

October 2, 1970.

Dear Sirs:

Re: Final Rejection Application No. 975,082
Filed November 8, 1966 P. Richard et al
COATED METAL ARTICLE AND METHOD OF
PRODUCING SAME

In accordance with the request of the applicant in his letter of January 8, 1970 the examiner's Final Action under Section 47 of the Patent Rules (prior to amendment by Order-in-Council P.C. 1970-728 effective June 1, 1970) dated October 8, 1969 has been reviewed.

By mutual agreement with the applicant's Patent Agent a Hearing was held September 29, 1970 before the Patent Appeal Board. The presentation for the applicant was made by Mr. Baillie of Langner, Parry, Card & Langner, New York and Mr. Macklin and Mr. McKhool of your firm.

In the Final Action the examiner rejected the application for a reissue patent on the grounds that it did not come within the provisions of Section 50(1) of the Patent Act since the invention of the reissue application was not the same as the invention of the original patent and furthermore there was no evidence that applicant had intended to limit his claims in the original patent.

After carefully considering the examiner's actions and the written and oral presentations on behalf of the applicant, the Patent Appeal Board finds the petition acceptable under Section 50 of the Patent Act. Sufficient evidence has been produced to support applicant's contention that he intended, at the time the original patent issued, to restrict his claims to the operable aspects of the invention, and failed to do so by reason of an oversight.

The applicant was mistaken in his theory of how the invention worked, however, this does not negate the fact that an invention had been made. An invention is considered to have been made and completed even though an inventor may not know why he obtained the results. Furthermore, the product can be produced using the starting materials of either of the two examples given and following the teachings of the specification. It was also found that the product is claimed in identical form in the Patent and the Reissue application.

I concur with the findings of the Patent Appeal Board and I am therefore setting aside the Final Action and returning the application to the examiner for resumption of prosecution.

Yours truly,

A.M. Laidlaw,
Commissioner of Patents.

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& Henderson,
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