

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

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOSEPH R. LYONS, JR.

Appeal No. 2001-0413
Application No. 09/182,404

ON BRIEF

Before JERRY SMITH, FLEMING, and DIXON, **Administrative Patent Judges**.
DIXON, **Administrative Patent Judge**.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 2, 4-7, 9-14, 16, 17, and 19, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

Appellant's invention relates to a method and apparatus for reducing artifacts in an imaging system. An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. An apparatus comprising:

an air displacement system including a fan assembly for directing a stream of air onto a rotating deflector element of an imaging system.

The prior art reference of record relied upon by the examiner in rejecting the appealed claims is:

Klainman	4,834,520	May 30, 1989
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Claims 1, 2, 4-7, 9-14, 16, 17, and 19, stand rejected under 35 U.S.C. § 102 as being anticipated by Klainman.

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellant regarding the above-noted rejections, we make reference to the examiner's answer (Paper No. 12, mailed May 9, 2000) for the examiner's reasoning in support of the rejections, and to appellant's brief (Paper No. 11, filed Apr. 24, 2000) and reply brief (Paper No. 13, filed Jun. 12, 2000) for appellant's arguments thereagainst.

OPINION

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

35 U.S.C. § 102

"Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention." **RCA Corp. v. Applied Digital Data Systems, Inc.**, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

It is well settled that the burden of establishing a *prima facie* case of anticipation resides with the Patent and Trademark Office (PTO). **See In re Piasecki**, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). After the PTO establishes a *prima facie* case of anticipation based on inherency, the burden shifts to the appellant to prove that the subject matter shown to be in the prior art does not possess the characteristics of the claimed invention. **See In re Thorpe**, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985); **In re King**, 801 F.2d 1324, 1327, 231 USPQ 136, 138 (Fed. Cir. 1986). Hence, appellant's burden before the PTO is to prove that the applied

prior art reference does not perform the functions defined in the claims. Compare **In re Best**, 562 F.2d 1252, 1255, 195 USPQ 430, 433-34 (CCPA 1977); **In re Ludtke**, 441 F.2d 660, 664, 169 USPQ 563, 566-67 (CCPA 1971). Here, we find that appellant has met this burden, and we will not sustain the rejection of claim 1.

Appellant argues that Klainman fails to teach (or suggest)¹ a method for directing a stream of air onto a portion of a rotating deflector element (using a fan assembly) and fails to teach a method for directing a stream of air onto a portion of a beam deflection assembly to reduce artifacts in the recorded image as recited in the independent claims. (See brief at page 3.) While we find the language of the claims to be quite broad, we agree with appellant that the disclosure of Klainman does not teach directing a stream of air at the rotating element or at any portion of the beam deflection assembly. From our review of the teachings of Klainman, Klainman teaches at columns 1-2 and 3 that it is desirable to provide forced air across the path of a laser beam to eliminate variations in the index of refraction of the air layer in the optical path using a pancake type fan. Additionally, Klainman teaches that the fan may be located adjacent the optical path in the region where the beam is at its maximum width to enable a maximum mixing effect of the air through which the beam passes.

¹ Here, we note that appellant argues that Klainman also does not suggest the claimed invention. We make no finding regarding the obviousness of the claimed invention in light of the teachings of Klainman.

The examiner maintains that Klainman teaches directing a stream of air onto a rotating deflector. (See answer at page 3.) We disagree with the examiner and find no support for this finding at the cited portions of Klainman. We merely find a teaching of placing the fan adjacent the optical beam which does not teach directing the stream of air at the (rotating) deflection element. The examiner maintains that the stream of air produced by fan 29 would “inherently be directed onto the deflecting element (28)” by forcing the air across optical path 30. (See answer at page 4.) We disagree with the examiner’s conclusion. While it may appear from Figure 1 that the stream of air may strike the rotating element, it is clear that Klainman is indifferent to the placement of the fan as long as it crosses at the maximum width of the beam (between the beam expander and the mirror). Therefore, it would not necessarily direct a stream of air onto the rotating or any other deflection element. Moreover, Klainman suggests at column 3, lines 29-31 that the air current deflectors are mounted on the fan so as to vary the direction of the forced air across the optical path. Therefore, this would suggest that the deflecting element is not the item to be cooled. Therefore, we find that the examiner has not established a *prima facie* case of anticipation, and we will not sustain the rejection of independent claims 1, 6, 12, 16, and 19 and their respective dependent claims.

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CONCLUSION

To summarize, the decision of the examiner to reject claims 1, 2, 4-7, 9-14, 16, 17, and 19 under 35 U.S.C. § 103 is reversed.

REVERSED

JERRY SMITH)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
MICHAEL R. FLEMING)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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