

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board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. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LLOYD DOUGLAS CLARK

Appeal No. 1999-1692
Application No. 08/810,477

ON BRIEF

Before URYNOWICZ, BARRETT, and BLANKENSHIP, Administrative Patent Judges.

URYNOWICZ, Administrative Patent Judge.

Decision on Appeal

This appeal is from the final rejection of claims 49-72, all the claims pending in the application.

The invention pertains to method and apparatus for measuring the electrical properties of a fluid and depth of immersion of a probe in the fluid. Claim 49 is illustrative and reads as follows:

49. A measurement system, comprising:

- a. potential source means with a ground return,
- b. a plurality of electrically conductive sections, said sections being electrically separate,
- c. connecting means for connecting a first of said

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- sections to said potential source means, said first section having predetermined physical dimensions,
- d. potential switching means for selectively connecting a second of said sections to either said potential source means or to said ground return,
- e. electrical current measuring means, and
- f. connecting means for connecting one of said sections to said electrical current measuring means.

The references relied upon by the examiner as evidence of obviousness are:

Brinegar 1977	4,021,730	May 03,
Hoyt, Jr. et al. (Hoyt) 1981	4,293,756	Oct. 06,

The appealed claims stand rejected under 35 U.S.C. § 103 as being unpatentable over Hoyt and Brinegar.

The respective positions of the examiner and the appellant with regard to the propriety of these rejections are set forth in the final rejection (Paper No. 8) and the examiner's answer (Paper No. 13) and the appellant's brief (Paper No. 12) and reply brief (Paper No. 14).

Appellant's Invention

An adequate description of the invention is provided at page 2 of the brief.

The Prior Art

An adequate description of the references is provided at

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pages 3 and 4 of the brief.

The Rejection under 35 U.S.C. § 103

After consideration of the positions and arguments presented by both the examiner and the appellant, we have concluded that the rejection should not be sustained.

Although all of the independent claims stand rejected under 35 U.S.C. § 103 as unpatentable over Hoyt and Brinegar, the examiner's position is that "Hoyt actually contains, satisfies and anticipates all of the limitations of the applicant's independent claims." (Paper No. 8, page 5).

With the exception of "electrical current measuring means", the examiner has made no showing as to what structure in Hoyt meets the limitations of the independent claims. Such being the case, the examiner has not satisfied his burden of establishing a prima facie case of unpatentability and the rejection of the independent claims cannot be sustained.

Whereas the Brinegar reference was in effect combined with Hoyt to meet limitations added by the dependent claims, the rejection of

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these claims cannot be sustained in view of our decision with respect to the independent claims.

REVERSED

STANLEY M. URYNOWICZ JR.)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
LEE E. BARRETT)	APPEAL AND
Administrative Patent Judge)	INTERFERENCES
)	
)	
)	
HOWARD B. BLANKENSHIP)	
Administrative Patent Judge)	

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SU/RWK

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