

**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(2) is not binding precedent of the Board.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. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

Ex parte RICHARD MASKELL

---

Appeal No. 97-4165  
Application 08/596,553<sup>1</sup>

---

ON BRIEF

---

Before CALVERT, ABRAMS, 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 1-5, which constitute all of the claims of record in the application.

---

<sup>1</sup>Application for patent filed February 5, 1996. According to appellant, this application is a continuation-in-part of Application 08/223,724, filed April 6, 1994, now Patent No. 5,491,957, issued February 20, 1996.

Appeal No. 97-4165  
Application No. 08/596,553

The appellant's invention is directed to a method for evacuating gas from a gas tight envelope. The subject matter before us on appeal is illustrated by reference to claim 1, which reads as follows:

1. A method for evacuating gas from a gas tight envelope containing solid or particulate material disposed in a tray having sidewalls with overhanging lip,<sup>2</sup> comprising inserting through an opening in said envelope to a position under said lip, an elongated vacuum probe extending from a vacuum source, applying a vacuum to said probe to withdraw gas from said envelope and collapsing said envelope around said tray containing said solid material.

#### **THE REFERENCES**

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

Suga	5,109,654	May 5, 1992
Maskell	5,491,957	Feb. 20, 1996 (filed Apr. 6, 1994)

#### **THE REJECTIONS**

Claims 1 and 2 stand rejected under the judicially created doctrine of double patenting over claims 1-4 of Maskell.

---

<sup>2</sup>It would appear that "an" should be inserted after "with."

Appeal No. 97-4165  
Application No. 08/596,553

Claims 1-5 also stand rejected under 35 U.S.C. § 102(b) as being anticipated by Suga.

The rejections are explained in Paper No. 4 (the final rejection).

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

#### OPINION

##### *The Double Patenting Rejection*

The appellant has not contested this rejection, but has merely offered to file an appropriate terminal disclaimer once allowable subject matter is indicated (Brief, page 3). However, in the absence of a terminal disclaimer at this time, we are constrained to sustain the rejection.

##### *The Rejection Under 35 U.S.C. § 102(b)*

Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of the claimed invention. See *RCA Corp. v. Applied Digital Data Sys., Inc.*, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.), cert. dismissed sub nom., *Hazeltine Corp. v. RCA Corp.*, 468 U.S. 1228 (1984). It is our

Appeal No. 97-4165  
Application No. 08/596,553

conclusion that Suga fails to meet this requirement, and therefore the Section 102(b) rejection cannot be sustained.

Claim 1 is directed to a method for evacuating gas from a gas-tight envelope containing solid or particulate material "disposed in a tray having sidewalls with [an] overhanging lip." It recites the step of inserting an elongated vacuum probe through an opening in the envelope "to a position under said lip" (emphasis added). The examiner has interpreted "under" to mean simply that the probe must be at a lower level height-wise than the lip, and therefore finds that probes 23 of Suga meet this step of the claim. The appellant argues that this interpretation is not in keeping with the meaning that is established in his specification, a conclusion with which we agree.

In proceedings before the PTO, claims in an application are to be given their broadest reasonable interpretation consistent with the specification, and should be read in the light of the specification as it would be interpreted by one of ordinary skill in the art. See *In re Sneed and Young*, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983). In our opinion, one of ordinary skill in the art would have recognized from a review of the appellant's disclosure that "under" in claim 1 references the overhanging lip of the tray, and should be interpreted to mean

Appeal No. 97-4165  
Application No. 08/596,553

that the probe not only is lower in height than the lip, but also is directly beneath its perimeter. See pages 7 and 8 and Figure 7.<sup>3</sup> It is clear to us from our study of Suga that the probes are spaced laterally from the lips of the trays and are not within their perimeters (see Figure 3). It therefore is our view that the "inserting" step recited in claim 1 is not disclosed or taught by Suga, and thus the subject matter of the claim is not anticipated by this reference. It follows, of course, that the dependent claims also are not anticipated by Suga.

#### SUMMARY

The rejection of claims 1 and 2 stand under the judicially created doctrine of double patenting is sustained.

The rejection of claims 1-5 as being anticipated by Suga is not sustained.

A rejection of claims 1 and 2 having been sustained, the decision of the examiner is affirmed-in-part.

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

---

<sup>3</sup>On page 7 of the specification, reference is made on line 19 to Figure 9, whereas it would appear that it should read "7."

Appeal No. 97-4165  
Application No. 08/596,553

AFFIRMED-IN-PART

Ian A. Calvert	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
Neal E. Abrams	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
John P. McQuade	)	
Administrative Patent Judge	)	

tdc

Appeal No. 97-4165  
Application No. 08/596,553

Gipple & Hale  
P.O. Box 40513  
Washington, DC 20016