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HAHN LOESER / LINCOLN ONE GOJO PLAZA SUITE 300 AKRON, OH 44311-1076			MATHEW, HEMANT MATHAI	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RANDALL M. BURT, JON P. CHIAPPONE,
CRAIG B. DALLAM, and ROBERT J. WEAVER

Appeal 2014-006799
Application 11/357,861¹
Technology Center 3700

Before: HUBERT C. LORIN, ANTON W. FETTING, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

SILVERMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 26–29, 31, 32, 37, 38, 42, 44–52, 54, 56, 57, 59, and 60. Appeal Br. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ According to the Appellants, Lincoln Global Inc., is the real party in interest. Appeal Br. 3.

ILLUSTRATIVE CLAIM

26. A cellulosic stick electrode for electric arc welding, said cellulosic stick electrode comprising a center wire and a cellulosic outer coating, said cellulosic outer coating comprising:

powdered fluxing agents, including titanium dioxide in the amount of 11–15 weight percent of the cellulosic outer coating;

20–30 weight percent cellulose powder

5–35 weight percent binder, and

a water content greater than 3 weight percent and less than or equal to 10 weight percent of said stick electrode.

CITED REFERENCES

The Examiner relies upon the following references:

Dorschu et al. (hereinafter “Dorschu”)	US 3,453,142	July 1, 1969
Hayashi et al. (hereinafter “Hayashi”)	US 4,166,879	Sept. 4, 1979
Crockett	US 2004/0187961 A1	Sept. 30, 2004

REJECTION

Claims 26–29, 31, 32, 37, 38, 42, 44–52, 54, 56, 57, 59, and 60 are rejected under 35 U.S.C. § 103(a) as unpatentable over Dorschu, Crockett, and Hayashi.

FINDINGS OF FACT

The findings of fact relied upon, which are supported by a preponderance of the evidence, appear in the following Analysis.

ANALYSIS

The Appellants present certain arguments for all claims on appeal (claims 26–29, 31, 32, 37, 38, 42, 44–52, 54, 56, 57, 59, and 60) as a group. Appeal Br. 7–14. Claim 26 is selected for analysis herein. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Claim 26 recites a cellulosic stick electrode comprising “a water content greater than 3 weight percent and less than or equal to 10 weight percent of said stick electrode.”

According to the Non-Final Action, Dorschu discloses a welding electrode having the constituents identified in claim 26, albeit not in the amounts claimed. Non-Final Act. 2–3.

The Non-Final Action states that it would have been obvious to increase the water content of Dorschu, based upon Crockett’s teaching of a cellulose electrode with a moisture content ranging from less than 0.2% in some low hydrogen electrodes to as high as 3–6% of the electrode’s coating. *Id.* at 3–4 (citing Crockett ¶ 5).

The Appellants argue that Crockett refers to “cellulose electrodes containing 3–6 percent moisture content in the flux coating, but does not provide moisture content as a percentage of the weight of the electrode as recited in the claims.” Appeal Br. 9. In addition, the Appellants submit the Dallam Declaration (Appeal Br., Evidence Appendix, Ex. 5) to support the proposition that a person of ordinary skill in the art would not have relied upon the teachings regarding the water content of a cellulose electrode (such as Crockett) to modify the water content of a basic or low hydrogen electrode (such as Dorschu). *See* Appeal Br. 10–14.

In response, the Examiner states that the moisture content of Crockett is interpreted as the percentage of the electrode. Answer 5.

Yet, the Examiner's position contradicts the disclosure of Crockett, which states:

The moisture content *of the dried flux coating on the electrode* will range from less than 0.2% in some low hydrogen electrodes to as high as 3 to 6 percent in a cellulose type of electrode (e.g. E6010, E6011, etc.).

Crockett ¶ 5 (emphasis added). Thus, the Examiner has not shown that the prior art discloses a welding electrode having “a water content greater than 3 weight percent and less than or equal to 10 weight percent of said stick electrode,” as recited in claim 26. Nor has the Examiner shown that it would have been obvious for a person of ordinary skill in the art to employ a water content in the amount recited in claim 26, in a welding electrode.

In addition, the Examiner does not address the Dallah Declaration. “Affidavits or declarations, when timely presented, containing evidence of criticality or unexpected results, commercial success, long-felt but unsolved needs, failure of others, skepticism of experts, etc., must be considered by the examiner in determining the issue of obviousness of claims for patentability under 35 U.S.C. 103.” MPEP § 716.01(a).

Accordingly, the Appellants' arguments are persuasive of error in the rejection of claim 26 and the claims grouped together therewith.

The rejection of claims 26–29, 31, 32, 37, 38, 42, 44–52, 54, 56, 57, 59, and 60 under 35 U.S.C. § 103(a) is not sustained.

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Application 11/357,861

DECISION

We reverse the Examiner's decision rejecting claims 26–29, 31, 32, 37, 38, 42, 44–52, 54, 56, 57, 59, and 60 under 35 U.S.C. § 103(a).

REVERSED