

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS W. ASTLE

Appeal No. 95-0526
Application No. 08/038,533¹

ON BRIEF

Before SOFOCLEOUS, WILLIAM F. SMITH and WEIMAR, Administrative Patent Judges.

SOFOCLEOUS, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 to 4, 6, and 8 to 20, all the claims remaining in the application.

The subject matter on appeal is directed to a micropipette tip rack, a pipettor system, and a method of loading onto a pipettor a plurality of micropipette tips.

¹ Application for patent filed March 29, 1993.

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Claims 1 to 4 stand rejected under 35 U.S.C. § 103 as being unpatentable over Scordato in view of Rainin.

Claims 13, 6, 8 to 14, 19, and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Freeman in view of Citrin and Lyman.

Claims 15 to 18 stand rejected under 35 U.S.C. § 103 as being unpatentable over Freeman, Citrin, and Lyman as applied to claims 13, 6, 8 to 14, 19, and 20 and further in view of Scordato and Rainin as applied to claims 1 to 4.

In his brief, appellant urges that to the extent his arguments are presented with respect to specific claims, it is appellant's intention that those claims do not stand or fall with the claims with which they are grouped. Claims 1, 13, and 15 are sufficiently representative of their groups and are as follows:

1. A micropipette tip package for micropipette tips each having an upper, hollow, tapered, generally cylindrical barrel portion joined to a lower, hollow, generally cylindrical, aspirating tip portion, both lying along a common vertical axis, said micropipette tip package comprising:

- (a) a generally hollow housing having four cojoined sidewalls depending from a horizontal cojoining upper surface to define an open skirt;
- (b) said upper surface having defined therein a plurality of openings to frictionally engagingly accommodate therein the distal, wider, ends of said upper portions of a said micropipette tips;
- (c) a horizontal internal support plate disposed in said housing and spaced from said upper surface, said

internal support plate having defined therein a plurality of openings to frictionally engagingly accommodate therein the proximal, narrower, ends of said upper portions of a said micropipette tips; and

- (d) corresponding pairs of said openings in said internal support plate and said upper surface being vertically aligned coaxially so that said micropipette tips can be supported in a vertical position in said package and releasably held therein by interference fits at said upper surface and said internal support plate.

13. A pipettor system, comprising:

- (a) a pipettor having a head portion with a plurality of tip pins depending therefrom;
- (b) a plurality of micropipette tips, said micropipette tips being releasably held in a micropipette tip package, said micropipette tips each having an upper, hollow, tapered, generally cylindrical barrel portion and a lower, hollow, generally cylindrical aspirating tip portion, both lying along a common vertical axis and being cojoined at a horizontal shoulder; and
- (c) a horizontal pusher plate to simultaneously engage said shoulder on each of said micropipette tips and to simultaneously raise said micropipette tips for insertion of said tip pins therein, with said micropipette tip package remaining attached to said micropipette tips.

15. A system, as defined in Claim 13, wherein said micropipette tip package comprises:

- (a) a generally hollow housing having four cojoined sidewalls depending from a horizontal cojoining upper surface to define an open skirt;
- (b) upper surface having defined therein a plurality of openings to frictionally engagingly accommodate therein the distal, wider, ends of said upper portions of a said micropipette tips;

- (c) a horizontal internal support plate disposed in said housing and spaced from said upper surface, said internal support plate having defined therein a plurality of openings to frictionally engagingly accommodate therein the proximal, narrower, ends of said upper portions of a said micropipette tips; and
- (d) corresponding pairs of said openings in said internal support plate and said upper surface being vertically aligned coaxially so that said micropipette tips can be supported in a vertical position in said package and releasably held therein by interference fits at said upper surface and said internal support plate.

The references relied upon by the Examiner are:

Scordato et al. (Scordato)	3,853,217	Dec. 10, 1974
Citrin	4,187,724	Feb. 12, 1980
Rainin et al. (Rainin)	4,676,377	June 30, 1987
Lyman et al. (Lyman)	4,824,642	Apr. 25, 1989
Freeman et al. (Freeman)	5,063,790	Nov. 12, 1991

Brochure, Cole-Parmer® Instrument Co. 1, 258, 268-69, 829 (1993-1994)²

After having reviewed the references in light of the arguments raised by appellant, we find that we cannot sustain these rejections for the reasons set forth in appellant's brief.

It is axiomatic that a rejection under 35 U.S.C. § 103 must rest on a factual basis. In re Warner, 379 F.2d 1011, 1017,

² On pages 12 and 13 of the Answer, the examiner relies upon the Cole-Parmer reference to support his conclusion of obviousness. We have not considered this reference since it is not positively included in the statement of any of the rejections before us. In re Hoch, 428 F.2d 1341, 1342 n.3, 166 USPQ 406, 407, n. 3 (CCPA 1970).

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154 USPQ 173, 177-78 (CCPA 1967). In making such a rejection, the examiner has the initial burden of supplying the requisite factual basis and may not, because of doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply the deficiencies in the factual basis. Id. With respect to claims 1 to 4, the combined references do not teach or suggest a horizontal internal support plate or that the support plate defines a plurality of openings to frictionally engagingly accommodate the ends of the upper portions of the micropipette tips. With respect to claim 13, the combined references do not teach or suggest that the micropipette tip package remains attached to the micropipette tips, when the tips are inserted into the tip pins of the header portion of the pipettor system. With respect to claim 15, the combined references do not teach or suggest a horizontal internal support plate or that the support plate defines a plurality of openings to frictionally engagingly accommodate the ends of the upper portions of the micropipette tips. While the examiner contends that the foregoing limitations would have been obvious to one of ordinary skill in the art, the record is devoid of any evidence showing these limitations. Thus, we can only conclude that, as cogently urged by appellants, the examiner has improperly used hindsight reconstruction in an attempt to meet the claimed

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limitations without providing any factual basis for his ultimate conclusion of obviousness.

The decision of the examiner rejecting the appealed claims is reversed.

REVERSED

MICHAEL SOFOCLEOUS)	
Administrative Patent Judge)	
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WILLIAM F. SMITH)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
ELIZABETH WEIMAR)	
Administrative Patent Judge)	

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John H. Crozier
1934 Huntington Turnpike
Trumbull, CT 06611-5116