

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

In re David Buszard, Matthew D. Phillips, Richard S. Rose and Stephen B. Falloon

In re David Buszard, Matthew D. Phillips, Richard S. Rose & Stephen B. Falloon, 504 F.3d 1364 (Fed. Cir. 2007) · No. 2006-1489 · Decided September 27, 2007

SUMMARY

The United States Court of Appeals for the Federal Circuit reviewed a Board of Patent Appeals and Interferences decision holding patent application claims anticipated under 35 U.S.C. § 102. The court held that a reaction mixture producing flexible polyurethane foam could not reasonably be construed to include a rigid-foam mixture whose product was later mechanically crushed. The court reversed and remanded for further examination, with Judge Prost dissenting.

CASE DETAILS

COURT	United States Court of Appeals for the Federal Circuit
WRITING FOR THE COURT	Pauline Newman; Daniel M. Friedman; Sharon Prost
JURISDICTION	Federal
DECIDED	September 27, 2007
DOCKET	2006-1489
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Patent applicants appealed the Board of Patent Appeals and Interferences' decision holding all claims in their application unpatentable for anticipation under 35 U.S.C. § 102.
STANDARD OF REVIEW	Under the Administrative Procedure Act, the Board's factual findings are reviewed for substantial evidence and its legal conclusions for correctness in law. The Board's claim interpretation during patent prosecution is reviewed for reasonableness under the broadest reasonable interpretation standard.
PRECEDENTIAL VALUE	published precedential Federal Circuit opinion
PARTIES	David Buszard, Matthew D. Phillips, Richard S. Rose, Stephen B. Falloon v. Director of the United States Patent and Trademark Office

TOPICS

patent prosecution

patent law

administrative procedure act

judicial review of agency action

appellate procedure

PRACTICE AREAS

patent law

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QUESTIONS PRESENTED

1. Whether the Eling reference disclosed every limitation of the applicants' claims, including a flexible polyurethane foam reaction mixture, so as to anticipate the claims under 35 U.S.C. § 102.
2. Whether the Board's broad construction of flexible polyurethane foam reaction mixture as any reaction mixture that ultimately produces a flexible polyurethane foam was reasonable during patent examination.

HOLDINGS

1. Eling did not anticipate the claims because it disclosed a rigid polyurethane foam reaction mixture that produced a rigid foam, which was later mechanically crushed, rather than a flexible polyurethane foam reaction mixture.
2. The Board's construction equating a flexible polyurethane foam reaction mixture with any mixture that ultimately produces a flexible foam was not reasonable because it improperly equated a rigid-foam reaction mixture with a flexible-foam reaction mixture.
3. PTO tribunal decisions are reviewed under the Administrative Procedure Act, with factual findings reviewed for substantial evidence and legal conclusions reviewed for correctness in law.

KEY QUOTATIONS

"A rejection for anticipation under section 102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference." (504 F.3d at 1366)

"No matter how broadly "flexible foam reaction mixture" is construed, it is not a rigid foam reaction mixture." (504 F.3d at 1367)

"We agree with Buszard that it is not a reasonable claim interpretation to equate "flexible" with "rigid," or to equate a crushed rigid polyurethane foam with a flexible polyurethane foam." (504 F.3d at 1367)

FACTUAL BACKGROUND

The applicants' patent application claimed a flame-retardant composition containing a dialkyl tetrahalophthalate ester, a phosphorus-containing flame retardant, and a flexible polyurethane foam reaction mixture, as well as a flexible foamed article made from that composition. The Board found the claims anticipated by the Eling patent, which disclosed making a rigid polyurethane foam and then producing a flexible foam by mechanically crushing the rigid foam. The Federal Circuit concluded that Eling disclosed a rigid-foam reaction mixture and did not disclose the claimed flexible polyurethane foam reaction mixture.

PROCEDURAL HISTORY

The PTO examiner rejected the claims for anticipation, and the Board affirmed, construing the claimed flexible polyurethane foam reaction mixture broadly enough to encompass the Eling reference. The Federal Circuit reviewed the Board's decision and reversed the anticipation determination, remanding for completion of examination.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the PTO for completion of examination and appropriate further proceedings.

CASES CITED

- Dickinson v. Zurko, 527 U.S. 150, 165 (1999)
- In re Gartside, 203 F.3d 1305, 1312 (Fed. Cir. 2000)
- In re Paulsen, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994)
- Karsten Manufacturing Corp. v. Cleveland Golf Co., 242 F.3d 1376, 1383 (Fed. Cir. 2001)
- In re Yamamoto, 740 F.2d 1569, 1571-72 (Fed. Cir. 1984)
- In re Zletz, 893 F.2d 319, 321-22 (Fed. Cir. 1989)
- In re Am. Acad. of Sci. Tech Ctr., 367 F.3d 1359, 1364 (Fed. Cir. 2004)
- In re Morris, 127 F.3d 1048, 1053-56 (Fed. Cir. 1997)
- In re Crish, 393 F.3d 1253, 1256 (Fed. Cir. 2004)
- In re Bigio, 381 F.3d 1320, 1324 (Fed. Cir. 2004)
- In re Hyatt, 211 F.3d 1367, 1372-73 (Fed. Cir. 2000)
- Phillips v. AWH Corp., 415 F.3d 1303, 1312-13 (Fed. Cir. 2005) (en banc)