

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today  
(1) was not written for publication in a law journal and  
(2) is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte RAYMOND R. BOSTIC

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Appeal No. 96-2817  
Application 08/082,549<sup>1</sup>

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ON BRIEF

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Before McCANDLISH, Senior Administrative Patent Judge, and  
MEISTER and FRANKFORT, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

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<sup>1</sup> Application for patent filed June 28, 1993.

Appeal No. 96-2817  
Application 08/082,549

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 2, 4 through 8, 10, 11, 14 and 16 through 20. Claims 3, 9, 12, 13, 15 and 21 through 28, the only other claims remaining in the application, stand withdrawn from further consideration under 37 CFR § 1.142(b).

Appellant's invention relates to a rotary milling cutter. Claims 1, 10 and 18 are representative of the subject matter on appeal. A copy of those claims may be found in the Appendix to appellant's brief.

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

Jodock et al. (Jodock)	4,605,347	Aug. 12, 1986
Maier	4,645,389	Feb. 24, 1987

Claims 1, 2, 4 through 6, 8, 10, 11, 14 and 16 through 19 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Jodock. According to the examiner, the Jodock reference shows

Appeal No. 96-2817  
Application 08/082,549

(1) Circular body with periphery 16, having cutting end (frustrum of a cone) 2, and an end surface formed by E.

(2) Terminal nose portion, 6.

(3) Shank, 1.

(4) Axially extending flutes (end surface), formed by E and D, see fig. 3. (apparently J-shaped)

(5) Wall (radiused) having flat section tangent to a curved section, 7 and adjacent 7, see fig. 3.

(6) Cutting edges, formed at 7 and 6 and adjacent F, defined by the intersection of said curved sections with said end surface E (answer, page 3).

Claims 7 and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Jodock in view of Maier. The examiner relies upon Maier to provide the drill reamer of Jodock with three flutes.

Reference is made to the examiner's answer (Paper No. 10, mailed January 22, 1996) for the examiner's full reasoning in support of the above-noted rejections. Appellant's arguments thereagainst are found in the brief (Paper No. 9,

Appeal No. 96-2817  
Application 08/082,549

filed November 9, 1995) and the reply brief (Paper No. 11,  
filed February 28, 1996).

#### OPINION

In reaching our conclusion on the anticipation and obviousness issues raised in this appeal, we have carefully considered appellant's specification and claims, the applied references, and the respective viewpoints advanced by appellant and the examiner. As a consequence of our review, we have made the determination that the examiner's rejections of the appealed claims under 35 U.S.C. § 102(b) and § 103 cannot be sustained. Our reasoning for such determinations follows.

In addressing the examiner's rejection under 35 U.S.C. § 102(b), we note that it is well settled that an anticipation under 35 U.S.C. § 102(b) is established only when a single prior art reference discloses, either expressly or under principles of inherency, each and every element of a claimed invention. See RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440,

Appeal No. 96-2817  
Application 08/082,549

1444, 221 USPQ 385, 388 (Fed. Cir. 1984). In the present case, appellant has argued convincingly in their brief and reply brief that the drill reamer bit of Jodock does not include a plurality of cutting edges "defined by the intersection of said curved sections with said end surface of said cutting end" as set forth in claim 1, and by similar language in independent claims 10 and 18 which refer to a radiused wall section, so as to provide curved arcuate cutting edges as required in appellant's invention. We agree.

Looking to Jodock, it is clear to us, as it was to appellant, that the cutting edges (6, 7) pointed to by the examiner are straight cutting edges and are clearly not defined by the intersection of a curved wall section or radiused wall section of a flute with the end surface of the cutting end of the drill. As for the unnumbered curved edges seen in Figure 3 at the base of facets (F), we share appellant's view (brief, pages 17-18) that given the necessary direction of rotation of the drill bit in Jodock and the positioning of these unnumbered edges, it is clear that they do not constitute cutting edges as required in the claims on appeal.

Appeal No. 96-2817  
Application 08/082,549

In light of the foregoing, we must conclude that Jodock does not disclose, either expressly or under principles of inherency, each and every element of the claimed invention. For this reason we will not sustain the examiner's rejection of appealed claims 1, 2, 4 through 6, 8, 10, 11, 14 and 16 through 19 under 35 U.S.C. § 102(b).

With respect to the examiner's rejection of claims 7 and 20 under 35 U.S.C. § 103 based on Jodock and Maier, we find nothing in Maier which supplies the deficiency noted above with regard to Jodock. Accordingly, it follows that the examiner's rejection of dependent claims 7 and 20 under 35 U.S.C. § 103 is also not sustained.

The decision of the examiner is reversed.

REVERSED

HARRISON E. McCANDLISH )  
Senior Administrative Patent Judge )  
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Appeal No. 96-2817  
Application 08/082,549

JAMES M. MEISTER  
Administrative Patent Judge

CHARLES E. FRANKFORT  
Administrative Patent Judge

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Appeal No. 96-2817  
Application 08/082,549

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