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I.FONG C. I.FI PMB # 1008 1839 YGNACIO VALLEY ROAD WALNUT CREEK, CA 94598			THOMAS, BRADLEY H	
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* CHUN-CHANG YEN

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Appeal 2010-007937  
Application 11/639,208  
Technology Center 2800

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Before SCOTT R. BOALICK, BRUCE R. WINSOR,  
and JEREMY J. CURCURI, *Administrative Patent Judges*.

WINSOR, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from a final rejection of claim 2, which is the only claim pending in this application. Claim 1 is cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

## STATEMENT OF THE CASE

Appellant's invention relates to a fuse assembly and more particularly to connecting a meltable rod to inner connecting ends of metal legs of the fuse assembly. Spec. 1:3-5. Claim 2 reads as follows (emphases added):

2. In a fuse assembly comprising a main body, two metal legs, and a meltable rod, said meltable rod having two outer ends connected with two inner ends of said metal legs, the improvement wherein said metal legs are connected with said meltable rod by a process comprising steps of:
  - (a) *coating a tin layer on an inner surface of a respective one of said inner ends of said metal legs;*
  - (b) winding said inner ends of said metal legs around said outer ends of said meltable ends; and
  - (c) applying predetermined temperature and pressure on both sides of said inner ends of said metal legs *thereby melting said tin layer and filling said tin layer between said inner ends of metal legs and said outer ends of said meltable rod without any space.*

Claim 2 stand rejected under 35 U.S.C. § 102(b) as anticipated by Marx (US 4,628,293; Dec. 9, 1986). Ans. 3-4.

Rather than repeat the arguments here, we refer to the Brief (filed Nov. 29, 2009) and the Answer (mailed Feb. 2, 2010) for the respective positions of Appellant and the Examiner.

## ISSUES

The issues presented by Appellant's contentions are as follows:

Does Marx disclose a fuse assembly in which an inner surface of an inner end of metal leg is coated with a tin layer, as recited in claim 2?

Does Marx disclose a fuse assembly in which a melted tin layer fills between the inner surface of the leg and an outer end of a meltable rod without any space, as recited in claim 2?

#### ANALYSIS

The Examiner finds that Marx discloses all of the limitations recited in claim 2. Ans. 3-4 (citing Marx, Figs. 1-3; col. 1, ll. 32-36; col. 2, ll. 18-23; col. 3, ll. 46-56); *see also* Ans. 5, citing Marx, col. 4, ll. 19-24). The Examiner construes claim 2 as reciting a fuse assembly that is described by the process used in producing the fuse assembly, i.e., a product-by-process claim. *See* Ans. 6. We agree with the Examiner's claim construction.

[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in a product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.

*In re Thorpe*, 777 F.2d 695, 697 (Fed. Cir. 1985) (citations omitted).

“Where a product-by-process claim is rejected over a prior art product that appears to be identical, although produced by a different process, the burden is upon the applicants to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product.” *In re Marosi*, 710 F.2d 799, 803 (Fed. Cir. 1983) (citations omitted).

The Examiner explains:

[T]he final product of both . . . [Appellant's] application and Marx is the same, wherein both result in a fuse with a rod held between two (wound) legs, the rod and legs (electrically and

physically) connected by melting solder such that there is no space between the rod and the legs (since any gaps are filled with solder), the connected portions of the rod and legs being coated with tin as a result of the melted solder.

Ans. 6.

Appellant contends that “the Marx reference fails to disclose, teach or suggest the step of coating a tin layer on an inner layer of a respective one of the inner ends of the metal legs.” Br. 11 (emphasis omitted). Appellant further contends that “according to the Marx reference, the flat portions of the conductor (3) are rolled up before the tin solder (8) is applied to the elongated cutouts (4) of the conductors (3), so that it will be very difficult to fill the tin solder (8) between the conductors (3) and the fuse wire (6),” *id.* (emphasis omitted), unlike Appellant’s invention where “the tin layer can be easily filled between the inner end of the metal legs and the outer ends of the meltable rod without any space,” *id.* (emphasis omitted).

However, as pointed out by the Examiner:

Marx states at col. 4, lines 19-24, that “... the tin solder material 8 will fill the gap between the fuse wire 6 and the holder 5 in all cases ... the necessary quantity will flow into the holder 5 in order to fill the gap ...”(emphasis added). Thus, upon melting of the solder, the space between the inner ends of the metal legs and the outer ends of the meltable rod is filled by the melted tin solder “without any space” (since all gaps are filled with tin solder), and thus the inner layer/surface of the legs are coated with the solder.

Ans. 5.

We find the Examiner has established that Marx discloses a fuse assembly in which an inner surface of an inner end of metal leg is coated with a tin layer. Further, the Examiner has shown that Marx discloses a fuse assembly in which a melted tin layer fills between the inner surface of the

leg and an outer end of a meltable rod without any space. We note that because claim 2 is a product-by-process claim, it is of no patentable significance when or how the tin layer is applied or when or how the tin layer fills between the inner surface of the leg and the outer end of the meltable rod without any space. *See Thorpe*, 777 F.2d at 697.

Accordingly, we find that the Examiner has established a prima facie case that the structure of the product produced by the process recited in claim 2 is the same as the structure of the product disclosed by Marx. *See id.* Appellant does not come forward with persuasive evidence that the product produced by the recited process is patentably distinct from that disclosed by Marx. *See Marosi*, 710 F.2d at 803. Accordingly, we are not persuaded of error in the rejection of claim 2 as anticipated by Marx, and will sustain the rejection.

#### ORDER

The decision of the Examiner to reject claim 2 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1).

AFFIRMED

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