

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HERMANN BOGERT and GERHARD GEISEL

Appeal No. 1999-0272
Application No. 08/605,212

ON BRIEF

Before COHEN, McQUADE, and NASE, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 7, 8, 10, 12, 14, 16, 17, 18, 22, 24 and 25. Claims 9, 11, 13, 15, 19, 20, 21 and 23 have been objected to as depending from a non-allowed claim. Claims 1 to 6 have been canceled.¹

¹ Claims 7, 13, 14, 16, 17 and 24 were amended subsequent to the final rejection.

We AFFIRM-IN-PART.

BACKGROUND

The appellants' invention relates to an apparatus for the severing of glass gobs from one or more strands of molten glass (claims 7, 8, 10, 12 and 14); an apparatus for severing glass gobs from at least one strand of molten glass (claims 16, 17, 18 and 22); and an apparatus for moving at least one pair of cooperating shear blades to sever glass gobs from at least one strand of molten glass (claims 24 and 25). A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

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

Ward, Jr. (Ward)	4,015,967	April 5, 1977
Gurevich et al. (Gurevich)	SU 1435548 ²	Nov. 7, 1988

² In determining the teachings of Gurevich, we will rely on the translation provided by the USPTO. A copy of the translation is attached for the appellants' convenience.

Claims 8, 10, 12 and 14 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the appellants regard as the invention.

Claims 7, 8, 16, 17, 18, 22, 24 and 25 stand rejected under 35 U.S.C. § 103 as being unpatentable over Ward or Gurevich.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer (Paper No. 26, mailed July 7, 1998) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 25, filed May 29, 1998) and reply brief (Paper No. 27, filed September 11, 1998) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and

claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

The indefiniteness rejection

We will not sustain the rejection of claims 8, 10, 12 and 14 under 35 U.S.C. § 112, second paragraph.

Claims are considered to be definite, as required by the second paragraph of 35 U.S.C. § 112, when they define the metes and bounds of a claimed invention with a reasonable degree of precision and particularity. See In re Venezia, 530 F.2d 956, 958, 189 USPQ 149, 151 (CCPA 1976).

Claim 8 reads as follows:

Apparatus according to claim 7 wherein each said drive means is formed as an electric servodrive with a driven crank, and a coupling rod is coupled between a crank pin of each driven crank and the associated shear arm at a distance from the longitudinal axis of the column.

The examiner believes (answer, p. 3) that claim 8 is indefinite since "each" in line 4 should be changed to --the-- as only one coupling rod is being referred to rather than all the rods.

The appellants argue (brief, pp. 5-6; reply brief, pp. 1-3) that the term "each" in line 4 is appropriate, where as the term "the" would be inappropriate. Furthermore, the appellants assert that claim 8 cannot be rejected because the examiner prefers different phraseology. We agree. After reviewing claim 8, it is our opinion that it defines the metes and bounds thereof with a reasonable degree of precision and particularity. In that regard, we note that the examiner has not even alleged that the scope of claim 8 cannot be determined from the language of the claims with a reasonable degree of certainty. Thus, the rejection of claims 8, 10, 12 and 14 under 35 U.S.C. § 112, second paragraph, is inappropriate.

The obviousness rejection

Claims 7, 16 and 17

In accordance with 37 CFR § 1.192(c)(7), we have selected claim 16 as the representative claim from the appellants' grouping of claims 7, 16 and 17 to decide the appeal on the rejection under 35 U.S.C. § 103. See page 4 of the appellants' brief.

Claim 16 recites an apparatus for severing glass gobs from at least one strand of molten glass, comprising, inter alia, a first shear blade arranged on a first shear arm; a second shear blade arranged on a second shear arm; a common column on which the first and second shear arms are coaxially and pivotally mounted to be pivotally moveable about the column; and "a separate powered drive coupled to each said shear arm to pivotally move said first and second shear arms in synchronism with each other to sever the glass gobs."

Ward discloses an apparatus for shearing an elongated gob of glass from the end of a vertically flowing stream of molten glass and tilting the severed gob from its vertical orientation toward a horizontal orientation. As shown in Figure 3, Ward's apparatus includes an upper blade 22 carried

and moved by an upper shear arm 32; a lower blade 24 carried and moved by a lower shear arm 34; the upper and lower shear arms 32 and 34 are both rotatably mounted upon a common freely rotating shaft 38 which serves as a pivot for the arms 32 and 34; a gear box 36; crank arms 40 and 42; gears 56 and 58; pivot pins 44 and 52; link arms 46 and 50; and pivot pins 48 and 54. Ward teaches (column 4, lines 7-11) that "[i]t is quite evident in the mechanical drive shown that rotation of the crank arms 40 and 42 will drive the link arms 46 and 50 which in turn will force the upper and lower shear arms 32 and 34 toward the centerline 26." Ward also teaches (column 3, lines 42-54) that the drive shown in Figure 3 use the mechanism of U.S. Patent No. 3,736,826.³ From Figure 3 and U.S. Patent No. 3,736,826 it is clear that Ward teaches that gears 56 and 58 are driven by a single motor.

Gurevich discloses a shear for the cutting of batches of glass mass. As shown in Figures 1 and 2, Gurevich's shear includes a first knife 7 arranged on upper lever 6; a second

³ A copy of this patent is attached for the appellants' convenience.

knife 10 arranged on lower lever 9; a holder 1 on which the upper and lower levers are coaxially and pivotally mounted; connecting rods 24 and 25; cranks 26 and 27; gearwheels 29; and a hydraulic motor 30 connected to one of the gearwheels 29 to impart rotation motion thereto.

The examiner determined (answer, pp. 4-6) that both Ward and Gurevich clearly teach all the claimed limitations of claim 16 except for the limitation "a separate powered drive coupled to each said shear arm to pivotally move said first and second shear arms in synchronism with each other to sever the glass gobs." With respect to this limitation the examiner set forth two alternative approaches. The first approach being that it would have been obvious at the time the invention was made to a person having ordinary skill in the art to replace the single drive motor of Ward or Gurevich with two drive motors so as to provide for individual control of each shear arm in view of a lack of any unexpected results or criticalities. The second approach being that the claimed limitation was met by Ward's gears 56 and 58 and Gurevich's cranks 26 and 27 driven by gearwheels 29.

The appellants argue (brief, pp. 7-8; reply brief, pp. 3-5 and 6-7) that the above-noted limitation of claim 16 is not taught or suggested by the teachings of either Ward or Gurevich. We do not agree since it is our opinion that the above-noted limitation of claim 16 is taught by Ward and Gurevich for the reasons that follow.

The "separate powered drive coupled to each said shear arm" as recited in claim 16 is not recited in means-plus-function format. Accordingly, it is appropriate to apply the broadest reasonable meaning to the word "drive" as in its ordinary usage as it would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the appellants' specification. In re Morris, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). See also In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983). Moreover, limitations are not to be read into the claims from the specification. In re Van Geuns, 988 F.2d 1181, 1184, 26

USPQ2d 1057, 1059 (Fed. Cir. 1993) citing In re Zletz, 893
F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

The American Heritage Dictionary, Second College Edition, (1982) defines "drive" as "[t]he means or apparatus for transmitting motion or power to a machine or from one machine part to another." It is our view that this definition is the broadest reasonable meaning of "drive" as it would be understood by one of ordinary skill in the art without importing limitations from the specification since the written description contained in the appellants' specification does not provide any other definition for "drive."

Ward's gears 56 and 58 and Gurevich's cranks 26 and 27 driven by gearwheels 29 do transmit motion or power from one machine part to another. Thus, it is our conclusion that the above-noted "separate powered drive" limitation claim 16 is readable on Ward's gears 56 and 58 and Gurevich's cranks 26 and 27 driven by gearwheels 29. Accordingly, we conclude that the claimed subject matter is taught by Ward and Gurevich.

For the reasons set forth above, the decision of the examiner to reject claim 16 under 35 U.S.C. § 103 is affirmed. In accordance with 37 CFR § 1.192(c)(7), claims 7 and 17 fall with claim 16. Thus, it follows that the decision of the examiner to reject claims 7 and 17 under 35 U.S.C. § 103 is also affirmed.

Claims 8, 18, 22, 24 and 25

We will not sustain the rejection of claims 8, 18, 22, 24 and 25 under 35 U.S.C. § 103.

With respect to claims 8, 18 and 24, we agree with the appellants' argument (brief, pp. 8-9; reply brief, p. 5) that two electric servodrives as recited in these claims are not suggested or taught by the applied prior art. In that regard, while an artisan may have found it obvious to have replaced either Ward's motor or Gurevich's motor with an electric

servodrive, we see no **evidence**⁴ as to why an artisan would have replaced a single motor with two motors.

With respect to claims 22 and 25, we agree with the appellants' argument (brief, pp. 9-11; reply brief, p. 6) that the common carriage as recited in these claims is not suggested or taught by the applied prior art. In that regard, the American Heritage Dictionary, Second College Edition,

⁴ Evidence of a suggestion, teaching, or motivation to modify a reference may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem to be solved, see Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc., 75 F.3d 1568, 1573, 37 USPQ2d 1626, 1630 (Fed. Cir. 1996), Para-Ordinance Mfg., Inc. v. SGS Importers Int'l., Inc., 73 F.3d 1085, 1088, 37 USPQ2d 1237, 1240 (Fed. Cir. 1995), cert. denied, 117 S. Ct. 80 (1996), although "the suggestion more often comes from the teachings of the pertinent references," In re Rouffet, 149 F.3d 1350, 1355, 47 USPQ2d 1453, 1456 (Fed. Cir. 1998). The range of sources available, however, does not diminish the requirement for actual evidence. That is, the showing must be clear and particular. See, e.g., C.R. Bard Inc. v. M3 Sys., Inc., 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998), cert. denied, 119 S. Ct. 1804 (1999). A broad conclusory statement regarding the obviousness of modifying a reference, standing alone, is not "evidence." E.g., McElmurry v. Arkansas Power & Light Co., 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993); In re Sichert, 566 F.2d 1154, 1164, 196 USPQ 209, 217 (CCPA 1977). See also In re Dembiczak, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

(1982) defines "carriage" as "[a] moving part of a machine for holding or shifting another part." Ward's gear box 36 is not a carriage since it is not a moving part of a machine for holding or shifting another part. Likewise, Gurevich's support within which his cranks 26 and 27 are located is not a carriage since it is not a moving part of a machine for holding or shifting another part.

For the reasons set forth above, the decision of the examiner to reject claims 8, 18, 22, 24 and 25 under 35 U.S.C. § 103 is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 8, 10, 12 and 14 under 35 U.S.C. § 112, second paragraph, is reversed; the decision of the examiner to reject claims 7, 16 and 17 under 35 U.S.C. § 103 is affirmed; and the decision of the examiner to reject claims 8, 18, 22, 24 and 25 under 35 U.S.C. § 103 is reversed.

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

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JOHN P. McQUADE)	APPEALS
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Appeal No. 1999-0272
Application No. 08/605,212

Page 15

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Appeal No. 1999-0272
Application No. 08/605,212

Page 16

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