

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. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHRISTIAN STRAHM
and
THOMAS GERBIG

Appeal No. 2000-1060
Application No. 09/030,378

ON BRIEF

Before OWENS, KRATZ, and PAWLIKOWSKI, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

ON REQUEST FOR REHEARING

The appellants request reconsideration of our October 19, 2001 decision wherein we affirmed the rejection of claims 6-8 under 35 U.S.C. § 103 over the admitted prior art in view of Aindow.

It remains undisputed that it would have been obvious to one of ordinary skill in the art to apply Aindow's powder removal air jet (col. 7, lines 35-39) to the admitted prior art paste-point

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coating and scattering device (specification, page 1). The appellants argue in their request for rehearing that if one did so, that person would

use only a small air jet angle as shown in Aindow's figure 5 (item 152), and would not use an angle of 30-80° as recited in the appellants' claim 6.

Specifically, the appellants argue that the fact that Aindow's rollers are round rather than elliptical indicates that Aindow's drawings are at least roughly proportional, horizontal-to-vertical (request, page 3).¹ Round circles, however, are what are drawn using a draftsman's compass or template. The fact that the circles are round does not mean that the components of the apparatus, the distances between components, or the angle of the air jet with respect to the web surface, are drawn to scale. Aindow does not disclose the air jet angle in the specification, and "[a]bsent any written description in the specification of quantitative values, arguments based on measurement of a drawing are of little value." *In re Wright*, 569 F.2d 1124, 1127, 193 USPQ 332, 335 (CCPA 1977). In *Wright*, wherein a reference did not disclose that the drawings are to scale, the court rejected the solicitor's argument that the reference pointed to a distance

¹ The appellants also argue generally that most drawings are at least roughly proportional, horizontal-to-vertical (reply, page 3), but provide no support for this argument.

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from a groove to the rim of a whiskey barrel of about ½ inch to 1 inch. *See id.*

Also relevant are *In re Nash*, 230 F.2d 428, 109 USPQ 36 (CCPA 1956) and *In re Olsen*, 212, F.2d 590, 101 USPQ 402-03 (CCPA 1954). In *Nash*, 230 F.2d at 430-31, 109 USPQ at 37-38, the specification described one of two openings in a load supporting pneumatic cushioning device as being in free open communication with a reservoir, and the other opening as being a restriction, but the drawing showed the two openings as having substantially the same diameter. The court stated that "[w]hile the appellant's drawing, as above noted, seems to show the passages as being of about the same size, it is well settled that the drawings of patent applications are not necessarily scale or working drawings, and that a clear disclosure of parts or proportions in the specification is not nullified by a draftsman's error indicating different proportions or arrangements." *Nash*, 230 F.2d at 431, 109 USPQ at 38. In *Olsen*, 212 F.2d 590, 592-93, 101 USPQ 401, 402-03 (CCPA 1954), the court stated that "[o]rordinarily drawings which accompany an application for a patent are merely illustrative of the principles embodied

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in the alleged invention claimed therein and do not define the precise proportions of elements relied upon to endow the claims with patentability," and held that the drawings did not adequately support an amendment to the specification which recited

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that ball stop head portions of a coupler for releasably connecting hydraulic fluid conduits are equally spaced with respect to their associated valve seats.

Thus, *Wright, Nash and Olsen* all indicate that unless patent drawings are disclosed as being drawn to scale, which Aindow's drawings are not, meaningful measurements cannot be taken from them.

The appellants argue that the present case is more similar to *In re Heinrich*, 268 F.2d 753, 122 USPQ 388 (CCPA 1959) than to any of the above cases (request, page 3). The court in *Heinrich*, 268 F.2d at 755-56, 122 USPQ at 390, stated:

Each of the appealed claims calls for a taper of less than $7\frac{1}{2}^{\circ}$ as projected against a plane parallel to the axis of the sealing ring. Weis does not specify the angle of taper but the board stated that the taper shown in his drawing is less than $7\frac{1}{2}^{\circ}$ and that statement is not questioned here by appellant. While it is true that patent drawings are not ordinarily considered to be working drawings drawn to scale, the only reasonable interpretation of the Weis disclosure is that a very small angle of taper is to be used and we are of the opinion that one skilled in the art would normally use a taper of less than $7\frac{1}{2}^{\circ}$ in carrying out the teachings of the Weis patent, and that such an angle is, therefore, fairly disclosed by the patent.

The appellants argue that "[h]ad Heinrich claimed a taper angle of, say, 'more than 30° ' surely the decision would have come out

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different" (request, page 3). That may be correct, considering that the taper was that of a frusto-conical surface of a sealing ring.

The present case, in contrast, involves the angle of a jet for blowing powder off of a web and, unlike in *Heinrich*, it is not reasonable to interpret Aindow as requiring a very small angle of taper. Aindow's illustration of an air jet (figure 5, item 152) and teaching that the air jet is for blowing powder off of a web (col. 7, lines 35-39) in no way indicates that the angle of the air jet to the web is to be limited to that illustrated. The most reasonable interpretation of the reference is that any angle which is effective for blowing off the powder is suitable. As stated in our decision (page 6), one of ordinary skill in the art, when applying Aindow's air jet to the admitted prior art paste-point coating and scatter coating device (as, it is undisputed, the applied prior art would have led such a person to do), would have optimized the angle of the air jet and thereby arrived at the steep angles recited in the appellants' claims. See *In re Boesch*, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA

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1980); *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA
1955).

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We have reconsidered our decision but, for the above reasons, decline to make any change thereto.

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

DENIED

	TERRY J. OWENS)	
	Administrative Patent Judge)	
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	PETER F. KRATZ)	BOARD OF
PATENT	Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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)	
	BEVERLY A. PAWLIKOWSKI))
	Administrative Patent Judge)	

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