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. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte ROBERT J. WESKAMP and JAMES A. MORBECK

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Appeal No. 2004-0221
Application 09/320,149

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ON BRIEF

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Before PAK, WARREN and OWENS, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from the final rejection of claims 21-34, which are all of the claims pending in the application.

THE INVENTION

The appellants claim a conveyor system having a specified lubricator. Claim 21 is illustrative:

21. A conveyor system comprising:

a guide track having a guide surface and an aperture;

a conveyor chain supported by the guide track for movement relative to the guide track, the conveyor chain including a plurality of interconnected links, a lower surface of at least one link contacting the guide surface of the guide track when the conveyor chain is moved by a drive means; and

a lubricator including a chamber for storing a lubricant and means for forcing lubricant from the chamber through an outlet in the chamber, the outlet of the chamber being in fluid communication with the aperture in the guide track, the means for forcing lubricant from the chamber continuously forcing lubricant from the chamber and through the aperture in the guide track when the means for forcing lubricant from the chamber is connected to a source of electric current contained within the lubricator,

the outlet of the lubricator and the aperture in the guide track being connected in fluid communication by a conduit and an adapter block, the conduit being connected to the outlet of the lubricator and a port in the adapter block, said port being oblong and presenting a single stream of outwardly flowing lubricant, and said port having a longitudinal axis transverse to the direction of said movement of said chain, the adapter block being connected to the aperture in the guide track, the adapter block having a projection dimensioned to fit into the aperture in the guide track and having a passageway extending from the port to an opening in the projection whereby lubricant is forced from the chamber through the conduit and out of the opening in the projection in the adapter block,

whereby a lubricating film is continuously formed between the guide surface of the guide track and the lower surface of each link that contacts the guide surface of the guide track when the means for forcing lubricant from the chamber is connected to the source of electric current.

THE REFERENCES

Orlitzky et al. (Orlitzky)	4,023,648	May 17, 1977
Egger	4,926,971	May 22, 1990
Gerhardt	5,626,470	May 6, 1997

THE REJECTIONS

The claims stand rejected under 35 U.S.C. § 103 as follows: claims 21-25 and 28-31 over Egger in view of Gerhardt, and claims 26, 27 and 32-34 over Egger in view of Gerhardt and Orlitzky.[1]

OPINION

We reverse the aforementioned rejections.

Each of the appellants' independent claims requires a port which is oblong and presents a single stream of outwardly flowing lubricant.

Egger discloses a drag chain conveyor system having carriers (5) provided with holders (6), each holder being joined to a link (7) of an endless conveyor chain and partly surrounding

[1] A rejection of claims 21-25 and 28-31 under 35 U.S.C. § 102(b) over Egger is withdrawn in the examiner's answer (page 3).

two guide rails (4) (col. 2, lines 31-34; figure 1). Lubricant passes through a plurality of bores (10) of a channel (8) in each guide rail (col. 2, lines 54-56; figure 2). Some of the bores are along a side of the channel and point toward the carriers, and other bores are at an end of the channel and point, either in the longitudinal direction of the channel or at an oblique angle thereto (figure 1), toward the holder.

Gerhard discloses a thrust bearing having a thrust bearing plate (34) with radially-oriented oval-shaped openings (46) which supply lubricant directly onto the surfaces of bearing pads (38) on the thrust bearing plate (col. 3, lines 21-30; col. 4, lines 55-58; col. 5, lines 8-23; figure 2).

For a *prima facie* case of obviousness to be established, the teachings from the prior art itself must appear to have suggested the claimed subject matter to one of ordinary skill in the art. *See In re Rinehart*, 531 F.2d 1048, 1051, 189 USPQ 143, 147 (CCPA 1976). The mere fact that the prior art could be modified as proposed by the examiner is not sufficient to establish a *prima facie* case of obviousness. *See In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992). The examiner has not carried the burden of explaining why the applied references themselves would have fairly suggested, to one of ordinary skill

in the art, substituting Gerhardt's oval-shaped aperture for lubricating a thrust bearing plate for Egger's structure for lubricating carriers and holders attached to chain links.

The examiner argues that one of ordinary skill in the art would have been motivated to substitute one of Gerhard's oval-shaped openings for Egger's plurality of bores to maintain the required lubricating film thickness between the moving and stationary surfaces and to increase the efficiency of the chain (answer, page 7). The examiner, however, provides no evidence that there is a desirability for replacing Egger's multiport structure with another structure to maintain the required lubricating film thickness or that the use of Gerhardt's oval-shaped aperture instead of Egger's multiport structure would increase the efficiency of the chain. The examiner has provided mere speculation, and such speculation is not a sufficient basis for a *prima facie* case of obviousness. *See In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), *cert. denied*, 389 U.S. 1057 (1968); *In re Sporck*, 301 F.2d 686, 690, 133 USPQ 360, 364 (CCPA 1962).

The examiner argues that the use of one port instead of several ports is an obvious design choice based upon the particular lubricant and mating surfaces to be lubricated

(answer, pages 9 and 12). The examiner has provided no evidence, however, that one of ordinary skill in the art would have considered Gerhardt's oval-shaped port for lubricating a thrust bearing plate to be desirable for any combination of Egger's lubricant and carrier/holder surfaces.

The examiner argues that the width-wise coverage of Gerhardt's oval-shaped aperture would be the same as that of Egger's multiport structure (answer, page 10). Egger's multiport structure provides lubricant both in the direction of the carrier and in the direction of the holder (figure 1). The examiner has not established that the same or substantially the same coverage would be provided by Gerhardt's oval-shaped aperture.

The examiner argues that it would be a matter of common sense that lubricant would move over surfaces around a port regardless of whether the port is part of a rotating ring or a stationary straight surface. This argument is not well taken because "'[c]ommon knowledge and common sense,' even if assumed to derive from the agency's expertise, do not substitute for authority when the law requires authority." *In re Lee*, 277 F.3d 1338, 1345, 61 USPQ2d 1430, 1435 (Fed. Cir. 2002). Moreover, even if lubricant flows around any port, the examiner has not established that the flows around the oval-shaped aperture of

Gerhardt and the multiport structure of Egger, wherein lubricant flows toward the carrier and in a different direction toward the holder, are such that one of ordinary skill in the art would have been led to substitute Gerhardt's oval-shaped aperture for Egger's multiport structure.

The examiner does not rely upon Orlitzky for any disclosure that remedies the above-discussed deficiency in Egger and Gerhardt.

For the above reasons we conclude that the examiner has not carried the burden of establishing a *prima facie* case of obviousness of the appellants' claimed invention.

DECISION

The rejections under 35 U.S.C. § 103 of claims 21-25 and 28-31 over Egger in view of Gerhardt, and claims 26, 27 and 32-34 over Egger in view of Gerhardt and Orlitzky, are reversed.

REVERSED

CHUNG K. PAK Administrative Patent Judge	)
CHARLES F. WARREN Administrative Patent Judge	) BOARD OF PATENT) APPEALS AND) INTERFERENCES
TERRY J. OWENS Administrative Patent Judge	)

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