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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/016,435	01/28/2011	Antonio BONUCCI	P563-USD	4563
72932	7590	10/26/2016	EXAMINER	
Steinfl & Bruno LLP 155 N. Lake Ave. Ste 700 Pasadena, CA 91101			KRUER, KEVIN R	
			ART UNIT	PAPER NUMBER
			3649	
			MAIL DATE	DELIVERY MODE
			10/26/2016	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ANTONIO BONUCCI, SERGIO RONDENA,
GIORGIO LONGONI, MARCO AMIOTTI, and LUCA TOIA

Appeal 2016-008392
Application 13/016,435
Technology Center 3600

Before LYNNE H. BROWNE, ERIC C. JESCHKE, and
BRENT M. DOUGAL, *Administrative Patent Judges*.

BROWNE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Antonio Bonucci et al. (Appellants) appeal under 35 U.S.C. § 134 from the rejection of claims 15–33. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

CLAIMED SUBJECT MATTER

Claim 1, reproduced below, is illustrative of the claimed subject matter:

15. A polymeric tri-layer for the manufacturing of photovoltaic panels, wherein the two outermost layers are composed of a polymeric material essentially without getter material, whereas the central layer is composed of a composite getter system for H₂O sorption.

REFERENCES

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

Chu	US 6,777,481 B2	Aug. 17, 2004
Dick	US 7,335,422 B2	Feb. 26, 2008
Bawden ¹	GB 1,231,569	May 12, 1971
Ito ²	JP 40-11610 A	June 23, 1989

REJECTIONS

- I. Claims 15, 16, 18–25, and 29–32 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Chu and Bawden.
- II. Claims 17, 26–28, and 33 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Chu, Bawden, and Ito.

¹ We note that Bawden is the name of the agent who prosecuted this patent; however, as no inventor is named and the patent is credited to Hercules Inc., like the Examiner and Appellants, we refer to it as Bawden. *See* Bawden, 1, 3.

² We note that the rejection relies upon the English abstract of this publication, not the entire document. *See* Final Act. 6.

DISCUSSION

Rejection I

The Examiner finds that Chu and Bawden disclose or suggest all of the limitations of independent claim 15. *See* Final Act. 4. In particular, the Examiner determines that it would have been obvious “to apply skin layers free of getter to the layer of Chu in order to ease processing.” *Id.*

Appellants argue that “adding sealing layers taught by Bawden will prevent the volatiles of Chu from escaping (passing through the Bawden layers), which is the purpose of the composition of Chu.” Appeal Br. 8. Responding to this argument, the Examiner explains that:

Bawden teaches the additive will be present on the surface of the laminate. Specifically, Bawden teaches, “(T)he effect of the additive, however, is not lost on the outer layers. Since a concentration gradient exists between the centre layer and the surface layer, there is a tendency for the additive to migrate to the outer layers. In time, sufficient migration will take place to provide the desired effect on the surface layer (page 1, lines 71 +).”

Ans. 6–7. The Examiner concludes that “the skin layers rendered obvious by Bawden would no[t] render the invention of Chu inoperative as ‘in time’ the getter material will be present on the surface.” *Id.* at 7.

In response, Appellants contend that the Examiner’s reasoning is flawed, arguing that:

Even if the Board adopts the Examiner’s erroneous reasoning, then “the skin layers” of Bawden in combination with Chu will result in that “‘in time’ the getter material will be present on the surface”. Thus, the combination of Chu and Bawden will still fail to disclose, teach or suggest the Appellants’ claimed feature of “the two outermost layers are composed of a polymeric material essentially without getter material” as recited in claim

15, because “‘in time’ the getter material will be present on the surface” in a combination of Chu and Bawden.

Reply Br. 5–6 (emphasis omitted).

Appellants are correct. In order to meet the limitation at issue, the proposed modified tri-layer must include outer layers “essentially without getter material;” however, as explained by the Examiner, in order for the proposed modification to not render Chu unsuitable for its intended purpose, migration of getter material to the outer surface must occur, such that the proposed modified tri-layer would no longer meet the limitation requiring “two outermost layers [that] are composed of a polymeric material essentially without getter material.” Appeal Br. 36. Accordingly, the Examiner’s reasoning lacks rational underpinning.

For this reason, we do not sustain the Examiner’s decision rejecting claim 15, and claims 16, 18–21, and 23, which depend therefrom. Claims 22 and 24 similarly require “the two outermost layers are composed of a polymeric material essentially without getter material” and “a pair of outer layers that are substantially free of said getter material.” Accordingly, we do not sustain the Examiner’s decision rejecting claims 22 and 24, and claims 25 and 29–32, which depend from claim 24, for the same reasons.

Rejection II

Claims 17 and 33 depend from claim 15 and claims 26–28 depend from claim 24. It does not cure the deficiencies in the rejection of claims 15 and 24 discussed *supra*. Accordingly, we do not sustain the Examiner’s decision rejecting claims 17, 26–28, and 33, for the same reasons.

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Application 13/016,435

DECISION

The Examiner's rejections of claims 15–33 are REVERSED.

REVERSED