

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 33

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte VICTOR LUST, STEPHEN ROBERT BEATON,
SCOTT FREDERICK ANSELL, HENRI ARMAND DAGOBERT,
PHILLIP KING PARNELL Sr., CRAIG WILLIAM WALKER
and DANIEL TSU-FANG WANG

Appeal No. 2001-2332
Application 08/909,249

ON BRIEF

Before COHEN, FRANKFORT, and NASE, Administrative Patent Judges.
FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 29, 30 and 44. Claims 20, 22 and 26, which are the only other claims remaining in the application, stand allowed. Claims 1 through 19, 21, 23 through 25, 27, 28 and 31 through 43 have been canceled.

Appellants' invention is directed to an apparatus for removing and transporting molded articles (e.g., molded contact lens packaging articles), oriented in a first array distribution, from a molding station (312) at a first location and depositing those articles at a remote fourth location (350) in a second array distribution. Note, particularly, Figures 9-11 of the application drawings and the description of this embodiment of appellants' invention at pages 45-58 of the specification. On page 46 of the specification, appellants specifically note that

[t]he specific differences between the previous apparatus and the present apparatus, as alluded to above, is that the second and third assemblies 330, 340 of this apparatus 310 carry out the additional steps of altering the spatial loci of the articles with respect to one another. The spatial relationship of the articles, and their array relationship is altered from an original 4x4 array, which is desirable from a mold efficiency standpoint to a 2x8 array which facilitates optical inspection by automated lens inspection system.

On page 53 of the specification, appellants' further explain the operation of this embodiment of the invention by indicating that

[t]he uniaxial drawing together of the blocks 334, and thereby the articles, of the second assembly alters the spacing of the articles along a first axis. The transference of the articles from the second to the third assembly alters the relative distribution of articles, from a four by four array to a two by eight array. The drawing together of the vacuum plates 344 of the third assembly, during the reciprocation back to the fourth location, completes the two axis spatial distribution change in the separation distance of adjacent articles. The 2x8 pallet

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350 which receives the articles at the fourth location is correspondingly characterized by a matching array of receiving ports which is aligned to the altered distribution of the articles.

Independent claim 29 is representative of the subject matter on appeal and a copy of that claim may be found in the Appendix to appellants' brief.

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

Warren	3,542,224	Nov. 24, 1970
Goransson	3,973,795	Aug. 10, 1976
Riley	4,411,574	Oct. 25, 1983
Montferme et al. (Montferme)	4,444,423	Apr. 24, 1984
Lebret	4,444,424	Apr. 24, 1984
Herman	4,576,560	Mar. 18, 1986
Hansen, Jr. et al. (Hansen)	4,773,523	Sep. 27, 1988
Colamussi	5,575,376	Nov. 19, 1996

Claims 29, 30 and 44 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Herman in view of Hansen and anyone of Goransson, Colamussi and Warren.

Claims 29, 30 and 44 additionally stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Herman in view of Hansen and Colamussi as applied in the preceding paragraph, and taken further in view of anyone of Riley, Montferme and Lebret.

Rather than attempt to reiterate the examiner's full commentary with regard to the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellants

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regarding those rejections, we make reference to the examiner's answer (Paper No. 29, mailed February 27, 2001) for the reasoning in support of the rejections, and to appellants' brief (Paper No. 27, filed November 13, 2000) and reply brief (Paper No. 31, filed April 25, 2001) for the arguments thereagainst.

OPINION

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

Looking first at the examiner's rejection of claims 29, 30 and 44 under 35 U.S.C. § 103(a) as being unpatentable over Herman in view of Hansen and anyone of Goransson, Colamussi and Warren, we note that on page 3 of the answer the examiner has urged (without making appropriate factual findings) that it would have been obvious to move the articles (presumably the molded articles 25 described at col. 3, lines 49-64 of Herman) from station (4) in Herman with a reciprocating assembly and place them on another reciprocating assembly in view of the teaching in Hansen to move articles with a reciprocating gantry (44) and place them in a reciprocating bin (20). In this regard, the examiner directs us

to note that (4) in Herman and (60) in Hansen "are synonymous." In addition, the examiner further urges (again without making appropriate factual findings) that "[i]t would have been obvious to use a gripper as claimed [sic] in Herman's transfer and Hanson's [sic, Hansen's] transfer if desiring to move a plurality of articles at a time and space them since such is conventional as shown by Goransson and Colamussi and Warren." With respect to the particular first and second array distributions set forth in claim 30 on appeal, the examiner contends that "the exact array changes would have been an obvious matter of design and or choice dependent upon what was being done to the articles."

Appellants assert (brief, pages 3-5), with regard to this rejection, that altering of the array distribution as specifically set forth in the claims on appeal is not taught or suggested by any of the applied references. More specifically, appellants' urge that alteration of the spacial distribution of an array (i.e., merely spreading out the elements within an array as in Goransson, Colamussi and Warren) is not an alteration of the array distribution, since the spatial separation of the individual elements within an x_1 by y_1 array would still result in an x_1 by y_1 array. The examiner's response to this line of argument is to urge (answer, page 4) that claim 29 does not state

that altering the array distribution is limited to changing the x and y numerical arrangement, and to conclude that "a mere space change alters the array distribution."

After having looked to appellants' specification (particularly pages 46 and 53 noted *supra*) and drawings (Figures 9-11) to understand exactly what appellants' mean by the requirement in independent claim 29 that the molded articles be removed and transported from a molding station "in a first array distribution" and deposited at a remote fourth location "in a second array distribution," and for exactly what structure in the application corresponds to the "means for altering the array distribution of the articles" set forth in claim 29, we must agree with appellants' assessment that a mere change of spacing of the molded articles in an array by spreading the articles out does not result in an altering of the array distribution, as required in the claims before us on appeal.

It is clear from appellants' disclosure that the linearly reciprocating second assembly (330) is operative to change the spacing of the articles relative to one another in the first matrix array distribution, while the linearly reciprocating third assembly (340) is operative to alter the array distribution and reorient the first array distribution (original 4x4 array) into a

second array distribution (e.g., a 2x8 array). The specification (page 46) notes that the original 4x4 array is desirable from a mold efficiency standpoint, while the 2x8 second array distribution facilitates optical inspection by an automated lens inspection system.

With the above-noted understanding of what is required in appellants' claims on appeal, we find the examiner's broad construction of the claim language to be unwarranted. Thus, for the reasons set forth on pages 3-5 of the brief, it is our determination that the examiner's rejection of claims 29, 30 and 44 under 35 U.S.C. § 103(a) as being unpatentable over Herman in view of Hansen and anyone of Goransson, Colamussi and Warren will not be sustained.

Turning now to the examiner's alternative rejection of claims 29, 30 and 44 under 35 U.S.C. § 103(a) as being unpatentable over Herman in view of Hansen and Colamussi as applied above, and further in view of anyone of Riley, Montferme and Lebret, we must agree with appellants that although Riley, Montferme and Lebret appear to each disclose altering array distributions during transporting of articles from one location to another, the examiner has not provide any proper motivation to combine the applied prior art references so as to arrive at the

presently claimed subject matter. More particularly, the examiner has not provided any reasonable teaching, suggestion or motivation as to why one of ordinary skill in the art at the time of appellants' invention would have found it obvious to modify the simple molding system of Herman, used for forming a single automotive deck lid (25) from sheet molding compound (SMC), to somehow form a plurality of molded articles "in a first array distribution" as set forth in claim 29 on appeal, or set forth any reason as to why the simple molding and handling apparatus of Herman, even if combined with a further automated article transport and handling system like that in Hansen, should be further modified to include a variable configuration transport head like that in Riley, Montferme or Lebret.

After a review of the applied references and the examiner's attempted combination thereof, we must conclude that the examiner has merely sought out "concepts" in the article transport and robotics arts and utilized appellants' own disclosure in the present application as a road map for piecing together the unrelated robotics and article transport references without providing any legitimate motivation for modification of Herman's SMC loader and compression molding press, and thereby engaged in an improper hindsight reconstruction of the claimed subject

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matter. In this regard, we note, as our court of review indicated in In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992), that it is impermissible to use the claimed invention as an instruction manual or "template" to piece together isolated disclosures and teachings of the prior art so that the claimed invention is rendered obvious.

Since we have determined that the teachings and suggestions found in Herman in view of Hansen and Colamussi, taken further in view of anyone of Riley, Montferme and Lebret would not have made the subject matter as a whole of claims 29, 30 and 44 on appeal obvious to one of ordinary skill in the art at the time of appellants' invention, we must refuse to sustain the examiner's rejection of those claims under 35 U.S.C. § 103(a).

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In light of the foregoing, the decision of the examiner to reject claims 29, 30 and 44 of the present application under 35 U.S.C. § 103(a) is reversed.

REVERSED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
CHARLES E. FRANKFORT)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
JEFFREY V. NASE)	
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