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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 28

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte CLIFTON D. FINNEY

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Appeal No. 96-3062
Application 08/239,029[1]

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ON BRIEF

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Before ABRAMS, STAAB and McQUADE, Administrative Patent Judges.

ABRAMS, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the decision of the examiner finally rejecting claims 21 through 23 and 34 through 38. At that point, claims 1 through 20 had been canceled, claims 27 through 33

[1] Application for patent filed May 6, 1994. According to appellant, this application is a continuation-in-part of Application 08/219,192 filed March 28, 1994, now U.S. Patent No. 5,464,320 issued November 7, 1995, which is a continuation-in-part of Application 08/074,023 filed June 2, 1993, now abandoned.

allowed, and claims 24 through 26 indicated as containing allowable subject matter. Subsequently, the appellant canceled claims 21 through 26. Claims 34 through 38 therefore remain before us on appeal.

The appellant's invention is directed to a superventuri power source. The subject matter before us on appeal is illustrated by reference to claim 34, which appears in an appendix to the appellant's Appeal Brief.

THE REFERENCES

The references relied upon by the examiner to support the final rejection are:

French patent (Jourdain)[2]	516,675	Sep. 5, 1923
French patent (Bloch)[2]	891,697	Mar. 15, 1944

Bailey, F. G. (Bailey), "Turbine," McGraw-Hill Encyclopedia of Science and Technology, vol. 18, New York (1992), p. 618.

THE REJECTIONS

Claims 34 and 35 stand rejected under 35 U.S.C. § 103 as being unpatentable over Bloch in view of Jourdain.

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[2] Our understanding of this reference was obtained from a PTO translation into English, a copy of which is attached to this decision.

Claims 36 through 38 stand rejected under 35 U.S.C. § 103 as being unpatentable over Bloch in view of Jourdain and Bailey.

The rejections are explained in the Examiner's Answer.

The opposing viewpoints of the appellant are set forth in the Appeal Brief and the Reply Brief.

OPINION

After consideration of the positions and arguments presented by both the examiner and the appellant, we have concluded that neither of the rejections should be sustained. Our reasons for this decision follow.

Independent claim 34 stands rejected under 35 U.S.C. § 103 as being obvious in view of the teachings of Bloch and Jourdain. The examiner bears the initial burden of presenting a *prima facie* case of obviousness. See *In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993) and *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). This is established when the teachings of the prior art itself would appear to have suggested the claimed subject matter to one of ordinary skill in the art. See *In re Bell*, 991 F.2d 781, 783, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993) and *In re Rinehart*, 531 F.2d 1048, 1051, 189 USPQ 143, 147 (CCPA 1976). The mere fact that

the prior art structure could be modified does not make such a modification obvious unless the prior art suggests the desirability of doing so. See *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

Claim 34 is directed to a superventuri power source comprising a series of at least two venturi tubes (alpha and beta) arranged and related in a manner specified in the claim and a turbine "adjacent the throat of the beta-venturi tube to recover useful rotary mechanical power from flow of the selected medium" through the power source. We share the examiner's view that all of the subject matter recited in claim 34 is disclosed in the Bloch reference except for the presence of a turbine adjacent to the throat of the second (beta) venturi tube, that is, the structure set forth in the final two lines of the claim.

The system disclosed by Bloch has three venturi tubes and a deflector. A single turbine is provided, positioned in the throat of the alpha venturi tube (A-A'). The objective of the Bloch invention is to reduce the dimensions of the turbine. This is accomplished by recompressing the fluid exiting from the turbine and venturi tube so that it can exit more freely. In order to recompress the fluid exiting the turbine, a plurality of concentric venturi tubes (B-B and C-C) and a deflector (D-D) are

positioned downstream of the first venturi. According to Bloch, "only one portion of the stream of fluid that is actually used passes through the rotor" (translation, page 1), that is, through the alpha venturi tube. The remaining portions of the stream of fluid, which pass through the other venturi tubes and the deflector, influence the area downstream of the alpha tube in such a manner as to recompress the fluid exhausting therefrom, allowing it to flow more freely.

Jourdain describes the prior art pertinent to his invention as comprising a turbine in a main cone, with a plurality of guiding cones arranged around the main cone to improve the power efficiency of the turbine. He characterizes his invention as an improvement in which a series of turbines is substituted for the series of guiding cones arranged around the main cone of the prior art devices. See translation, page 1. As shown in the drawing, a turbine is located in the constricted portion of each of a series of "cones" which, in our view, would have been recognized by one of ordinary skill in the art as being, in actuality, venturi tubes.[3]

[3] A short tube with a tapering constriction in the middle that causes an increase in the velocity of the flow of fluid and a corresponding decrease in fluid pressure. See, for example, Mirriam Webster's Collegiate Dictionary, Tenth Edition, 1996, page 1311.

The function of the downstream venturi tubes in the Bloch invention is to improve the efficiency of a power source in which a turbine is operated in the throat of a venturi tube by creating certain conditions which affect the fluid exiting the alpha turbine. From our perspective, absent any evidence to the contrary, it would appear that placing a second turbine in one of the downstream venturi tubes would disturb their function, that is, would interfere with their ability to recompress the fluid issuing from the turbine. In our view, this would cause the Bloch invention to become inoperable for its intended purpose, thus serving as a disincentive to one of ordinary skill in the art to modify the Bloch apparatus in the manner proposed by the examiner. See *In re Gordon*, 733 F.2d at 902, 221 USPQ at 1127 (Fed. Cir. 1984).

For this reason, it is our opinion that the teachings of Bloch and Jourdain fail to establish a *prima facie* case of obviousness with regard to the subject matter of claim 34, and we will not sustain the rejection of this claim or of claim 35, which depends therefrom. Nor will we sustain the rejection of claims 36 through 38, for the teachings of Bailey, the added reference, fail to overcome the deficiency in the basic combination.

The decision of the examiner is reversed.

REVERSED

NEAL E. ABRAMS Administrative Patent Judge	)
LAWRENCE J. STAAB Administrative Patent Judge	) BOARD OF PATENT APPEALS AND INTERFERENCES
JOHN P. McQUADE Administrative Patent Judge	)

Appeal No. 96-3062
Application 08/239,029

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