

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 27

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte GEORGE R. LANGLAND

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Appeal No. 96-4007  
Application No. 08/294,769<sup>1</sup>

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ON BRIEF

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

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 7, 9, 16 and 17. Claims 12 through 15 have been withdrawn from consideration under 37 CFR § 1.142(b) as being drawn to a nonelected invention. Claims 8, 10 and 11 have been canceled.

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<sup>1</sup> Application for patent filed August 23, 1994. According to the appellant, the application is a continuation of Application No. 08/066,047, filed May 25, 1993, now abandoned.

Appeal No. 96-4007  
Application No. 08/294,769

We AFFIRM-IN-PART.

BACKGROUND

The appellant's invention relates to a conveyance system and method. Claims 1 and 9 are representative of the subject matter on appeal and a copy of those claims, as they appear in the appellant's brief, is attached to this decision.

The prior art references of record relied upon by the examiner as evidence of obviousness under 35 U.S.C. § 103 are:

Beidler	2,025,371	Dec. 24, 1935
Keller	2,956,520	Oct. 18, 1960

Claims 1 through 7, 9, 16 and 17 stand rejected under 35 U.S.C. § 103 as being unpatentable over Beidler in view of Keller.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the § 103 rejection, we make reference to the examiner's answer (Paper No. 26, mailed May 24, 1996) for the examiner's complete reasoning in support of the rejection, and to the appellant's brief (Paper No. 25, filed April 29, 1996) for the appellant's arguments thereagainst.

Appeal No. 96-4007  
Application No. 08/294,769

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the examiner is sufficient to establish a case of obviousness only with respect to claims 1, 2, 4, 5, 9, 16 and 17. Accordingly, we will sustain the examiner's rejection of claims 1, 2, 4, 5, 9, 16 and 17 under 35 U.S.C. § 103. We will not sustain the examiner's rejection of claims 3, 6 and 7 under 35 U.S.C. § 103. Our reasoning for this determination follows.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of obviousness is established by presenting evidence that the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed combination or other modification. See In re Lintner, 9

Appeal No. 96-4007  
Application No. 08/294,769

F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972). Furthermore, the conclusion that the claimed subject matter is prima facie obvious must be supported by evidence, as shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Rejections based on § 103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. See In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 177 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968).

With this as background, we analyze the prior art applied by the examiner in the rejection of the claims on appeal.

Beidler discloses an apparatus for conveying film from conveyor belts 63 and 64 to a submerging unit. The conveying apparatus includes a plurality of chains 41, a plurality of upstream sprockets wheels 29, 30 and 31, a plurality of downstream sprockets wheels 40, 40<sup>a</sup> and 40<sup>b</sup> and a plurality of grippers to positively hold the film while it is being conveyed.

Each gripper is formed from a strip of metal having two straight portions 42 and 43, the latter terminating in a spur 44 operative to impinge the film (Fig. 11). The straight portion 43 is relatively short and is shaped to form a loop 45 which embraces one of the cross bars 46 of a link of the chain. The cross bar acts as a fulcrum on which the gripper oscillates. Each gripper is provided with a curved portion 47 between the loop 45 and the straight portion 42 to permit the straight portions 42 and 43 to lie approximately parallel with the chain when it is in its horizontal position. When the conveyor chains 41 pass around the downstream sprocket wheels, the grippers are caused to swing on the cross bar of the link and the spurs 44 are drawn from the film, and hence the film is released (Fig. 10).<sup>2</sup> As shown in Figure 5, when the conveyor chains 41 pass around the sprocket wheels 29, 30 and 31, the grippers are caused to assume an open position to receive the film. Belts and pulleys may be substituted for the chains 41 and the sprocket wheels.<sup>3</sup>

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<sup>2</sup> See page 2, left column, line 6, to page 2, right column, line 10, of Beidler.

<sup>3</sup> See page 3, left column, lines 17-19, of Beidler.

Appeal No. 96-4007  
Application No. 08/294,769

Keller discloses a candy can forming machine having a continuously operating gripper chain 42. The gripper chain 42 consists of a pair of transversely spaced chains 43 and 44 passing around sprockets 45 and 46. The gripper chains are bridged by gripper jaws 53 and 54 rigidly mounted upon adjacent links of the carrying chains. When traveling along the lower flight, the gripper jaws will have their adjacent faces spaced apart substantially the diameter of the candy cane to be handled. As the links turn around the sprockets, the gripper jaws assume radial positions with respect to the sprocket which causes increased separation between adjacent jaw faces. This permits ready insertion of the candy canes from the transfer means 12 to the gripper jaws as well as ready release of the candy canes from the gripper jaws.<sup>4</sup>

With respect to the standing § 103 rejection of independent claims 1 and 9 as being unpatentable over Beidler in view of Keller, the examiner determined that the only limitation not disclosed by Beidler is the continuous operation of the belt when loading. Based on the teachings of Beidler and Keller, the examiner concluded that it would have been obvious to one of

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<sup>4</sup> See column 3, line 63 to column 4, line 19, of Keller.

Appeal No. 96-4007  
Application No. 08/294,769

ordinary skill in the art to modify Beidler to operate continuously when loading the grippers as suggested by Keller in order to speed up the loading process and provide a more efficient system.

Implicit in this rejection is the examiner's view that the above noted modification of Beidler would result in a device and method which correspond to the conveyance system of claim 1 and the method for conveying of claim 9 in all respects.

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In this case, we are in agreement with the examiner that the combined teachings of Beidler and Keller would have been suggestive to one of ordinary skill in the art at the time of appellant's invention of modifying Beidler's apparatus so as to operate his conveyor chains 41 continuously, thereby providing a more efficient system as suggested by Keller's transfer means 12 continuously supplying articles to the continuously operated gripper chain 42.

Appeal No. 96-4007  
Application No. 08/294,769

The appellant's argument (brief, pp. 3 and 5) that Beidler's conveyor does not operate continuously during loading is unpersuasive. Nonobviousness cannot be established by attacking the references individually when the rejection is predicated upon a combination of prior art disclosures. See In re Merck & Co. Inc., 800 F.2d 1091, 1097, 231 USPQ 375, 380 (Fed. Cir. 1986).

The appellant's argument (brief, pp. 3-4) that if one skilled in the art were to combine Beidler and Keller, one would not arrive at the claimed invention since one would employ Keller's two-part cradles is unpersuasive. In that regard, we agree with the examiner that Keller's two-part cradles (e.g., members 25 and 26) are part of the transfer means 12 used for loading Keller's gripper chains 42 and that it is Keller's gripper jaws 53 and 54, not the two-part cradles, which an artisan would consider as corresponding to Beidler's grippers. Thus, in contrast to the appellant's view, it is our opinion that Keller's two-part cradles would not have provided any suggestion to an artisan to modify Beidler's grippers.

Appeal No. 96-4007  
Application No. 08/294,769

The appellant's argument (brief, p. 4) that if one were to employ a one-piece gripper as taught by Beidler, it would be necessary to provide a clutch mechanism which temporarily ceases movement of the conveyor is unpersuasive since the appellant's have not submitted any evidence to support this statement. Attorney's arguments in a brief cannot take the place of evidence. In re Pearson, 494 F.2d 1399, 1405, 181 USPQ 641, 646 (CCPA 1974). Furthermore, we disagree with the appellant's conclusion. In our opinion, Keller clearly discloses that a clutch mechanism is not necessary to time the arrival of articles to the opening of a gripper traversing an arc if a coordinated transfer means is utilized to supply an article to each gripper as it opens. As noted above, such continuous operation provides a more efficient system by speeding up the loading process.

In light of the foregoing, we will sustain the standing § 103 rejection of claims 1 and 9.

The appellant has grouped claims 1, 2, 4, 5 and 16 as standing or falling together. Additionally, the appellant has grouped claims 9 and 17 as standing or falling together.<sup>5</sup>

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<sup>5</sup> See pages 2-3 of the appellant's brief.

Appeal No. 96-4007  
Application No. 08/294,769

Thereby, in accordance with 37 CFR § 1.192(c)(7), we have determined that dependent claims 2, 4, 5, 16 and 17 must be treated as falling with independent claims 1 and 9. Thus, it follows that the examiner's standing § 103 rejection of claims 2, 4, 5, 16 and 17 is also sustained.

Considering next the standing § 103 rejection of dependent claims 3, 6 and 7, we agree with the appellant that the limitations recited in these claims are not met by the combined teachings of Beidler and Keller. With respect to claim 3, the combined teachings of Beidler and Keller fail to teach or suggest a conveyance system wherein a workpiece is loaded as the gripping member traverses a first arc of a greater radius than a second arc and the workpiece is offloaded as the gripping member traverses the second arc. While Beidler does disclose the loading and unloading of workpieces at different arcs, as stated by the examiner, the arcs provided by the upstream and downstream sprocket wheels of Beidler have the same radius as shown in Figure 1. While Keller suggests sprocket wheels 45, 46 having arcs of different radiuses, Keller clearly suggests loading the workpiece as the gripper jaws 53, 54 traverse the arc of the sprocket wheels 45 having the smaller radius. With respect to

Appeal No. 96-4007  
Application No. 08/294,769

claim 6, the combined teachings of Beidler and Keller fail to teach or suggest a second biasing means which biases the free end of the gripping member away from the surface of the conveyor belt. While the examiner states that arm/finger 59 seen in Figures 1, 2 and 5 of Beidler biases the gripper open, we see no basis in Beidler for that statement. Arm/finger 59 is engaged by film on conveyer belts 63 and 64 to elevate arms 51 and 52 to disengage the cross arm 48 thus permitting the chains 41 to be driven. In this regard, arm/finger 59 is not in any way responsive to the second biasing means (e.g., spring 538 in Figure 5 or spring 640 in Figure 6) as set forth in the appellant's claim 6 since the arm/finger 59 does not engage the grippers and therefore does not bias the grippers away from the chains 41. Moreover, arm/finger 59 is part of the clutch mechanism and would be part of the structure removed from Beidler when Beidler is modified to operate continuously as suggested by Keller. With respect to claim 7, the combined teachings of Beidler and Keller fail to teach or suggest a surface of the gripping member which comprises a foam pad or a serrated edge. The mere fact that the gripper jaws 53, 54 of Keller "inherently will not damage the delicate articles" (as asserted by the examiner) provides no teaching or suggestion of the use of a

Appeal No. 96-4007  
Application No. 08/294,769

gripping member having a foam pad or serrated edge to grip the workpiece as required in the appellant's claim 7.

In light of the foregoing, we will not sustain the standing § 103 rejection of claims 3, 6 and 7.

#### CONCLUSION

To summarize, the decision of the examiner to reject claims 1, 2, 4, 5, 9, 16 and 17 under 35 U.S.C. § 103 is affirmed and the decision of the examiner to reject claims 3, 6 and 7 under 35 U.S.C. § 103 is reversed.

Appeal No. 96-4007  
Application No. 08/294,769

No period for taking any subsequent action in connection  
with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

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

Appeal No. 96-4007  
Application No. 08/294,769

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APPENDIX

1. A conveyance system comprising an endless flexible belt which circulates through at least two arcs, at least one structurally rigid gripping member attached to the belt, the gripping member having a free end and an anchoring end disposed at opposite ends of the gripping member, a biasing means which biases the gripping member in a closed position, and a pivot attachment located at a medial point on the gripping member between the anchoring end and the free end, wherein the configuration of the biasing means causes the gripping member to be opened as it traverses an arced path and closed against the belt as it traverses a straight path, without interruption in the movement of the path.

9. A method for conveying a workpiece, the method comprising:
- a) conveying a structurally rigid gripping member in a path which describes a first arc having a predetermined radius, said gripping member having a free end, an anchoring end disposed at opposite ends of the gripping member, and a pivot means located at a medial point on the gripping member between the anchoring end and the free end, the free end being open as it traverses the first arc;
  - b) loading a workpiece into the opening as the gripping member traverses the first arc, while the gripping member is being conveyed;
  - c) conveying the gripping member and workpiece in a path which is substantially straight, said gripping member being closed and firmly holding the workpiece at the free end of the gripping member against the belt as the gripping member traverses the substantially straight path; and
  - d) conveying the gripping member in a path which describes a second arc having a predetermined radius, said gripping member being open as it traverses the second arc to permit the exit of the workpiece.

APPEAL NO. 96-4007 - JUDGE NASE  
APPLICATION NO. 08/294,769

APJ NASE

APJ FRANKFORT

APJ COHEN

DECISION: **AFFIRMED-IN-PART**

Prepared By: Delores A. Lowe

**DRAFT TYPED:** 22 Jul 97  
1st Rev. 23 Jul 97

**FINAL TYPED:**