

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. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES S. HOLTROP and JOHN R. WIEDEMANN

Appeal No. 2000-0954
Application No. 08/972,206

ON BRIEF

Before CALVERT, STAAB, and NASE, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 5, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellants' invention relates to a method of cleaning manure from support surfaces of egg-laying installations (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Woods et al. (Woods) 1966	3,274,973	Sep. 27,
Castrantas 1977	4,014,805	Mar. 29,
Dyer 22, 1994	5,365,878	Nov.

Claims 1 to 3 stand rejected under 35 U.S.C. § 103 as being unpatentable over Woods in view of Castrantas.

Claims 4 and 5 stand rejected under 35 U.S.C. § 103 as being unpatentable over Dyer in view of Castrantas.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer (Paper No. 10,

mailed November 23, 1999) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 9, filed September 1, 1999) for the appellants' 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 to 5 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 by

presenting evidence that would have led one of ordinary skill in the art to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988) and In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).

Claims 1 to 3

We will not sustain the rejection of claims 1 to 3 under 35 U.S.C. § 103 as being unpatentable over Woods in view of Castrantas.

Claim 1 reads as follows:

A method of cleaning poultry manure from support surfaces of an egg-laying installation which comprises contacting the manure with an aqueous solution obtained by combining water and one or more compounds selected from alkali metal polyphosphates, organo-phosphonates, alkali metal salts of nitriloacetic acid and alkali metal salts of ethylene diamine tetraacetic acid.

The examiner determined (answer, p. 3) that to use the cleaning solution of Castrantas with the bath of Woods would have been obvious to one skilled in the art wishing to ensure that all support surfaces were as sanitary as possible.

Implicit in this rejection is the examiner's view that the above noted modification of Woods would result in a method which corresponds to the method recited in claim 1 in all respects. We do not agree since this modification of Woods would not result in a method of cleaning **poultry manure** from **support surfaces of an egg-laying installation** which comprises **contacting the manure** with an aqueous solution. In that regard, while Woods does disclose using his flooring for collecting manure from animals, we fail to find any disclosure of using Woods' flooring with poultry to collect poultry manure or of contacting poultry manure with an aqueous solution to clean poultry manure from the flooring. While such a use may have been obvious at the time the invention was made to a person having ordinary skill in the art as implied by the examiner (answer, p. 4) we note that such is not part of the rejection before us in this appeal.

Additionally, it is our view that the only suggestion for modifying Woods to use the cleaning solution of Castrantas (an improved dry cleaning formulation for dry cleaning garments

and other articles made from textile fibers) with the bath of Woods in the manner proposed by the examiner stems from hindsight knowledge derived from the appellants' own disclosure. The use of such hindsight knowledge to support an obviousness rejection under 35 U.S.C. § 103 is, of course, impermissible. See, for example, W. L. Gore and Assocs., Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

For the reasons set forth above, the decision of the examiner to reject claim 1, and claims 2 and 3 dependent thereon, under 35 U.S.C. § 103 is reversed.

Claims 4 and 5

We will not sustain the rejection of claims 4 and 5 under 35 U.S.C. § 103 as being unpatentable over Dyer in view of Castrantas.

Claim 4 reads as follows:

A method of cleaning poultry nest pads which comprises: soaking poultry nest pads soiled with hardened poultry manure in an aqueous solution until the manure

softens, said solution obtained by combining water and one or more members selected from the group consisting of alkali metal polyphosphates, organo-phosphonates, alkali metal salts of nitriloacetic acid and alkali metal salts of ethylene diamine tetraacetic acid; and then flushing the softened manure from the pads with pressurized water.

The examiner determined (answer, pp. 3-4) that to use the cleaning solution of Castrantas to clean the nest pad of Dyer would have been obvious to one skilled in the art wishing to easily and effectively clean the nest pad. We do not agree. In our view, the only suggestion for modifying Dyer to use the cleaning solution of Castrantas (an improved dry cleaning formulation for dry cleaning garments and other articles made from textile fibers) to clean Dyer's nest pads in the manner proposed by the examiner stems from hindsight knowledge derived from the appellants' own disclosure. As set forth above, the use of such hindsight knowledge to support an obviousness rejection under 35 U.S.C. § 103 is, of course, impermissible. While Dyer does teach (column 3, lines 16-19) that his nest pads can be cleaned on site with a sprayer, we fail to find any motivation in the applied prior art that would

have led one of ordinary skill in the art to combine the relevant teachings of the references to arrive at the claimed invention.

For the reasons set forth above, the decision of the examiner to reject claim 4, and claim 5 dependent thereon, under 35 U.S.C. § 103 is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 5 under 35 U.S.C. § 103 is reversed.

REVERSED

IAN A. CALVERT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
LAWRENCE J. STAAB)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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