In re Appeal 179PQ 730

supports the conclusion, that the addition of sulfur to the basic carbonate bond process results in an enhancement of the strength of the lump ore at high temperatures. The board does not dispute the allegation but dismisses it as being merely the aggregative effect of combining sulfur with the carbonate bond process. In our view, this conclusion is not supported by the record.

[1] With regard to the principal rejection, we agree that combining the teaching of Schaefer with that of Johnson or Amberg would give the beneficial result observed by appellant. However, the mere fact that those disclosures *can* be combined does not make the combination obvious unless the art also contains something to suggest the desirability of the combination. In re Bergel, 48 CCPA 1102, 292 F.2d 955, 130 USPQ 206 (1961). We find no such suggestion in these references.

Schaefer does teach that sulfur can be used as a bonding agent for finely divided ore. However, his disclosure also reveals that at high temperatures the sulfur is burned away and the lump ore loses strength. To overcome this problem, he would incorporate into the pellet a known high temperature bonding agent such as bentonite. According to Schaefer, bentonite is a clay material and unsatisfactory as a *low temperature* bonding agent.

Contrast this teaching to what appellant has done. He combines two processes known to result in lump ore having high strength at low temperatures but not at high temperatures, yet obtains a lump ore having improved strength in both situations. We consider this to be unexpected and unobvious in view of the art despite the board's contention to the contrary. In fact, we think that the art suggests that no desirable effect would result from the combination as Schaefer teaches that the sulfur will be burned away as the temperature is raised and, therefore, would contribute nothing to the combination.

We do not think that one skilled in the art would be led by the teachings of Russo to employ sulfur in the carbonate bond process. In the first place, Russo uses sulfur in a high temperature molding process employed to make finished articles of high strength from iron powder. The reference does not suggest that this strength is improved at high temperatures such as are encountered in the metallurgical processes for which lump ore is useful.

Secondly, there is nothing in the record to suggest that the problems of powder metallurgy in any way resemble those of lump ore preparation. Therefore, if Russo would suggest that sulfur improves the strength at high temperatures of articles molded from iron powder, we think one skilled in the art would not view this to be significant in view of the contrary suggestion in Schaefer, a more pertinent reference, concerning the effect of adding sulfur to a metal ore.

In view of all the art of record, we also believe that the secondary rejection of claims 4 and 5 cannot be sustained. At the outset, we note that Bell's basic goal was to improve the high temperature performance of the pellets and that free sulfur was merely an optional agent not essential to this purpose. However, in view of Schaefer's disclosure that free sulfur is an adequate agent for imparting low temperature stability to ore pellets, the art does not appear to suggest that there would be any advantage to be obtained by using the carbonate bond process with Bell's pellets if they also contain sulfur. In the absence of such a suggestion, we conclude that the combination would not have been obvious.

For the foregoing reasons, we hold that the claimed invention would not have been obvious to one skilled in the art at the time it was made. Accordingly, the board's decision is *reversed.*

Court of Customs and Patent Appeals

CHAMPION INTERNATIONAL CORPORATION v. THE GILBERT & BENNETT MANUFACTURING COMPANY

No. 9032 Decided Nov. 15, 1973

Appeal from Trademark Trial and Appeal Board of the Patent Office; 171 USPQ 254.

Trademark opposition No. 49,405 by The Gilbert & Bennett Manufacturing Company against Champion International Corporation, application, Serial No. 300,664, filed June 18, 1968. From decision sustaining opposition, applicant appeals.

Editor's Note: Affirmed without published opinion.

Court of Customs and Patent Ap

CARRERAS LIMITED v. CONSOLIDA CIGAR CORPORATION

No. 9063 Decided Nov. 15,

Appeal from Trademark Trial and Board of the Patent Office; 172 USPQ

Trademark cancellation No. 9,547 b solidated Cigar Corporation against Ca Limited, Supplemental Registration 799,289, issued Nov. 23, 1965. From de granting petition, registrant appeals.

Editor's Note: Affirmed without pub opinion.

Court of Customs and Patent App

BREEN AND LAUTERBACH v. COBB JACKSON; COBB AND JACKSON v. BREEN AND LAUTERBACH

Nos. 9005-6 Decided Nov. 2

PATENTS

1. Drawings — Disclosure i only (§34.3)

While drawing may provide supp claim, fact that count may read on d does not establish that drawing wou stitute adequate disclosure of limita count inasmuch as skilled artisan wo gard showing as accidental or arbitr

2. Interference — Practice (§41.6

Party is entitled to benefit of gran application specified in notice of inte even though bridging parent applicat not so specified since notice necessa inherently included bridging applica quired to make notice effective.

Particular patents—Nozzle

Breen and Lauterbach, Texturizing application awarded priority as to