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12/402,108	03/11/2009	Atsushi Funaki	338877USOCONT	7088
22850	7590	03/15/2013	EXAMINER	
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314			BUIE-HATCHER, NICOLE M	
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BEFORE THE PATENT TRIAL  
AND APPEAL BOARD

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*Ex parte* ATSUSHI FUNAKI,  
SHIGEKI KOBAYASHI, and HIROKI NAGAI

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Appeal 2012-001512  
Application 12/402,108  
Technology Center 1700

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Before BRADLEY R. GARRIS, RICHARD TORCZON, and  
BEVERLY A. FRANKLIN, *Administrative Patent Judges*.

FRANKLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134 from the Examiner's rejection of claims 1, 5-10, 12, and 14-19. We have jurisdiction under 35 U.S.C. § 6. An oral hearing was held on March 5, 2013.

STATEMENT OF THE CASE

Claim 1 is representative of the subject matter on appeal and is set forth below:

1. A method for producing a melt-moldable tetrafluoroethylene copolymer comprising:

radical suspension-polymerizing tetrafluoroethylene and perfluoro(alkyl vinyl ether) in an aqueous medium in the presence of

a radical polymerization initiator,

at least one chain transfer agent selected from the group consisting of methane, ethane, a hydrochlorocarbon, a hydrofluorocarbon and a hydrochlorofluorocarbon, and

3 to 32.1 ppm of a fluoroemulsifier, based on the total mass of the aqueous medium,

by charging the perfluoro(alkyl vinyl ether) all at once at the initiation of the polymerization, wherein

said melt-moldable tetrafluoroethylene copolymer comprises repeating units (a) based on tetrafluoroethylene and repeating units (b) based on perfluoro(alkyl vinyl ether), wherein the amount of the repeating units (a) is from 97.4 to 99.5 mass% based on the total mass of the repeating units (a) and the repeating units (b), and the amount of the repeating units (b) is from 0.5 to 2.6 mass% on the total mass of the repeating units (a) and the repeating units (b),

the melting point of said melt-moldable tetrafluoroethylene copolymer is from 320 to 335° C, and

the volume flow rate of said melt-moldable tetrafluoroethylene copolymer is from 0.1 to 1000 mm<sup>3</sup>/s.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Funaki et al. (Funaki '984)	5,494,984	Feb. 27, 1996
Iwasaki et al. (Iwasaki)	US 2002/0028895 A1	Mar. 7, 2002
Aten	US 2004/0214974 A1	Oct. 28, 2004
Funaki et al. (Funaki '662)	EP 1 698 662 A1	Sep. 6, 2006

### THE REJECTIONS

1. Claims 1, 5-10, and 14-19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Aten.
2. Claim 6 is rejected under 35 U.S.C. §103(a) as being unpatentable over Aten in view of Funaki '984.
3. Claim 12 stands finally rejected under 35 U.S.C. §103(a) as being unpatentable over Aten in view of Funaki '662.
4. Claim 12 stands finally rejected under 35 U.S.C. §103(a) as being unpatentable over Aten in view of Iwasaki.

### ISSUE

Did the Examiner err in determining that Aten makes obvious the claimed invention, and in particular the aspect of claim 1 pertaining to “charging the perfluoro(alkyl vinyl ether) all at once at the initiation of the polymerization”?

We answer this question in the affirmative and REVERSE.

### ANALYSIS

It is the Examiner's position that Aten teaches that “all of the fluorinated vinyl ether is precharged [0025].” The Examiner also states that “[a]dding additional amounts of fluorinated vinyl ether is optional.” Ans. 5. However, the Examiner does not direct us as to where in Aten it is indicated that adding additional amounts of fluorinated vinyl ether is “optional.” Appellants correctly point out that every example in Aten teaches adding

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additional amounts of fluorinated vinyl ether. Br. 9. Hence, the preponderance of the evidence supports Appellants' interpretation of Aten in this regard. As such, we are convinced that the Examiner has not made out a prima facie case of obviousness. We need not reach Appellants' declaration evidence (rebuttal evidence) because the Examiner has not set forth a prima facie case. We thus reverse Rejection 1. We also reverse Rejections 2-4 because the secondary references do not cure this deficiency of Aten.

#### CONCLUSIONS OF LAW AND DECISION

Each rejection is reversed.

REVERSED

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