

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte HANS W. HERZOG, KENNETH B. LINGO and JOHN H. NOLAN

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Appeal No. 1999-1524  
Application No. 08/938,051<sup>1</sup>

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ON BRIEF

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Before MEISTER, PATE, 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 1 to 8, 14, 15, 22, 24 and 26 to 31.<sup>2</sup> Claims 9, 16 to 21, 23, 25 and 32 to 36 have been allowed.

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<sup>1</sup> Application for patent filed September 26, 1997. According to the appellants, the application is a continuation of Application No. 08/523,061, filed September 1, 1995, now abandoned.

<sup>2</sup> Claim 15 was amended subsequent to the final rejection.

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Claims 10 to 13 have been objected to as depending from a non-allowed claim. No claim has been canceled.

We REVERSE.

BACKGROUND

The appellants' invention relates to an accumulating conveyor with latchable pallets. An understanding of the invention can be derived from a reading of exemplary claim 15, which is reproduced in the opinion section below.

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

Jacksch et al. 9, 1978 (Jacksch)	4,088,220	May
Linden <sup>3</sup> 1990	4,934,515	June 19,
van den Bergh et al. 1993 (van den Bergh)	5,253,745	Oct. 19,
Gyger 1995	5,407,058	Apr. 18,

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<sup>3</sup> We note that on page 3 of the examiner's answer, the examiner failed to include this patent in section (9) Prior Art of Record. Moreover, we note that the patent to Orisaka et al. (U.S. Patent No. 5,540,319) included in section (9) of the answer was not relied upon by the examiner in any rejection of the claims under appeal.

Claims 1 to 3, 14, 15, 22, 24, 26 and 27 stand rejected under 35 U.S.C. § 103 as being unpatentable over Linden in view of van den Bergh and Gyger.

Claims 4 to 8 and 28 to 31 stand rejected under 35 U.S.C. § 103 as being unpatentable over Linden in view of van den Bergh, Gyger and Jacksch.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the final rejection (Paper No. 13, mailed July 20, 1998) and the examiner's answer (Paper No. 18, mailed January 11, 1999) for the examiner's complete reasoning in support of the rejections, and to the appellants' brief (Paper No. 17, filed December 18, 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. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the examiner is insufficient to establish a prima facie case of obviousness with respect to the claims under appeal. Accordingly, we will not sustain the examiner's rejection of claims 1 to 8, 14, 15, 22, 24 and 26 to 31 under 35 U.S.C. § 103. Our reasoning for this determination follows.

In rejecting claims 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). A prima facie case of obviousness is established by presenting evidence that would have led one of ordinary skill in the art to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988) and In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).

**Claim 15**

Independent claim 15 reads as follows:

An endless accumulating conveyor comprising laterally spaced apart endless multi-strand conveyor chains having upper and lower runs connected adjacent the ends of the conveyor by curved sections with return bends thereof, laterally spaced coaxial conveyor sprockets at each end of the conveyor for supporting the curved sections of the chains, a plurality of pallet trains each for carrying a workpiece and each having at least a leading first pallet and a trailing last pallet, a first workpiece support on the first pallet, a second workpiece support on the last pallet and the first and second supports together carrying the same workpiece on one train of pallets with the workpiece having a length greater than the length of any one pallet, each pallet being slidably supported on the chains and adapted to be frictionally transported over the upper and lower runs, propelling mechanism for positively engaging and positively advancing without slippage therebetween the pallets one at a time over the curved sections in an arcuate path from one run to the other, a clasp carried by the first pallet of each pallet train, a catch releasably engagable with a clasp and carried by the last pallet of each train, each clasp being constructed so that it engages with the catch carried by an immediately succeeding pallet to couple the pallets together as their associated train is advanced along at least one of the runs for carrying a workpiece, and each clasp and catch is constructed so that as each pallet having a clasp is initially advanced by the propelling mechanism around one of the curved sections it disengages from the catch of the immediately succeeding pallet and as each pallet is advanced in an arcuate path around a curved section it is disconnected from all other pallets and is the only pallet being moved by its associated propelling mechanism around the curved section.

The examiner's full statement of the rejection of claim 15 is as follows (final rejection, p. 2):

[i]t would have been obvious to add the teachings of latching means of figure 24 or 25 of van den Bergh et al to the carries P of Linden. Note that the latching means of van den Bergh et al releases as the lead carrier 2 begins travel through a transition or curved portion of the patch [sic, path] of travel (see column 6 lines 12-25 of van den Bergh et al). The number of pallets moved around the curved section at the same time is dependent on the relative dimensions of the pallet and the radius of the curve. If one wished to transport one large article by the train of carriers, note figure 6 of Gyger.

The appellants argue (brief, pp. 16-21) that the applied prior art, considered alone or in combination, does not disclose or suggest the claimed accumulating conveyor having "two pallets releasably connected together by a clasp and a catch."

The examiner's complete response to the appellants' argument (answer, p. 3) was "[t]he examiner has no further comments to make."

We have reviewed all the applied prior art (i.e., Linden, van den Bergh, Gyger and Jacksch) and fail to find any

teaching or suggestion therein of connecting pallets together with a clasp and catch as recited in claim 15. In that regard, while van den Bergh does teach in Figures 24 and 25 magnetically coupling tray units together, van den Bergh does not teach or suggest using a clasp and catch arrangement as set forth in claim 15. In our view, the only suggestion for modifying Linden in the manner proposed by the examiner to meet the limitations of claim 15 stems from hindsight knowledge derived from the appellants' own disclosure. The use of such hindsight knowledge to support an obviousness rejection under 35 U.S.C. § 103 is, of course, impermissible. See, for example, W. L. Gore and Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). It follows that the decision of the examiner to reject claim 15 under 35 U.S.C. § 103 is reversed.

**Claims 1 and 26**

Independent claims 1 and 26 also recite an accumulating conveyor having a clasp and catch for connecting pallets together which is not suggested by the applied prior art for the reasons set forth above with respect to claim 15. Accordingly, the decision of the examiner to reject claims 1 and 26 under 35 U.S.C. § 103 is reversed.

**Claims 2 to 8, 14, 22, 24 and 27 to 31**

In view of our decision above to reverse the rejection under 35 U.S.C. § 103 of independent claims 1, 15 and 16, it follows that the decision of the examiner to reject dependent claims 2 to 8, 14, 22, 24 and 27 to 31 under 35 U.S.C. § 103 is also reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 8, 14, 15, 22, 24 and 26 to 31 under 35 U.S.C. § 103 is reversed.

REVERSED

JAMES M. MEISTER	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
WILLIAM F. PATE, III	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
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	)	
JEFFREY V. NASE	)	
Administrative Patent Judge	)	

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APPEAL NO. 1999-1524 - JUDGE NASE  
APPLICATION NO. 08/938,051

APJ NASE

APJ MEISTER

APJ PATE

DECISION: **REVERSED**

Prepared By: Gloria Henderson

**DRAFT TYPED:** 08 Jul 99

**FINAL TYPED:**