

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT J. KELLNER and MARK F. CASSIDY, JR.

Appeal No. 1999-2761
Application No. 08/790,322¹

ON BRIEF

Before CALVERT, PATE, and GONZALES, Administrative Patent Judges.

CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

¹ Application for patent filed January 28, 1997. According to appellants this application is a division of Application 08/303,535, filed September 9, 1994, now U.S. Patent 5,615,474, issued April 1, 1997.

controller 1014 for each fastening machine (col. 7, lines 7 to 35). With regard to the rejection here at issue, the relevant disclosure of Speller concerning the functions of control 1038 is as follows:

Controller 1038 has five major functions, and a first is equipment monitoring which allows controller 1038 to track and record the current status of all equipment within the assembly cell and display it on request to an operator at a central station which can be either near to or remote from the cell thereby extending capability to monitor several pieces of equipment and take corrective action whenever needed. For example, individual equipment can be moved on and off line via means command issued by controller 1038. A second function is fault monitoring wherein controller 1038 detects and records error conditions, classifies them according to user-defined severity levels, response [sic: responds] to errors by shutting down malfunctioning equipment, and reroutes work in process. [col. 7, lines 42 to 56]

* * * * *

A fourth function is production control including tracking work in process and assigning work stations to maximize production. . . . Controller 1038 continually tracks the progress of each manufacturing step, recording production history data for later evaluation of overall cycle times, manufacturing problems and bottlenecks. Controller 1038 also maintains and evaluates completed product test results and tracks the number of rejected as compared to acceptable parts produced in the assembly cell. There is provided a complete record of number of

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parts run, problems with the machines, errors with assemblies, errors with incoming parts, and a total log is kept with everything tracked in real time. [col. 8, lines 7 to 28]

In order to anticipate claim 24, Speller must disclose every limitation of that claim, either explicitly or inherently. In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). Appellants argue, first, that (brief, page 3):

Speller [does] not disclose gathering fastening functions including measurements and data from fastener installation operations as they are performed on the workpiece and then downloading those measurements and data from the fastening functions to a processor as claimed by applicants.

According to appellants (brief, page 4), in the Speller system measurements and data are not downloaded from controller 1014 through interface 1026 to controller 1038, but rather, programs are downloaded from controller 1038 to device controller 1014.

Although the examiner asserts on page 4 of the answer that "Speller clearly discloses gathering fastening function including measurement and data from fastener installation operation and then downloading those measurement and data from

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the fastening function to a processor means (say, central or cell controller 84, 1038)," he does not identify, and we do not find, where such disclosure is located in Speller.

Accordingly, we agree with appellants to the extent that there does not appear to be any explicit disclosure in Speller of the claim limitations referred to in the above quotation from page 3 of appellants' brief. This does not end the inquiry, however, because it is well settled that "[u]nder the principles of inherency, if a structure in the prior art necessarily functions in accordance with the limitations of a process or method claim of an application, the claim is anticipated." In re King, 801 F.3d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986). See also Atlas Powder Co. v. IRECO Inc., 190 F.3d 1342, ___, 51 USPQ2d 1943, 1946 (Fed. Cir. 1999), and MEHL/Biophile Int'l Corp. v. Milgraum, ___ F.3d ___, ___, 52 USPQ2d 1303, 1305 (Fed. Cir. 1999).

In the present case, we do not agree with appellants that measurements and data are not downloaded from Speller's controller 1014 (i.e., fastening machines) to controller 1038. To the contrary, we consider that such downloading inherently, if not explicitly, occurs in the Speller system because the

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above-quoted portion of col. 7 of Speller discloses that the second function of controller 1038 is "fault monitoring wherein controller 1038 detects and records error conditions, classifies them according to user-defined severity levels, response [sic: responds] to errors by shutting down malfunctioning equipment, . . ." (lines 51 to 55). Keeping in mind that fastening machines 16, 18 constitute part of the equipment cell 10, and that one function of controller 84 (1038) is disclosed as being "for monitoring operation of the machines 16, 18" (col. 7, lines 2 to 5), it is evident that in order for the controller to monitor the operation of the fastening machines, to record error conditions in those machines, and to shut them down if they were malfunctioning (col. 7, line 55), it would be necessary to gather measurements and data from the fastening machines while they were in operation installing fasteners in the workpiece 44, 46, etc., as recited in step (a) of claim 24, and then to transmit, i.e., download, such measurements and data to the controller 1038, as recited in step (b). Otherwise, the controller would not be able to operate as disclosed by Speller, in that it could not monitor the operation of the

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fastening machines, nor could it detect when they were malfunctioning, so that they could be shut down. Of necessity, such monitoring and shutting down would have to be done on a real time basis; note Speller's disclosure at col. 8, line 28, that "a total log is kept with everything tracked in real time." In addition, Speller discloses providing historical data for subsequent use in analyzing operation of the fastening machine(s), as claimed, in the above-quoted col. 8, lines 18 to 28.

Although Speller does not disclose the making of any specific measurements on fastening machines 16, 18, claim 24 does not recite any specific measurements, and some such "measurements and data" would necessarily have to be gathered in order for Speller's controller 1038 to perform its disclosed functions, as discussed above.

We therefore conclude that claim 24 is anticipated by Speller, and will sustain the rejection of that claim. The rejection of claims 25 and 26 will also be sustained, since appellants state on page 3 of the brief that claims 24 to 26 stand and fall together. 37 CFR § 1.192(c)(7).

Conclusion

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The examiner's decision to reject claims 24 to 26 is affirmed.

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

AFFIRMED

IAN A. CALVERT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
WILLIAM F. PATE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
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)	
JOHN F. GONZALES)	
Administrative Patent Judge)	

SLD

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Hudgson, Ross, Andrews, Wood
and Goodyear
1800 One M&T Plaza
Buffalo, NY 14203

Shereece

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APJ CALVERT

APJ GONZALES

APJ PATE

AFFIRMED

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