

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PEKKA KOIVUKUNNAS

Appeal No. 2000-0081
Application 08/785,099

ON BRIEF

Before CALVERT, STAAB and GONZALES, Administrative Patent
Judges.

CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 to
27, all the claims in the application.

The claims on appeal are drawn to a thermally insulated
roll, and are reproduced in the appendix of appellant's brief.

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The references applied in the final rejection are:

Fleissner 27, 1974	3,831,666	Aug.
Bos et al. (Bos) 1977	4,053,277	Oct. 11,
Stahl et al. (Stahl) 1989	4,876,780	Oct. 31,
Neuhöffer et al. (Neuhöffer) 1990	4,920,623	May 1,

The appealed claims stand finally rejected under
35 U.S.C. § 103 as unpatentable over the following
combinations of references:

- (1) Claims 1 to 7, Fleissner in view of Stahl;
- (2) Claims 8 and 9, Fleissner in view of Stahl and Bos;
- (3) Claims 10 to 15, 18 to 24 and 27, Fleissner in view of
Stahl and Neuhöffer;
- (4) Claims 16, 17, 25 and 26, Fleissner in view of Stahl,
Neuhöffer and Bos.

Considering first the rejection of claim 1, the only
independent claim, it is evident that Fleissner discloses all
the subject matter recited in that claim except the final
paragraph, which reads:

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joining members mounted to respective ends of said first and second insulating walls so that said joining members and first and second insulating walls define a hermetically sealed insulated cavity.

The examiner takes the position that (answer, page 4):

The patent of Stahl et al., in Figure 4 and in the Abstract, discloses a second insulating wall (10) located around a first insulating wall (20) of a fluid channel, welding the first and second insulating walls (10, 20) together and evacuating the cavity between the two insulating walls (10, 20) [for] the purpose of insulating the second insulating wall from the heat transfer fluid flowing through the fluid channel. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Fleissner ('666) welding the first and second insulating walls together and evacuating the cavity between the two insulating walls for the purpose of insulating the second insulating wall from a heat transfer fluid flowing through a channel as disclosed in Stahl et al.

On page 10 of the brief, appellant first argues that the two fields of technology to which the Fleissner and Stahl devices relate (Fleissner: textiles; Stahl: piping) are so diverse that there would be no reason for one of ordinary skill to combine their teachings absent an improper hindsight reconstruction based on appellant's disclosure. To the extent that this constitutes an argument that Stahl is nonanalogous art, we disagree. As stated in In re Clay, 966 F.2d 656, 658-

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59, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992):

Two criteria have evolved for determining whether prior art is analogous: (1) whether the art is from the same field of endeavor, regardless of the problem addressed, and (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved.

In the present case, even if Stahl is not from the same field of endeavor, it satisfies criterion (2) in that it is reasonably pertinent to the particular problem with which appellant is involved, namely, the thermal insulation of a conduit containing a heated fluid. Thus, Stahl is analogous art.

On pages 12 and 13 of the brief, appellant presents a number of other arguments as to why it would not have been obvious to modify the Fleissner apparatus in view of Stahl. After fully considering the record in light of these arguments and the arguments presented in the examiner's answer, we conclude that claim 1 is patentable over the combination of Fleissner and Stahl. Given the fact that Stahl discloses that the inner conduit must be prestressed, and in view of Fleissner's lack of disclosure of the structure of the right-

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hand ends of shaft 1 and conduits 7 and 21 (as seen in Fig. 1), we do not consider that Stahl would have suggested to one of ordinary skill that shaft 1 and conduit 21 of Fleissner be provided with joining members at their ends to thereby define a hermetically sealed cavity, as claimed. The portions of Stahl which the examiner identifies as providing motivation for such a modification of Fleissner, namely, the Abstract and col. 4, lines 9 to 47, would not, in our view, have done so.

Accordingly, the rejection of claim 1, and therefore of dependent claims 2 to 7 will not be sustained. Also, the rejection of claims 8 to 27 will not be sustained, since the additional references applied therein, Bos and Neuhöffer, do not supply the above-noted deficiencies of the combination of Fleissner and Stahl.

Conclusion

The examiner's decision to reject claims 1 to 27 is reversed.

REVERSED

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Administrative Patent Judge)	
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