

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

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GARY DAVID GREENBLATT,
BARRY CLIFFORD LANGE, MICHAEL DAMIAN BOWE,
RICHARD FOSTER MERRITT, ROBERT WILCZYNSKI,
GARY ROBERT LARSON, LORI MARIE PETROVICH
and DAVID WILLIAM WHITMAN

Appeal No. 2002-2282
Application 09/212,038

ON BRIEF

Before GARRIS, WARREN and PAWLIKOWSKI, *Administrative Patent Judges*.

WARREN, *Administrative Patent Judge*.

Decision on Appeal and Opinion

We have carefully considered the record in this appeal under 35 U.S.C. § 134, including the opposing views of the examiner, in the answer, and appellants, in the brief,¹ and based on our

¹ We find in the filewrapper of the present application a paper designated “Appellants’ Reply Brief” which was directed to the present application, originally filed on June 14, 2002, marked “Copy of Papers Originally Filed” and stamped “Received Jun 28 2002 Technology Center 1700.” There is no indication that this reply brief has been entered into the record or considered and acknowledged by the examiner. We have *not* considered this reply brief in reaching our decision in this appeal, leaving the matter of this document to the Technology Center.

review, find that we cannot sustain the rejection of appealed claims 3, 10/3, 11/3, 14/3 and 15/3² under 35 U.S.C. § 103(a) as being unpatentable over Kempler et al. (Kempler).³

We agree with appellants for the reasons pointed out at pages 2-5 of the brief, that the examiner has failed to make out a *prima facie* case of obviousness. We add only that an inoperative rotor would obviously render Kempler's invention inoperative, and the examiner has not established otherwise. *See generally, In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984), and cases cited therein.

The examiner's decision is reversed.

Reversed

BRADLEY R. GARRIS)	
Administrative Patent Judge)	
)	
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)	
CHARLES F. WARREN)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
BEVERLY A. PAWLIKOWSKI)	
Administrative Patent Judge)	

² See the amendment after final of September 26, 2001 (Paper No. 12) in which claims 2 and 3 were amended and claim 4 was canceled. Claims 1, 5, 6, 9 and 16 through 22 are also of record and have been withdrawn from consideration by the examiner under 37 CFR § 1.142(b).

³ Answer, pages 3-4. The examiner withdrew the ground of rejection with respect to appealed claims 2, 7, 8, 10/2, 11/2, 12, 13, 14/2 and 15/2 (*id.*, page 2).

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