

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(2) is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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**Ex parte** KENNETH L. CARR

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Appeal No. 97-3575  
Application 08/380,815<sup>1</sup>

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ON BRIEF

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Before COHEN, MEISTER and ABRAMS, **Administrative Patent Judges.**

ABRAMS, **Administrative Patent Judge.**

**DECISION ON APPEAL**

This is an appeal from the decision of the examiner  
finally rejecting claims 1-11 and 13-16, which constitute all

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<sup>1</sup> Application for patent filed January 30, 1995. According to appellant, this application is a continuation of Application 08/142,577, filed October 26, 1993; which is a continuation-in-part of Application 07/976,936, filed November 16, 1992, now abandoned; which is a continuation-in-part of Application 07/808,854, filed December 16, 1991, now abandoned; which is a continuation of Application 07/067,626, filed June 26, 1987, now Patent No. 5,073, 167, issued December 17, 1991.

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of the claims remaining of record in the application.

The appellant's invention is directed to a microwave warming device for blood and other fluids. The subject matter before us on appeal is illustrated by reference to claim 1, which has been reproduced in an appendix to the Amended Appeal Brief (Paper No. 10).

**THE REFERENCES**

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

Carr et al. (Carr) 1974	3,806,837	Apr. 23,
Stubbs 1978	4,114,011	Sep. 12,
Black 1983	4,417,116	Nov. 22,

**THE REJECTION**

Claims 1-11 and 13-16 stand rejected under 35 U.S.C. § 103 as being unpatentable over Stubbs in view of Black and Carr.<sup>2</sup>

The rejection is explained in the Examiner's Answer.

The opposing viewpoints of the appellant are set forth in

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<sup>2</sup> Two rejections of some of the claims under 35 U.S.C. § 102(b) were withdrawn by the examiner in the Answer.

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the Amended Brief and the Reply Brief.

**OPINION**

In reaching our decision on the issues raised in this appeal, we have carefully assessed the claims, the prior art applied against the claims, and the respective views of the examiner and the appellant as set forth in the Answer and the Briefs. As a result of our review, we have determined that the rejection should not be sustained. Our reasoning in support of this conclusion follows.

In a rejection under 35 U.S.C. § 103, 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)), which 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, 782, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993)).

Independent claim 1 is directed to a cartridge for conducting fluid through a microwave heating chamber. The

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cartridge comprises a base portion having a substantially flat exterior surface, a bobbin connected to the base portion and extending outwardly therefrom perpendicular to the exterior surface, and a length of tubing engaged around the bobbin to form a coil, the coil including tubing segments at opposite sides of the coil which extend generally perpendicular to the exterior surface.

It is clear to us that none of the references applied by the examiner discloses or teaches a cartridge having a bobbin and tube arrangement like that recited in claim 1. In Stubbs, the primary reference, to the extent that the tubing in the embodiment shown in Figure 2 may be considered to be a coil, there is no support structure, much less a bobbin with the coil engaged around it in the manner specified in claim 1. The alternative shown embodiment in Figure 5 discloses a support member, but the tube is not in the form of a coil engaged around it. The secondary references disclose neither tubing nor coil.

For the reasons expressed above, the applied references

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fail to establish a prima facie case of obviousness with regard to the subject matter of independent claim 1, and we therefore will not sustain the rejection of claim 1 or of claims 2-10, which depend from it.

Independent claim 11 is directed to a fluid flow apparatus for seating in an opening in a microwave heating cavity. It recites a tubing support having an electrically conductive exterior surface dimensioned to close the opening, a bobbin affixed to and projecting from the conductive surface, and a

length of tubing engaged around the bobbin to form a coil. The tubing has opposite end segments extending from the bobbin through the conductive surface.

Stubbs discloses a microwave heating cavity (16), within which an arrangement of tubing (41) is deployed, with tubing segments (42 and 43) extending through its walls. The Stubbs device is not a fluid flow apparatus for seating in an opening in a microwave heating cavity, but is the heating cavity itself. There is no tubing support and no bobbin around which

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the tubing is coiled, nor is there an opening that the tubing support is dimensioned to close. These deficiencies are not cured by either of the two secondary references.

Thus, the references also fail to establish a **prima facie** case of obviousness with regard to the subject matter recited in claim 11, and we will not sustain the rejection of claim 11 or of dependent claims 13-16.

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The decision of the examiner is reversed.

**REVERSED**

	Irwin Charles Cohen	)	
	Administrative Patent Judge	)	
		)	
		)	
		)	
	James M. Meister	)	BOARD OF
PATENT		)	
	Administrative Patent Judge	)	APPEALS AND
		)	INTERFERENCES
		)	
		)	
	Neal E. Abrams	)	
	Administrative Patent Judge	)	

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