

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(2) is not binding precedent of the Board.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. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEFF LOGIC

Appeal No. 97-1005
Application 08/262,993¹

ON BRIEF

Before CALVERT, FRANKFORT and STAAB, Administrative Patent
Judges.

FRANKFORT, Administrative Patent Judge.

¹ Application for patent filed June 20, 1994.

Appeal No. 97-1005
Application 08/262,993

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 12 through 23. Claims 1 through 11 and 24, the only other claims pending in the application, stand withdrawn from further consideration under 37 CFR § 1.142(b).

Appellant's invention relates to an apparatus for continuously cutting extruded metal tubing generally of the type used in parallel flow heat exchangers. As explained in the specification (page 1) and as seen in Figure 1 of the drawings, such extruded tubing is of flattened cross section having tube major and minor dimensions. In the "Background" section of appellant's specification (pages 1-4) it is noted that prior art methods and apparatus for cutting such extruded metal tubing were relatively slow in that the tubing was intermittently advanced and then halted while some operation was performed on it. This approach is indicated to have

Appeal No. 97-1005
Application 08/262,993

resulted in production of a given number of tube lengths being unduly time consuming and, thus, expensive. As indicated on page 4 of the specification, an object of the present invention is to provide a method and

apparatus for cutting such extruded flattened metal tubing while the same is continuously being fed, to thereby maximize production and, thus, provide economy in the tube cutting operation. Claims 12 and 21 are representative of the subject matter on appeal and a copy of those claims may be found in the Appendix to appellant's brief.

The prior art references of record relied upon by the examiner as evidence of obviousness of the claimed subject matter are:

Chamberlin	2,158,400	May 16,
1939		

Appeal No. 97-1005
Application 08/262,993

Brockmuller 1973	3,730,411	May 1,
Hofmann et al. (Hofmann) 1986	4,577,789	Mar. 25,
Stroup, Jr. (Stroup) 1992	5,143,268	Sept. 1,

Claims 12 through 14 stand rejected under 35 U.S.C.
§ 103 as being unpatentable over Stroup in view of
Brockmuller.

Claims 15 through 17 stand rejected under 35 U.S.C.
§ 103 as being unpatentable over Stroup in view of Brockmuller
as applied to claim 12 above, and further in view of Hofmann.

Claims 18 through 23 stand rejected under 35 U.S.C.
§ 103 as being unpatentable over Stroup in view of Brockmuller
as applied to claim 12 above, and further in view of
Chamberlin.

Appeal No. 97-1005
Application 08/262,993

Reference is made to the examiner's answer (Paper No. 15, mailed April 9, 1996) and to the supplemental examiner's answer (Paper No. 17, mailed May 28, 1996) for the examiner's reasoning in support of the above-noted rejections. Appellant's arguments against the examiner's rejections are found in appellant's brief (Paper No. 13, filed January 16, 1996), reply brief (Paper No. 16, filed April 22, 1996) and supplemental reply brief (Paper No. 18, filed June 13, 1996).

OPINION

Our evaluation of the obviousness issues raised in this appeal has included a careful assessment of appellant's specification and claims, the applied prior art references, and the respective positions advanced by appellant and the examiner. As a consequence of our review, we have reached the conclusion that none of the examiner's rejections before us on appeal will be sustained. Our reasons follow.

Looking at the basic combination of Stroup and Brockmuller, we share appellant's view (brief, pages 7-8) that

Appeal No. 97-1005
Application 08/262,993

the operation of the system in Stroup is clearly incremental or intermittent and not continuous as required in appellant's claims

on appeal. The examiner concedes as much on page 7 of the examiner's answer, but then attempts to rationalize why the intermittent and repetitious feeding arrangement of Stroup may nonetheless be considered "continuous." The examiner concludes with regard to Stroup that "while the stock moves incrementally, it is still being continuously fed" (answer, page 8). We find no support for such a seemingly anomalous position in the Stroup patent. Moreover, we find nothing in Stroup which is responsive to appellant's "means . . . for continuously feeding tubing along the path at a first speed" in combination with "cutting nip defining means including means for moving said blades at the same speed at which tubing is moving in said path" as set forth in claim 12 on appeal. Thus, for this reason alone we would reverse the examiner's rejection of claims 12 through 14 under 35 U.S.C. § 103. In addition, we also share appellant's view (brief, pages 8-11)

Appeal No. 97-1005
Application 08/262,993

that the examiner's proposed combination of Stroup and Brockmuller is based on hindsight derived from appellant's

application. In this regard, we note that column 1, lines 51-59, of Stroup appear to clearly teach away from employing the type of tensile force separation proposed by the examiner in severing of the flat heat exchange tubing therein. For these reasons, we

will not sustain the examiner's rejection of claims 12 through 14 based on the teachings of Stroup and Brockmuller.

Having reviewed the patents to Hofmann and Chamberlin also applied by the examiner, we find nothing therein which overcomes or supplies the deficiencies of the basic combination of Stroup and Brockmuller as discussed above. In addition, we note our agreement with appellant's position (reply brief, pages 1-3) concerning the examiner's proposed modification of Brockmuller as employed in Stroup based on the further teachings of Chamberlin. As for the

Appeal No. 97-1005
Application 08/262,993

examiner's invoking of "Official Notice" on pages 10-11 of the answer, we are in agreement with appellant's view as expressed on page 5 of the reply brief. Accordingly, it follows that the examiner's respective rejections of claims 15 through 17 and 18 through 23 under 35 U.S.C. § 103 will likewise not be sustained.

Based on the foregoing, the decision of the examiner rejecting claims 12 through 23 under 35 U.S.C. § 103 is reversed.

REVERSED

	IAN A. CALVERT)	
	Administrative Patent Judge)	
)	
)	
)	BOARD OF
PATENT)	
	CHARLES E. FRANKFORT)	APPEALS AND

Appeal No. 97-1005
Application 08/262,993

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