

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte SU-SYIN WU AND  
CHARLES HOWLETT

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Appeal No. 2000-0315  
Application 08/671,983

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ON BRIEF

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Before LIEBERMAN, TIMM, and MOORE, Administrative Patent Judges.

MOORE, Administrative Patent Judge.

**DECISION ON APPEAL**

This is an appeal under 35 U.S.C. § 134 from a final rejection of claims 1 - 18, all of the claims pending in this application.

CLAIMS

Claims 1 is representative of the claims on appeal, and read as follow:

1. A sterilization container for sterilizing instruments comprising:  
an enclosing wall;  
a base portion of said wall;  
a plurality of drainage apertures through the base portion;

drainage wells associated with at least a portion of the drainage apertures;

the drainage wells individually comprising:

a supporting surface above the exit aperture, and

an exit surface between supporting surface [sic] and the exit aperture, the exit surface being oriented to direct liquid downwardly toward the exit aperture without entrapment; and

a flexible elastomeric mat supported within the container upon the supporting surfaces, said mat having means for holding an instrument;

whereby the exit surfaces promote drainage of liquids from the container out through the drainage apertures associated therewith and the supporting surfaces support the flexible elastomeric mat.

#### THE REFERENCES

In rejecting the appealed claims under 35 U.S.C. §103, the Examiner relies on the following references:

Allen et al. (Allen)	5,407,648	Apr. 18, 1995
Nichols (Nichols)	4,900,519	Feb. 13, 1990

#### THE REJECTIONS

Claims 1 -18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Allen in view of Nichols.

#### SUMMARY OF DECISION

On consideration of the entire record, we affirm.

#### DISCUSSION

##### The Invention

The Appellant's invention relates generally to a sterilization container for sterilizing instruments. The container includes an enclosing wall having a base portion

with a plurality of drainage apertures through the base. A flexible elastomeric mat is supported within the container upon supporting surfaces of drainage wells associated with the drainage apertures. The drainage wells have surfaces which promote drainage of liquids from the container (Appeal Brief, page 2, lines 15 – 24). A method of sterilizing instruments using the apparatus is also claimed.

The Rejection of Claims 1-18 Under 35 U.S.C. §103(a) over Allen in view of Nichols

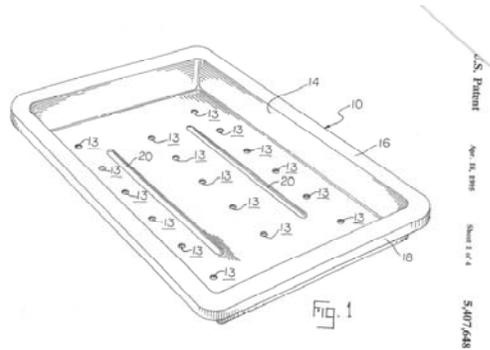
The Examiner has found that Allen teaches a sterilization container having a tray formed with a grid of apertures, a base supporting a flexible elastomeric (and preferably silicone rubber) mat having a plurality of instrument support fingers. The mat has a plurality of apertures which coordinate with those in the tray. The tray further has raised ribs to support the mat such that the circulation of the sterilant is not impeded. (Paper No. 8, page 3, lines 3-8).

Nichols was found by the Examiner to teach a sterilization container formed of a tray having a grid of apertures therethrough, the apertures being surrounded by a domed surface to form a funnel to facilitate circulation of the sterilant by preventing accumulation of condensate. (Examiner's Answer, page 3, lines 9-12).

The Appellants initially attack the prima facie case of obviousness, stating that there is no motivation for combining the references and the Examiner has relied upon hindsight (Appeal Brief, page 5, lines 7 – 14). The Appellants also state that one of skill in the art would not look to these references to make the combination (Appeal Brief, page 5, lines 15 – 27). Additionally, the Appellants assert that even were one to make the combination, it would not reach the claimed invention (Appeal Brief, page 6, line 27).

As we find this last point persuasive, we reverse.

The Allen reference teaches a tray system which is almost identical to the Appellants' system as may be seen by reference to Figure 1, which we reproduce below.

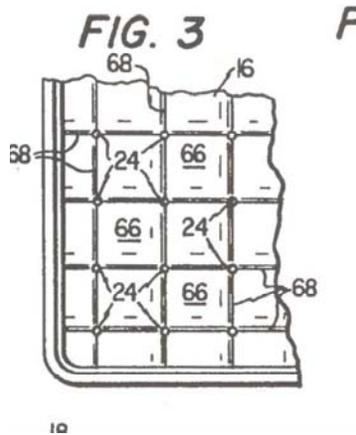


The enclosing wall of the sterilization container 14 is visible; that wall having a base (bottom) portion and a plurality of drainage apertures 13 through the base portion. There are drainage wells (the space between ridges 20, and the spaces between ridges 20 and side walls 14 can be considered wells) which include a supporting surface 20 above the exit aperture, an exit surface (the flat bottom) between the supporting surface and the exit aperture, and (not shown) a flexible elastomeric mat supported within the container upon the supporting surfaces. The only difference between claim 1 and the disclosure of Allen is the characterization of the wells as having an exit surface being “oriented to direct liquid downwardly” toward the exit aperture.

We interpret the quoted language as requiring a down slope between the support and the exit aperture to facilitate water running off the bottom of the tray. If Appellants disagree with this interpretation of claim 1, they should immediately inform us and request reconsideration.

To cure the deficiency of Allen, the Examiner relies upon the teaching of Nichols to use domed rectangles in a tray, the rectangle having drains at the corners thereof.

Figure 3 is reproduced below.



The domes are formed to slope at the corners thereof to aperture 24 to “further assist in draining condensate or liquid through the apertures 24” (Column 4, lines 21-23), essentially creating wells along the aperture to drain fluid.

However, the issue of the support of the mat comes into play. We are told that reduction of surface contact with the mat is desirable to increase the contact of steam/sterilant with the instruments and minimizes the areas where condensation can occur (Allen, column 1, lines 26-30). However, support of the mat is necessary to prevent sagging under heat conditions (Allen, column 1, lines 38-40) If one is to substitute the floor of the Nichols tray in for the floor of the Allen reference, for which there is motivation, where does the mat then lie? No guidance is found in Nichols for placement of a mat.

If one retains the ribs which are above the floor, then the mat is not in contact with the floor and the supporting surfaces of the individual drainage wells; a sought after

end to reduce condensation, but not in the manner as instantly claimed. The mat must contact the supporting surfaces which are part of the well to fall within the scope of claims 1 and 17.

If one removes the ribs during the substitution, then the mat is in contact with the dome tops (“supporting surfaces”) of Nichols creating a plurality of areas of almost flat contact but meeting the literal limitations of claim 1. The Examiner states that Allen explicitly teaches the need to minimize contact (Examiner’s Supplemental Answer, page 1, lines 9-12), and we agree with this general supposition. However, Allen accomplishes this by using the ribs to separate the mat and the bottom having apertures.

The Examiner finds that the substitution of the aperture structure of Nichols for the tray apertures and ribs of Allen clearly minimizes the structure required to provide optimum sterilant flow and mat support. (Examiner’s Answer, page 4, lines 8-11). We are not convinced of this. Domed structures would provide many contact areas which were of a flat nature, potentially frustrating the purpose of draining fluids. It would seem equally likely to us that an artisan would solve this potential problem by keeping the ribs of Allen.

The burden is upon the examiner to set forth a prima facie case of obviousness. See In re Alton, 76 F.3d 1168, 1175, 37 USPQ2d 1578, 1583 (Fed. Cir. 1996). Findings of fact and conclusions of law must be made in accordance with the Administrative Procedures Act, 5 U.S.C. §706 (A), (E) (1994). See Zurko v. Dickinson, 527 U.S. 150, 158, 119 S. Ct. 1816, 1821, 50 USPQ2d 1930, 1934 (1999). Under the Act, the agency making the findings and conclusions must set forth its findings and explain its

application of the law to the facts. See In re Lee, 2000 U.S.App. LEXIS 855, 856-7 (Fed. Cir. 2002). Findings of fact relied upon in making the obviousness rejection must be supported by substantial evidence within the record. See In re Gartside, 203 F.3d 1305, 13154, 53 USPQ2d 1769, 1775 (Fed. Cir. 2000).

In sum, while we agree with the Examiner that there is motivation to substitute the Nichols bottom into the Allen structure, the motivation for eliminating the ribs of Allen has not been established with substantial evidence in this record. Accordingly, we are constrained to reverse the obviousness rejection.

Summary of Decision

The rejection of claims 1 - 18 under 35 U.S.C. §103(a) as unpatentable over Allen in view of Nichols is reversed.

**REVERSED**

PAUL LIEBERMAN  
Administrative Patent Judge

CATHERINE TIMM  
Administrative Patent Judge

JAMES T. MOORE  
Administrative Patent Judge

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