



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/338,498	12/18/2008	Herve Cartier	227822-US-NP	5533
43245	7590	02/27/2013	EXAMINER	
SABIC - I.NP-CE 08CE			VALDEZ, DEVE E	
SABIC Innovative Plastics - IP LEGAL			ART UNIT	
ONE PLASTICS AVENUE			PAPER NUMBER	
PITTSFIELD, MA 01201-3697			1765	
			NOTIFICATION DATE	
			DELIVERY MODE	
			02/27/2013	
			ELECTRONIC	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ned.green@sabic-ip.com
judith.rowe@sabic-ip.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HERVE CARTIER and
ALEXIS CHOPIN

Appeal 2011-013384
Application 12/338,498
Technology Center 1700

Before HUBERT C. LORIN, ROMULO H. DELMENDO, and
KAREN M. HASTINGS, *Administrative Patent Judges*.

HASTINGS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134 from the Examiner's rejection of claims 1-5 and 15-19 under 35 U.S.C. § 103(a) as obvious over the combined prior art of Huggard¹ and Roth² (Ans. 4-8), and claims 6-8 under 35 U.S.C. § 103(a) as obvious over the combined prior art of Huggard, Roth, and Gitto³ (Ans. 8, 9), as well as the rejection of claim 18 under 35 U.S.C. 112, second paragraph (Ans. 7).

We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

The Examiner's rejection of claim 18 under 35 U.S.C. § 112, second paragraph (Ans. 7) is summarily affirmed as Appellants agree that correction is necessary (Reply Br. 1).

Claim 1 is representative of the claimed subject matter:

1. A chemically resistant, flame-retardant article comprising:

- a) a thermoplastics resin,
- b) 10-50 wt% a C₂-C₈ melamine diamine phosphate; and
- c) a nitrogen compound selected from condensation products of melamine or reaction products of condensation products of melamine with phosphoric acid, or mixtures thereof;

wherein the condensation products of melamine are melem, melam, melon, derivatives of melem, melam and melon, or mixtures thereof;

wherein the reaction products of the condensation products of melamine with phosphoric acid are melamine

¹ US 5,137,937 issued Aug. 11, 1992.

² WO 2005/113661 A1 published Dec. 1, 2005.

³ US 2002/0155348 A1 published Oct. 24, 2002.

pyrophosphate; melamine polyphosphate; di-melamine pyrophosphate; reaction products of melem, melam, melon, derivatives of melem, melam and melon with phosphoric acid; wherein the respective weight percents are based on the total weight of the article; and

wherein the article displays chemical resistance towards alkaline electrolytes.

The only other independent claim 15 similarly recites a flame retardant composition. Appellants argue claims 1-5 and 15-19 as a group (*generally* App. Br.). Appellants rely upon the arguments made for this claim grouping for the separate rejection of dependent claims 6-8 (Reply Br. 4). Accordingly, all the claims stand or fall with claim 1.

ANALYSIS

Upon consideration of the evidence on this record and each of Appellants' contentions, we find that the preponderance of evidence on this record supports the Examiner's conclusion that the subject matter of Appellants' claims 1-8 and 15-19 is unpatentable. (*Ans. generally*).

In assessing whether a claim to a combination of prior art elements would have been obvious, the question to be asked is whether the improvement of the claim is more than the predictable use of prior art elements or steps according to their established functions. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007). "[T]he analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *Id.* at 418.

A reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including non-preferred embodiments. *Merck & Co., Inc. v. Biocraft Labs., Inc.*, 874 F.2d 804, 807 (Fed. Cir. 1989) (“all disclosures of the prior art, including unpreferred embodiments, must be considered.”)(quoting *In re Lamberti*, 545 F.2d 747, 750 (CCPA 1976)). Disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or non-preferred embodiments. *In re Susi*, 440 F.2d 442, 446 n.3 (CCPA 1971).

Appellants’ main arguments that Huggard teaches away because it states synergists such as a nitrogen containing compound are not required or desired (App. Br. 11, 12) are unavailing for reasons set forth by the Examiner (*e.g.*, Ans. 9, 10). *See, In re Harris*, 409 F.3d 1339, 1341 (Fed. Cir. 2005) (whether a reference teaches away from a claimed invention is a question of fact); *see also In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994) (a known or obvious device or method “does not become patentable simply because it has been described as somewhat inferior to some other product [or method] for the same use.”). *Cf. Para-Ordnance Mfg., Inc. v. SGS Importers Int’l, Inc.*, 73 F.3d 1085, 1090 (Fed. Cir. 1995) (to teach away, a reference must state that a feature “should not” or “cannot” be used in combination with other features in the prior art.)

Notably, there is no dispute that Huggard describes a thermoplastic resin as recited in component a) of claims 1 and 15, with a melamine diamine phosphate flame retardant that is encompassed by component b) of claims 1 and 15, and that Roth describes a nitrogen compound flame retardant especially suited for thermoplastics that is encompassed by component c) of claims 1 and 15 (Ans. 4-7). Furthermore, Roth discusses

that it was known that phosphates or phosphonates in combination with nitrogen containing compounds are flame retardants (*e.g.*, Roth, 1, fourth full paragraph). In any event, it is well established that combining known components useful for the same purpose flows logically from their having been individually taught in the prior art. *See In re Kerkhoven*, 626 F.2d 846, 850 (CCPA 1980).

Appellants have not provided any persuasive reasoning or credible evidence why one of ordinary skill in the art would not have, using no more than ordinary creativity, predictably used both flame retardant components as exemplified in Huggard and Roth in a thermoplastics flame retardant composition (*see generally* App. Br., Reply Br.). *See KSR*, 550 U.S. at 421 (“[a] person of ordinary skill is also a person of ordinary creativity, not an automaton.”).

Accordingly, for the reasons stated above and in the Answer, the preponderance of the evidence supports all of the Examiner’s rejections on appeal.

DECISION

The decision of the Examiner 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).

ORDER

AFFIRMED

bar