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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/933,847	11/05/2015	Carlos A. CRUZ	211201US01 (4081-22001)	2039
37814	7590	10/29/2019	EXAMINER	
CHEVRON PHILLIPS CHEMICAL COMPANY 5601 Granite Parkway, Suite 500 PLANO, TX 75024			RABAGO, ROBERTO	
			ART UNIT	PAPER NUMBER
			1762	
			MAIL DATE	DELIVERY MODE
			10/29/2019	PAPER

**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.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* CARLOS A. CRUZ, MAX P. McDANIEL, QING YANG,  
JARED L. BARR, and YOULU YU

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Appeal 2018-009118  
Application 14/933,847  
Technology Center 1700

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Before BRADLEY R. GARRIS, N. WHITNEY WILSON, and  
CHRISTOPHER C. KENNEDY, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

Appellant claims a radically coupled ethylene polymer characterized by a crossover modulus defined via a particular formula (independent claim 1; *see also* remaining independent claims 10 and 11).

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<sup>1</sup> We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Chevron Phillips Chemical Company LP. Appeal Br. 3.

A copy of representative claim 1, taken from the Claims Appendix of the Appeal Brief, appears below.

1. A radically coupled ethylene polymer having a density of from about 0.915 g/ml to about 0.975 g/ml and subjected to a temperature of 190°C, the radically coupled polymer characterized by a crossover modulus that is measured in Pascals (Pa) and is equal to or less than  $y_{mn}$  where  $y_{mn}=180,000e^{-0.15x}$  and  $x$  is the number average molecular weight of the radically coupled polymer divided by 1,000.

The Examiner rejects claims 1–20 under pre-AIA 35 U.S.C. § 103(a) as unpatentable over Yang (US 2014/0275462 A1; published Sept. 18, 2014) (Final Office Action (Final) 6–8). The Examiner finds that Yang “is the parent application of the instant C-I-P application” (*id.* at 7) and that Yang does not expressly disclose the crossover modulus limitation of claim 1 (*id.*). Nevertheless, the Examiner finds that “[t]he polymers and methods described in the two disclosures are otherwise identical” (*id.* at 7–8) and determines that it is obvious to one of ordinary skill in the art the radically coupled ethylene polymers of Yang possess (i.e., inherently) the claimed property of crossover modulus “because the same methods operating on the same materials will result in the same properties” (*id.* at 8).<sup>2</sup>

Appellant argues that the Examiner’s priority determination is inconsistent with the Examiner’s finding that Yang’s ethylene polymer inherently has the crossover modulus defined by claims 1–20 (Appeal Br. 9).

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<sup>2</sup> The Examiner determines Yang is available as prior art against Appellant’s claims 1–20 on the grounds that the instant application is not entitled to the priority filing date benefit of the parent application, Yang, due to the lack of written description support in Yang for the crossover modulus limitation recited in Appellant’s independent claims (Final 3).

According to Appellant, because Yang's ethylene polymers inherently possess the claimed crossover modulus property, Yang inherently provides written description support for this property such that the instant application is entitled to the priority filing date benefit of the parent application, thus rendering Yang unavailable as prior art and the § 103 rejection moot (*id.* at 10).

The Examiner responds by stating that benefit of the parent application filing date requires the parent application to provide either explicit or inherent written description support for the full scope of the claimed crossover modulus and that Appellant has not identified any such support (Ans. 6–7). For this reason, the Examiner contends that the priority determination is not inconsistent with the inherency finding in the § 103 rejection (*id.* at 7).

In reply, Appellant argues that the Examiner fails to provide a reason why persons skilled in the art would not recognize Yang's disclosure supports the claimed crossover modulus range and, therefore, fails to meet the initial burden of presenting evidence or reasons why Yang lacks written description support for this range (Reply Br. 8).

“Under the doctrine of inherent disclosure, when a specification describes an invention that has certain undisclosed yet inherent properties, that specification serves as adequate written description to support the subsequent patent application that explicitly recites the invention's inherent properties.” *Yeda Research and Development Co., LTD. v. Abbott GMBH & Co.*, 837 F.3d 1341, 1345 (Fed. Cir. 2016) citing *Kennecott Corp. v. Kyocera Int'l, Inc.*, 835 F.2d 1419, 1423 (Fed. Cir. 1987).

The record supports the Examiner's finding that the ethylene polymers disclosed by Yang are identical to the ethylene polymers encompassed by claims 1–20 whereby the former inherently possess the claimed crossover modulus values of the latter. Appellant correctly observes that the Examiner fails to provide a reason why Yang's ethylene polymers would not possess the same range of crossover modulus values as the identical claimed ethylene polymers. These circumstances reflect that the Examiner's priority determination and concomitantly the Examiner's application of Yang as prior art against claims 1–20 are erroneous. For this reason, we do not sustain the § 103 rejection of claims 1–20 as unpatentable over Yang.

We reverse the Examiner's decision to reject these claims.

#### CONCLUSION

In summary:

<b>Claims Rejected</b>	<b>Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1–20	§ 103(a) Yang		1–20
<b>Overall Outcome</b>			1–20

REVERSED