

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ASHOK R. SANADI

Appeal No. 1997-3015
Application No. 08/441,794

ON BRIEF

Before STAAB, GONZALES, and LAZARUS, Administrative Patent Judges.

LAZARUS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 30-33 and 36-38, which are all of the claims pending in this application.

We Reverse.

Appeal No. 1997-3015
Application No. 08/441,794

BACKGROUND

The appellant's invention relates to an apparatus for prevention of cross contamination of multi-well test plates (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellant's brief.¹

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

Fernwood et al. (Fernwood)	5,141,719	August 25, 1992
Wong	5,227,139	July 13, 1993
Vogler et al. (Vogler '535)	5,326,535	July 5, 1994
Vogler et al. (Vogler '611)	5,344,611	September 6, 1994

Claims 30-33, 36 and 37 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Fernwood.²

Claim 38 stands rejected under 35 U.S.C. § 103 as being unpatentable over Fernwood in view of Vogler '535, Vogler '611 and Wong.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the examiner's answer (Paper No. 14, mailed March 7, 1997) for the examiner's complete

¹ In claim 36 in the appendix "plurality" is incorrectly spelled "plurallity".

² The examiner's reference to claims 30-37 (answer, page 3) appears to be an inadvertent error in view of the cancellation of claims 34 and 35 in the

Appeal No. 1997-3015
Application No. 08/441,794

reasoning in support of the rejections, and to the appellant's brief (Paper No. 13, filed December 23, 1996) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

amendment filed March 21, 1996 (Paper No. 6).

Claim 36, the sole independent claim, is representative and reads as follows:³

36. A specimen containment assembly, comprising:
a lid;
a plate defining a plurality of individual sample containment chambers, said chambers each having an open end and a closed end, said closed ends and said plate being formed of a substantially fluid impermeable material;
a fluid impermeable gasket interposed between said lid and said plate;
said lid defining a plurality of openings in register with said open ends of said chambers to provide access to said chambers; and
a clamp for clamping said lid, plate and gasket together such that said gasket is compressed between said lid and plate;
said lid, plate, and gasket cooperating to hermetically seal said individual sample containment chambers.

Appellant urges that "Hermetic" is defined as "made airtight by fusion or sealing" ... and, with respect to the primary reference, "the Fernwood device could not hermetically seal a sample in containment wells" (brief, page 6). It is asserted that "[t]he key to Applicant's invention is that samples can be fully (hermetically) sealed within the chambers, but can still be 'accessed' through the holes in the lid. Access may be via a self-sealing gasket or visual access through a membrane, for example a fluid impermeable membrane.

³ The claimed embodiment is described in appellant's specification at page 13 lines 26-30, however, it is not shown in the drawings.

Appeal No. 1997-3015
Application No. 08/441,794

The inventive concept is a multi-well tray or plate for sealing a sample, but with a lid having holes to permit access" (brief, page 7).

In response, the examiner finds that Fernwood discloses a "gasket cooperating to hermetically seal the individual sample containment chambers (Fig. 4)" (answer, page 4). This position is repeated from the examiner's final action wherein Fernwood is described, to wit "the lid, plate, and gasket cooperating to hermetically seal the individual sample containment chambers (Fig. 4)" (final, page 2).

We must point out, however, that anticipation under 35 U.S.C. ' 102 is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of a claimed invention. See RCA Corp. V. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

We find that Fernwood does not disclose the "lid, plate, and gasket cooperating to hermetically seal said individual sample containment chambers" as recited in appellant's claim 36. Fernwood discloses that "the gasket sheet 14 contains openings aligned with the sample wells for the fluids to pass

Appeal No. 1997-3015
Application No. 08/441,794

through" (col. 5, lines 20-24). As can be seen in Figure 4 of Fernwood the plate or lid 11 has apertures 12 corresponding to apertures in the gasket 14 such that when the assembly is clamped the chambers 20 are not hermetically sealed, they are open to the apertures 12 via membrane sheet 13. Membrane sheet 13 is described as "of porous material" (col. 3, line 24) which is pervious to both gas and some liquids (col. 3, lines 34-39).

Fernwood's disclosure is similar to the embodiments shown in appellant's drawings, e.g. Figures 6-8 wherein the lid and gasket have aligned holes with the tubes or wells in the plate and the lid hole is separated from the tube or well only by a gas permeable membrane. Appellant's claim 36 differs from the embodiments of Figures 6-8 in that the lid, plate and gasket cooperate to hermetically seal the sample containment chamber, whereas in Figures 6-8 the lid, plate and gasket do not hermetically seal the sample containment chamber. Claim 36 is, nonetheless, supported by the embodiment in appellant's specification wherein it is disclosed that "[i]n another embodiment (not shown), lid 32 has apertures corresponding to well openings 25 on plate 23 so that samples can be introduced

Appeal No. 1997-3015
Application No. 08/441,794

into sample containment sites with a syringe or the like through a resilient and self-sealing gasket without removal of the lid" (page 13 lines 26-30). Thus, appellant discloses a hermetically sealed sample containment site different from the sample containment site in Fernwood which is covered by a gas and liquid permeable layer, but is not hermetically (gas and liquid impermeable) sealed.

Accordingly, since the teachings and suggestions found in Fernwood do not anticipate the subject matter as a whole of claims 30-33, 36 and 37 on appeal, we must refuse to sustain the examiner's rejection of claims 30-33, 36 and 37 under 35 U.S.C. § 102(b).

We have also reviewed the Vogler '535, Vogler '611 and Wong references additionally applied in the rejection of claim 38, but find nothing therein which makes up for the deficiencies of Fernwood discussed above. Accordingly, we cannot sustain the examiner's rejection of appealed claim 38 under 35 U.S.C. ' 103.

CONCLUSION

To summarize, the decision of the examiner to reject

Appeal No. 1997-3015
Application No. 08/441,794

claims 30-33, 36 and 37 under 35 U.S.C. ' 102(b) is reversed.

It follows that the examiner's other rejection of dependent claim 38 under 35 U.S.C. ' 103 as obvious over Fernwood, Vogler '535, Vogler '611 and/or Wong is also reversed.

REVERSED

LAWRENCE J. STAAB)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
JOHN F. GONZALES)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
RICHARD B. LAZARUS)	
Administrative Patent Judge)	

KEVIN G. MIERZWA

Appeal No. 1997-3015
Application No. 08/441,794

DYKEMA GOSSETT PLLC
1577 N WOODWARD AVENUE
SUITE 300
BLOOMFIELD HILLS, MI 48304

RL/

APPEAL NO. 1997-3015 - JUDGE LAZARUS
APPLICATION NO. 08/441,794

APJ LAZARUS

APJ STAAB

APJ GONZALES

DECISION: **REVERSED**

Prepared By:

DRAFT TYPED: 21 Aug 01

FINAL TYPED: