of claims 1 through 5, 22, 23, and 26 under 35 U.S.C. § 103(a) as being unpatentable over French Patent Publication 2 275 271 (FR 271) is reversed.
The decision of the examiner is reversed.

REVERSED

THOMAS A. WALTZ)
Administrative Patent Judge)
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) BOARD OF PATENT
PAUL LIEBERMAN) APPEALS)
Administrative Patent Judge) AND
) INTERFERENCES
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ROMULO^{H. DELMENDO})
Administrative Patent Judge)

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