

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT A. SHELLBY and DONALD K. WISEMAN JR.

Appeal No. 96-2680
Application No. 08/258,788¹

ON BRIEF

Before KIMLIN, WEIFFENBACH and PAK, Administrative Patent Judges.
KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-19, all the claims in the present application. Claim 1 is illustrative:

1. An insulating cover for covering an opening in a torpedo car comprising:

an upper mesh layer and a lower mesh layer;

an insulating layer positioned between said upper and lower mesh layers;

¹ Application for patent filed June 13, 1994.

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tie means for securing said upper mesh layer and said lower mesh layer together and holding said insulating layer in position; and

at least one ferromagnetic plate, whereby each said ferromagnetic plate provides a lift point for lifting said insulating cover.

The examiner relies upon the following references as evidence of obviousness:

Schnabel	982,883	Jan. 31, 1911
Evans et al. (Evans)	1,466,823	Sep. 4, 1923
Grant et al. (Grant)	4,424,957	Jan. 10, 1984

Appellants' claimed invention is directed to an insulating cover for the opening in a torpedo car, as well as methods for forming and installing the insulating cover. Torpedo cars, or ladle cars, are used for carrying molten metal. The insulating cover of the present invention comprises an insulating layer positioned between upper and lower mesh layers and at least one ferromagnetic plate. The ferromagnetic plate enables the insulating cover to be lifted by an electromagnet.

Appealed claims 1-19 stand rejected under 35 U.S.C. § 103 as being unpatentable over Grant in view of either Schnabel or Evans.

We have thoroughly reviewed the respective positions advanced by appellants and the examiner. In so doing, we find ourselves in agreement with appellants that the prior art applied by the examiner fails to establish a prima facie case of

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obviousness for the claimed subject matter. Accordingly, we will not sustain the examiner's rejection.

Grant discloses an insulating cover for a torpedo car similar to the one presently claimed. For instance, the cover of Grant comprises an insulating layer positioned between upper and lower mesh layers. The cover of Grant does not have the claimed ferromagnetic plate. Rather, Grant employs a metallic lattice 39 as a gripping means for holding and placement of the cover by workmen. Recognizing this deficiency of Grant with respect to the appealed claims, the examiner cites either Schnabel or Evans for evidence that "in metallurgical plants it is old and well known to employ electromagnets to accurately and efficiently place objects with ferromagnetic components" (page 3 of Answer). Based on this prior art evidence, the examiner concludes that it would have been obvious for one of ordinary skill in the art to employ flat, ferromagnetic plates in place of the metallic lattice of Grant so that electromagnets could replace manual labor for positioning and removing insulating covers.

In view of the long-held knowledge in the art of using electromagnets to move and position ferromagnetic components in industry, we appreciate that the examiner's underlying reasoning has a certain intuitive appeal. However, upon thorough scrutiny of the present record, we find that there is insufficient factual

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evidence to support the examiner's legal conclusion of obviousness within the meaning of 35 U.S.C. § 103. As correctly urged by appellants, neither the primary nor secondary references applied by the examiner provide any teaching or suggestion of an insulating cover of the type disclosed by Grant having a ferromagnetic plate. In the absence of such teaching or suggestion in the cited references, the examiner's rationale relies more upon the impermissible use of hindsight than evidentiary support. The apparent desirability of modifying the prior art cannot serve as the basis for obviousness under § 103.

In conclusion, based on the foregoing, the examiner's decision rejecting the appealed claims is reversed.

REVERSED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
)	
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)	
CAMERON WEIFFENBACH)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
CHUNG K. PAK)	
Administrative Patent Judge)	

clm
William H. Logsdon
700 Koppers Bldg.
436 Seventh Ave.

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Pittsburgh, PA 15219-1818