

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KURT E. BROWN

Appeal No. 2002-0675
Application No. 09/217,876

ON BRIEF

Before ABRAMS, PATE, and NASE, Administrative Patent Judges.

PATE, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 9, 12 through 19 and 22 through 24. Claims 10, 11, 20 and 21 stand allowed.

The claimed invention is directed to a system and method for conveying a string of air-filled packing cushions between a machine in which they are made and a storage bin where they can be removed for use. The claimed conveyor is an air conveyor

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which uses pressurized air to move the air-filled packing cushion from the manufacturing machine to the storage bin.

The claimed invention may be further understood with reference to the appealed claims which are appended to appellant's brief.

The references of record relied upon by the examiner as evidence of obviousness are:

Wiseman et al. (Wiseman)	4,744,702	May 17, 1988
Long et al. (Long)	5,209,387	May 11, 1993
Ross et al. (Ross)	5,419,457	May 30, 1995

AirFil 1200 Brochure, "The Flexible approach to air-filled packaging"

THE REJECTIONS

Claims 1 through 6, 12 and 13 stand rejected under 35 U.S.C. § 103 as unpatentable over the AirFil brochure in view of Long and Wiseman. According to the examiner, the AirFil brochure discloses a method and apparatus for air pillow production. Long discloses conveying a web of material 46 from one location to another by the use of an air pressure conveyor. Wiseman discloses that a pneumatic conveyor may be used to transport light objects. Therefore, the examiner concludes that it would have been obvious to have modified the method and apparatus of

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the AirFil brochure by substituting a pneumatic conveyor as taught by Long or Wiseman.

Claims 7 through 9, 14 through 19 and 22 through 24 stand rejected under 35 U.S.C. § 103 as unpatentable over the AirFil brochure in view of Long, Wiseman and Ross. According to the examiner, Ross teaches the concept of using bins and an overhead track to collect and transport articles. Thus, the examiner concludes, that it would have been obvious to use the Ross et al. teaching of collecting articles in a bin in the system of the AirFil brochure as modified by Long and Wiseman.

OPINION

We have carefully reviewed the claimed subject matter in light of the arguments of the appellant and the examiner. As a result of this review, we have reached the determination that the applied prior art does not establish the prima facie obviousness of the claimed subject matter. Accordingly, the rejections of the claims on appeal are reversed. Our reasons follow.

We are in agreement with the examiner that the Airfil brochure discloses a machine for manufacturing a continuous string of air-filled cushions. With respect to page 3 of the brochure, apparently a web of manufactured cushions exits the

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machines toward the floor where the web is taken by a conveyor and lifted to be dumped in a bin. Apparently, an operator removes the cushions from the bin to use as packing material as he or she fills the boxes on the roller conveyor for shipment. There is no indication of what type of lifting conveyor is used for the illustrated installation, although a specific type of conveyor is obviously commercially viable.

We further agree with the examiner as to the scope and content of the Long and Wiseman references. Long discloses a non-contact air film conveyor intended for conveying a web of film at high speed. The conveyor is formed of a duct with an air plenum or pressure chamber 18 in the base of the duct with air holes from the pressure chamber where injected air lifts and transports a strip of film 46. Long discloses that his conveyor is designed to transport "strips of web material having surface coatings or finishes sensitive to contact by adjacent surfaces during conveying." Col. 2, lines 7-10. Wiseman is directed to a conveyor of modular construction that eliminates the need to custom manufacture each conveyor. Wiseman states that air conveyors can convey relatively light objects without the use of moving parts.

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We are in agreement with appellant that there is no motivation or suggestion in this prior art, taken as a whole, for the substitution of an air conveyor such as is disclosed by Wiseman or Long for the unknown but clearly suitable conveyor shown in the Airfil brochure. There is no disclosure of the suitability of an air conveyor as disclosed by Long or Wiseman for conveying a web of balloon-like material. In our view, the combination of references is based on an impermissible hindsight reconstruction of appellant's claimed subject matter. Thus, the combination of references cannot support a proper prima facie case of obviousness.

We have carefully reviewed the other applied reference, but we find therein no teaching to ameliorate the shortcomings we have previously discussed. Accordingly, the rejections of all claims on appeal are reversed.

The record reflects that the examiner has considered possible double patenting with U.S. Patent No. 5,873,215. The record does not reflect whether the examiner has considered the issue of obviousness double patenting with respect to companion Application No. 09/246,257, Appeal No. 02-1878.

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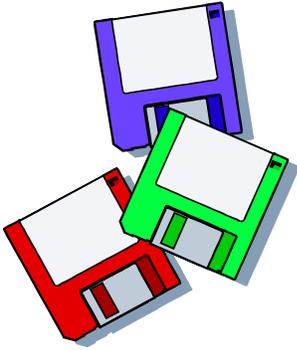
REVERSED

NEAL E. ABRAMS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
WILLIAM F. PATE, III)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JEFFREY V. NASE)	
Administrative Patent Judge)	

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DECISION: REVERSED

Prepared: June 9, 2003

Draft Final

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