

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

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAG H. GUNDERSEN, HARALD BORRESEN, and
ODD F. JOHANSEN

Appeal No. 1999-1728
Application No. 08/750,041

ON BRIEF

Before FRANKFORT, NASE, and LAZARUS, Administrative Patent
Judges.

LAZARUS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 12, which are all of the claims pending in this application.

We reverse.

BACKGROUND

The appellants' invention relates to a production line for manufacturing absorbent disposable articles (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

THE PRIOR ART

The prior art reference of record relied upon by the examiner in rejecting the appealed claims is:

Hermann et al. (Hermann) 0 589 859 Mar. 30, 1994
Published European Patent Application

THE REJECTION

Claims 1 through 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hermann.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the examiner's answer (Paper No. 14, mailed December 30, 1998) for the examiner's complete reasoning in support of the rejections, and to the appellants' brief (Paper No. 13, filed October 7, 1998) and reply brief

(Paper No. 15, filed March 1, 1999) for the 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 through 12 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 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, 783, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993). If the examiner fails to establish a prima facie case, the rejection is improper and will be overturned. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

The appellants' invention is directed to a production line having a framework of vertical posts and plates. Claim 11 is representative and reads as follows:

11. A production line for the manufacture of absorbent disposable articles, comprising:

plural carrier plates, each for carrying at least one device used in the manufacture of the absorbent disposable articles, each device being powered by flowing media;

a framework comprising vertical posts, each of said carrier plates being carried by at least two of said vertical posts so that the devices carried by said carrier plates are sequentially arranged for the manufacture of the absorbent disposable articles;

a connector carried in one of each set of the two vertical posts carrying one of said carrier plates, each of said connectors being connected to a source of the flowing media; and

each of said carrier plates further comprising a receptor for conveying the flowing media to the device on the corresponding one of the carrier plates and for being connected to the one said connector on the one of the vertical posts carrying the corresponding one of the carrier plates.

This claim stands rejected over Hermann. The appellants acknowledge Hermann's disclosure of a production line with identical module plates mounted in a framework along the production line (specification, page 2). It is, however,

argued that Hermann does not teach or suggest the claimed arrangement of connectors and connector elements (brief, page 4). The importance of providing a connector to each pair of vertical posts in the framework whether the connector is needed or not is argued in the reply brief (at page 1). The appellants conclude that there is no support in Hermann for this feature.

We find that Hermann discloses eighteen modules aligned in a linear array (Figs. 6A and 6B) with mechanisms for operating on, or relative to, a moving web (specification, col. 13, lines 30-55). Each module (400) (Fig. 8) has upright members (410) (posts) to which is mounted plates or panels (450) for holding the mechanisms. The mechanisms include continuously and intermittently operating mechanisms with the continuously operating mechanisms being preferably driven by DC electric motors (M) mounted within the frame and, many or all of, the intermittently operating mechanisms being preferably driven from a common rotating main drive shaft (188) (col. 20, lines 38-50). Our review of Hermann's disclosure reveals the above teaching of how the mechanisms are driven, however Hermann does not teach or suggest the

appellants' specifically claimed mode for providing power for the mechanisms, i.e. "a connector carried in one of each set of the two vertical posts carrying one of said carrier plates, each of said connectors being connected to a source of the flowing media" as recited in claim 11 on appeal. We note the examiner's position that one of ordinary skill in the art concerned with including electrically and pneumatically operated working devices in Hermann's production line, would have found it obvious to include "flowing media" operating means in the framework modules, because "flowing media" is another type of working device operating means, (answer, page 6). While we agree with the examiner that it would have been obvious to one of ordinary skill in the art to substitute one type of power for another, such substitution would not have suggested or taught the appellants' claimed connector arrangement. Without some teaching or suggestion of the appellants' claimed connector arrangement in the prior art, the rejection would appear to rely only on impermissible hindsight. In summary, the examiner has not provided, and we do not find, any evidence of the specific connector arrangement as recited in claim 11 in the prior art, and we

agree with the appellants that, lacking such evidence, there is no prima facie case of obviousness.

Rejections based on ' 103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. See In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968). Our reviewing court has repeatedly cautioned against employing hindsight by using the appellant's disclosure as a blueprint to reconstruct the claimed invention from the isolated teachings of the prior art. See, e.g., Grain Processing Corp. v. American Maize-Products Co., 840 F.2d 902, 907, 5 USPQ2d 1788, 1792 (Fed. Cir. 1988).

For the above reasons, we will not sustain the examiner's rejection of claim 11. The other independent claim, claim 1, requires a connector arrangement like that of claim 11, i.e. claim 1 requires "a plurality of connectors (27, 28) which connect to lines for the delivery of flowing media, one of

said connectors being provided for each pair of said vertical posts carrying at least one of said carrier plates," and the examiner's rejection with regard to claim 1, as being unpatentable over Hermann, will not be sustained for the same reasons as recited above with respect to claim 11. The rejection of dependent claims 2 through 10 and 12 will likewise not be sustained.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 through 12 under 35 U.S.C. § 103 is reversed.

REVERSED

CHARLES E. FRANKFORT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JEFFREY V. NASE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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RICHARD B. LAZARUS)	
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ARLINGTON, VA 22202

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APPLICATION NO. 08/750,041

APJ LAZARUS

APJ NASE

APJ FRANKFORT

DECISION: **REVERSED**

Prepared By:

DRAFT TYPED: 25 Sep 01

FINAL TYPE

