

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MAX EISELE

Appeal No. 97-0210
Application No. 08/157,050¹

ON BRIEF

Before BARRETT, FLEMING and GROSS, Administrative Patent Judges.
GROSS, Administrative Patent Judge.

¹ Application for patent filed December 2, 1993.
According to appellant, this application is a National stage application under 35 U.S.C. § 371 of PCT/EP92/01174, filed May 25, 1992.

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DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 11 through 24, which are all of the claims pending in this application.

The appellant's invention relates to a pole-changing asynchronous fan motor with a continuously adjustable speed of rotation. Claim 11 is illustrative of the claimed invention, and it reads as follows:

11. A device comprising:
- a) a pole-changing asynchronous motor for driving a fan; and
 - b) a regulating device coupled with said motor and adapted to continuously adjust a speed of rotation of said motor, within a predetermined speed range by decreasing a voltage supplied to said motor.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Demeter et al. (Demeter)	4,928,051	May 22, 1990
Viandon (French patent application)	FR 2,607,187	May 27, 1988

Claims 11 through 21, 23, and 24 stand rejected under 35 U.S.C. § 112, second paragraph, as omitting essential elements or steps.

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Claim 11 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Demeter or Viandon.

Claims 12 through 24 stand rejected under 35 U.S.C. § 103 as being unpatentable over Demeter.

Reference is made to the Examiner's Answer (Paper No. 13, mailed February 7, 1996) for the examiner's complete reasoning in support of the rejections, and to the appellant's Brief and Supplemental Brief (Paper Nos. 12 and 17, filed November 8, 1995 and April 7, 1999, respectively) and Reply Brief (Paper No. 14, filed April 2, 1996) for the appellant's arguments thereagainst.

OPINION

As a preliminary matter, we note that appellant indicates on page 4 of the Brief and page 2 of the Reply Brief that the claims do not stand or fall together but rather fall into three groups, (1) claim 1, (2) claims 2 through 21, 23, and 24, and (3) claim 22. Appellant's arguments are consistent with this grouping except as to claims 23 and 24, which do not include the limitation argued for group 2. As appellant has not separately argued the limitations of claims 23 and 24, we will treat them as standing or falling with claim 1.

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Accordingly, we will consider claims 1, 2, and 22 as representative of the three groups, respectively, with claims 23 and 24 standing or falling with claim 1 and claims 3 through 21 standing or falling with claim 2.

We have carefully considered the claims, the applied prior art references, and the respective positions articulated by the appellant and the examiner. As a consequence of our review, we will reverse the indefiniteness rejection of claims 11 through 21, 23, and 24; the anticipation rejection of claim 11 over Viandon; and the obviousness rejection of claims 12 through 22; and affirm the anticipation rejection of claim 11 over Demeter and the obviousness rejection of claims 23 and 24 over Demeter.

Claim 11 recites "a regulating device . . . adapted to continuously adjust a speed of rotation of said motor, within a predetermined speed range by decreasing a voltage supplied to said motor." The examiner rejects the claims as being indefinite, stating (Answer, page 6) that "the claims omits [sic] essential elements or steps" because "one can not solely operate a motor speed device by only 'decreasing a voltage supplied to said motor.'" One must recite the ability to

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increase voltage or the motor could never run." The examiner also explains (Answer, page 6-7), that the "difference of interpretation [as to whether the speed is continuously adjusted in part or all of the predetermined speed range] may have be [sic] the source of the above 112 rejection as well."

In response to the examiner's allegation of indefiniteness, appellant contends (Brief, page 5) that "[c]laim 11 is directed to the feature of continuous adjustability based on reducing the voltage below a certain level." Appellant points to the specification, stating (Brief, page 5) that the scope of the claims is "clear when interpreted in light of the specification." The claims, however, read that the regulating device adjusts the speed by decreasing the voltage, or rather that the speed changes with the voltage, not that the continuous adjustability results once the voltage is reduced below a certain level.

The difference between the claims and the specification, along with appellant's argument and the examiner's reference to a "difference of interpretation" (see above), indicate to us that the claims are not indefinite, as asserted by the examiner, but rather are misdescriptive, as the specification

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does not support what is actually claimed. As explained above, appellant discloses that the speed becomes continuously adjustable once the voltage is decreased below a certain level, whereas the claims recite that the speed continuously adjusts while lowering the voltage. Accordingly, we reverse the rejection under 35 U.S.C. § 112, second paragraph, and enter a new ground of rejection below under 35 U.S.C. § 112, first paragraph.

The examiner further asserts that claim 11 is anticipated by either Viandon or Demeter. The examiner states (Final Rejection, page 3):

Applicant also argues that '187 [Viandon] only teaches step-wise adjustment. Claim 2 [sic, 12] as well as many others of the present claims clearly teaches that applicant's control is also stepwise. Thus the examiner believes that this reference clearly anticipates claim 11. . . . Demeter et al. also teaches a step wise control however once again so does applicant. In claim 1 [sic, 11], it is recited that within a first speed range the adjustment is continuous. In claim 2 [sic, 12] it is recited that [sic, for] part of the speed range stepwise adjustment is performed. Therefor [sic] it is clear that continuous adjustment can be said to be performed by stepwise adjustment.

In other words, the examiner states that neither reference teaches continuous adjustment of the speed. The examiner

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instead relies on an interpretation of the claims that is both contrary to the normal meanings of the terms therein and also contrary to the specification to conclude that the stepwise adjustment in each of the references meets the claim limitation of continuous adjustment. We disagree with the examiner's reasoning, and thus address the specifics of the two references below.

Viandon is directed to an electric cooling fan for a thermal engine, the fan being controlled by an asynchronous motor. Viandon teaches (page 6) that "to obtain the range of lower speeds, all of the terminals [of the three-phase electric motor] are connected to the network in the appropriate order, in order to utilize the six poles of the motor." However, Viandon shows in Figure 2 a three-phase alternator and an inverter for changing the connections to power three poles (for high speeds) or six poles (for low speeds). Viandon clearly shows a stepwise adjustment of the speed of the fan. Nowhere does Viandon disclose or illustrate a regulator for controlling the voltage of the motor to continuously adjust the speed of the fan. Accordingly, we cannot sustain the rejection of claim 11 over Viandon.

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With respect to the second part of the examiner's anticipation rejection, Demeter discloses (column 4, lines 1-14):

The method further allows the motor to be operated as a variable speed induction motor. This may be accomplished by ... short-circuiting the windings in either the rotor or the stator upon interruption of the operation of the corresponding inverter. The motor may operate as an induction motor upon such interruption.

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The method may additionally comprise the step of maintaining the voltages of the currents proportional to the rotational speed of the rotor. This enables the motor to more readily develop and maintain torque.

By short-circuiting the windings, the motor becomes asynchronous. Further, decreasing the voltages decreases the rotational speed of the rotor, as the speed of the rotor is proportional to the voltages of the currents. As claim 11 does not preclude additional factors for adjusting the speed of the motor, and Demeter teaches a step of maintaining voltages proportional to the rotor speed, Demeter meets the limitation of adjusting the speed of rotation of a pole-changing asynchronous motor by decreasing the voltage supplied. Accordingly, we find that Demeter does anticipate claim 11. In addition, since claims 23 and 24 stand or fall with claim 11, we also affirm the obviousness rejection of claims 23 and 24.

Claims 2 through 21 each require two speed ranges, one in which the speed is adjusted stepwise, and the other in which the speed is adjusted continuously. Demeter discloses a stepwise increase in speed when the motor is synchronous, and a continuous adjustment in the speed when the motor is

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asynchronous, but Demeter does not disclose two speed ranges, one with a continuous change in the speed and the other with a stepwise change in the speed, both for an asynchronous motor. Accordingly, we must reverse the obviousness rejection of claims 2 through 22.

Similarly, claim 22 recites an upper speed range in which the speed is adjusted stepwise and a lower speed range in which the speed is adjusted continuously. As previously stated, Demeter does not disclose a continuous and a stepwise speed range for an asynchronous motor. Therefore, we cannot sustain the rejection of claim 22.

Under the provisions of 37 CFR § 1.196(b), we enter the following new ground of rejection against appellant's claims 11 through 21, 23, and 24:

Claims 11 through 21, 23, and 24 are rejected under 35 U.S.C. § 112, first paragraph, for the reasons explained above.

CONCLUSION

The decision of the examiner rejecting claims 11 through 21, 23, and 24 under 35 U.S.C. § 112, second paragraph; claim

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11 under 35 U.S.C. § 102(b) over Viandon; and claims 2 through 22 under 35 U.S.C. § 103 is reversed. The decision of the examiner rejecting over Demeter claim 11 under 35 U.S.C. § 102(b) and claims 23 and 24 under 35 U.S.C. § 103 is affirmed. A new ground of rejection of claims 11 through 21, 23, and 24 under 35 U.S.C.

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§ 112, first paragraph, has been added pursuant to provisions of 37 CFR § 1.196(b).²

This decision contains a new ground of rejection pursuant to 37 CFR § 1.196(b)(amended effective Dec. 1, 1997, by final rule notice, 62 Fed. Reg. 53131, 53197 (Oct. 10, 1997), 1203 Off. Gaz. Pat. Office 63, 122 (Oct. 21, 1997)). 37 CFR § 1.196(b) provides that, "[a] new ground of rejection shall not be considered final for purposes of judicial review."

37 CFR § 1.196(b) also provides that the appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of proceedings (§ 1.197(c)) as to the rejected claims:

(1) Submit an appropriate amendment of the claims so rejected or a showing of facts relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the application will be remanded to the examiner. . . .

(2) Request that the application be reheard under § 1.197(b) by the Board of Patent Appeals and Interferences upon the same record. . . .

² Appellant should note that the new ground of rejection can be overcome fairly easily by amending the language of claim 1. For example, appellant could change "by decreasing a voltage supplied to said motor" to "once a voltage supplied to said motor is decreased below a certain level."

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART
37 CFR § 196(b)

LEE E. BARRETT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
MICHAEL R. FLEMING)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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