

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DANIELLE A. BRIGHT, ALAN M. AARONSON
and RONALD L. PIRRELLI

Appeal No. 1998-1790
Application No. 08/711,134

ON BRIEF

Before KIMLIN, OWENS and JEFFREY T. SMITH, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-9, all the claims in the present application. Claim 1 is illustrative:

1. A fluid flame retardant composition suitable for use in forming flame retarded polymer composition which comprises a normally viscous flame retardant and an effective amount of an

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alkylene-bridged diphosphate compound for viscosity reduction thereof.

The examiner relies upon the following references as evidence of obviousness:

Fesman	4,433,071	Feb. 21, 1984
Buszard et al. (Buszard)	4,565,833	Jan. 21, 1986
Duncan et al. (Duncan)	4,681,902	Jul. 21, 1987
Bright et al. (Bright)	5,041,596	Aug. 20, 1991
Stone	5,086,082	Feb. 4, 1992
Asahi Denka Kogyo K.K. (Japanese Patent Publication)	JP 40342/74	Apr. 28, 1974

Appellants' claimed invention is directed to a fluid flame retardant composition comprising a viscous flame retardant, such as polybrominated diphenyl oxide, and an alkylene-bridged diphosphate. The diphosphate reduces the viscosity of the viscous flame retardant.

As acknowledged by appellants at page 1 of their principal brief, the present application is related to U.S. Serial No. 08/586,442. An appeal was taken in the related application and, in a decision dated April 20, 2000, a merits panel of this Board sustained the examiner's rejections of the appealed claims under 35 U.S.C. § 103 over the same prior art presently applied by the examiner (Appeal No. 1997-3587).

Appealed claims 1-9 stand rejected under 35 U.S.C. 103 as

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being unpatentable over Fesman, considered alone, or in combination with Buszard or Duncan or Bright. Claims 1-3 and 6-7 stand rejected under 35 U.S.C. § 103 as being unpatentable over Stone, considered alone, or in view of JP '342 and Bright.

Appellants set forth four different groups of claims at page 3 of the principal brief. However, the Argument section of appellants' brief fails to advance any argument that is reasonably specific to a particular claim on appeal. Accordingly, all the appealed claims stand or fall together with claim 1, and we will limit our consideration of this appeal to the examiner's rejections of claim 1. Ex parte Ohsumi, 21 USPQ2d 1020, 1023 (BPAI 1991). See also 37 CFR § 1.192 (C)(7) and (C)(8).

We have thoroughly reviewed each of appellants' arguments for patentability presented in the principal and reply briefs on appeal. However, we are in complete agreement with the examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Accordingly, we will sustain the examiner's rejections for the reasons set forth in the answer, which incorporates the final rejection of July 1, 1997 (Paper No. 15) and the reasons articulated in the Board's decision on the

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related appeal referred to above. We add the following for emphasis only.

There is no dispute that Fesman and Stone, the primary references, each disclose flame retardant compositions for polymers which comprise the presently claimed "normally viscous flame retardant" and "an alkylene-bridged diphosphate." While neither reference exemplifies a flame retardant composition comprising both of the claimed compounds, both Fesman and Stone disclose the use of the compounds, and the mixtures thereof, in a relatively small list of flame retardant compounds (see Fesman at column 3, lines 3-17, and Stone at column 3, lines 20-30). Accordingly, inasmuch as it is well settled that it is a matter of obviousness for one of ordinary skill in the art to combine two or more materials when each is taught by the prior art to be useful for the same purpose, we must agree with the examiner that it would have been prima facie obvious for one of ordinary skill in the art to formulate a flame retardant composition for a polymer comprising a mixture of the two presently claimed compounds. In re Kerkhoven 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980). While appellants emphasize that neither of the primary references teaches or suggests that the alkylene-bridged diphosphate reduces the viscosity of the normally viscous flame

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retardant, the examiner has properly explained that it is not necessary for a finding of obviousness that the prior art disclose the same purpose, or advantage, of an applicant's invention. See In re Dillion, 919 F.2d 688, 693, 16 USPQ2d 1897, 1901 (Fed Cir. 1990) (en banc), cert. denied, 500 U.S. 904 (1991). We fully concur with the examiner that both Fesman and Stone provide ample motivation for one of ordinary skill in the art to prepare a flame retardant composition for polymers comprising a mixture of the recited compounds. We note that appellants have proffered no objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the inference of obviousness established by the applied references.

In conclusion, based on the foregoing and the reasons well-stated by the examiner, the examiner's decision rejecting the appealed claims is affirmed.

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

AFFIRMED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
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TERRY J. OWENS)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
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JEFFREY T. SMITH)	
Administrative Patent Judge)	

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RICHARD P FENNELLY
AKZO NOBEL INC
7 LIVINGSTONE AVENUE
DOBBS FERRY, NY 10522