

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. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

Ex parte WILLIAM T. BALL

---

Appeal No. 2000-1465  
Application No. 09/037,485

---

HEARD: June 12, 2001

---

Before ABRAMS, FRANKFORT and BAHR, Administrative Patent Judges.  
ABRAMS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 3 and 5, which at that point were all of the claims remaining of record. Subsequently, claims 1 and 3 were canceled and claim 5 amended. Thus, claim 5 remains the only claim before us on appeal.

We REVERSE.

### BACKGROUND

The appellant's invention relates to a strainer assembly for bathtub drains and the like. Claim 5 has been reproduced below.

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

Bergin	3,800,339	Apr. 2, 1974
Mowery	5,363,518	Nov. 15, 1994

Claim 5 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Bergin in view of Mowery.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the Answer (Paper No. 12) for the examiner's complete reasoning in support of the rejection, and to the Brief (Paper No. 10) and the Reply Brief (Paper No. 13) for the appellant's arguments thereagainst.

### OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

The appellant's invention is directed to improvements in strainer assemblies in which the flange assembly that extends around the opening in the basin can be replaced when it becomes damaged or discolored without replacing the entire strainer assembly.

Claim 5 reads as follows:

5. A strainer assembly for bathtub drains and the like, comprising,

a strainer assembly having a circular horizontal flange with a center opening adapted to fit over and around a vertically disposed drain port in the bottom of a fluid receptacle,

a hollow bushing extension extending downwardly from said center opening and terminating in an open lower portion with external threads,

a hollow attachment bushing having a center opening threadably secured around said lower portion of said bushing extension and extending downwardly therefrom, said attachment bushing having a lower open end with at least one crossbar extending thereacross,

a bearing hub formed in the center of said crossbar on the center axis of said center openings, and

a vertically disposed threaded aperture in said hub to threadably receive a threaded connecting stud from a closure valve,

the attachment bushing having both internal and external threads positioned directly opposite each other on inner and outer internal and external surfaces thereof with the internal threads threadably receiving the external threads on the open lower portion of the bushing extension.

It is the examiner's view that all of the subject matter rejected in this claim is disclosed in Bergin, except for the separate bushing extension. However, the examiner is of the opinion that it would have been obvious to one of ordinary skill in the art to modify the

Bergin strainer assembly to include such an element in view of the teachings of Mowery “in order to facilitate assembly and replacement” (Answer, page 4), whereupon conformance would be achieved with the subject matter recited in the claim. Among the appellant’s arguments in rebuttal is that Mowery does not disclose or teach that the attachment bushing have the internal and external threads positioned directly opposite each other on inner and outer surfaces thereof, and therefore the references do not render the claim obvious.

The test for obviousness is what the combined teachings of the prior art would have suggested to one of ordinary skill in the art. See, for example, In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In establishing a prima facie case of obviousness, it is incumbent upon the examiner to provide a reason why one of ordinary skill in the art would have been led to modify a prior art reference or to combine reference teachings to arrive at the claimed invention. See Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Int. 1985). To this end, the requisite motivation must stem from some teaching, suggestion or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art and not from the appellant's disclosure. See, for example, Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1052, 5 USPQ2d 1434, 1439 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988).

Bergin discloses a strainer assembly in which the circular horizontal flange (16) and the threaded attachment portion are of one-piece construction. As in the prior art discussed by the appellant on page 1 of the specification, in order to replace a damaged or stained flange in the Bergin device, the entire assembly must be removed and replaced. The attachment portion of the Bergin device is provided with threads (18) on its outer surface to receive a lock nut that will secure the strainer assembly in place. There is no separate attachment bushing, and it follows that Bergin is devoid of internal threads on the internal surface of the attachment bushing, much less internal threads positioned directly opposite the external threads, as is required by the appellant's claim.

Mowery is directed to a pop-up drain stopper. It comprises a circular flange (24) that has a center opening adapted to fit through the drain port in a sink and external threads for receiving the internal threads on the upper portion of a cylindrical housing (18) which extends downwardly therefrom. The cylindrical housing has external threads for receiving a lock nut (28) that secures the assembly to the sink. The external threads are spaced axially from the internal threads, and thus the two threaded sections are not opposite each other, as is required by the appellant's claim. A stopper (46) is installed in the opening in the flange and housing. Interestingly, Mowery is concerned about the problem of stained flanges, but solves it by providing the head of the stopper with a

decorative cover (52) that is of sufficient diameter to cover the annular flange, so that any staining that may occur on the flange is hidden from the user's view (column 5, lines 4-12).

The mere fact that the prior art structure could be modified does not make such a modification obvious unless the prior art suggests the desirability of doing so. See In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). In the present case, we fail to perceive any teaching, suggestion or incentive in either reference which would have led one of ordinary skill in the art to modify the Bergin strainer in the manner proposed by the examiner. Mowery teaches that the problem of stained flanges can be solved by providing a stopper large enough to cover the flange and hide it from view, so that stains are not seen by the user. Therefore, one of ordinary skill would be instructed by Mowery to provide the Bergin strainer assembly with a large stopper, not to make the one piece assembly (10) into two pieces. There is no explicit teaching in Bergin that making a strainer assembly such as that of Bergin of two pieces rather than one would facilitate assembly and replacement, as alleged by the examiner. Such a teaching might, however, be implied when the casing has a laterally extending element, such as Mowery's threaded projection (34), which cannot be removed through the opening in the sink. Of course, this is not the case in Bergin. Finally, even if one were to combine the teachings of the two references in the manner proposed by the examiner, that is, separate the Bergin housing into two pieces, one screwed into the other, in our view the result would not include inner

and outer threaded portions on the attachment bushing that are positioned opposite each other.

We therefore find that the combined teachings of Bergin and Mowery fail to establish a prima facie case of obviousness with regard to the subject matter recited in claim 5, and we will not sustain the rejection.

SUMMARY

The rejection is not sustained.

The decision of the examiner is reversed.

REVERSED

NEAL E. ABRAMS  
Administrative Patent Judge

CHARLES E. FRANKFORT  
Administrative Patent Judge

JENNIFER D. BAHR  
Administrative Patent Judge

)  
)  
)  
)  
)  
) BOARD OF PATENT  
) APPEALS AND  
) INTERFERENCES  
)  
)  
)  
)  
)  
)

Appeal No. 2000-1465  
Application No. 09/037,485

Page 9

DONALD H. ZARLEY  
ZARLEY, McKEE, THOMTE,  
VOORHEES & SEASE  
801 GRAND - SUITE 3200  
DES MOINES, IA 50309-2721

APPEAL NO. 2000-1465 - JUDGE ABRAMS  
APPLICATION NO. 09/037,485

APJ ABRAMS

APJ BAHR

APJ FRANKFORT

3 JUDGE CONFERENCE

DECISION: **REVERSED**

Prepared By:

**DRAFT TYPED:** 29 Jan 02

**FINAL TYPED:**