

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEAN-LUC HAUSER

Appeal No. 97-1074
Application 08/170,224¹

ON BRIEF

Before URYNOWICZ, HAIRSTON, and KRASS, Administrative Patent Judges.

URYNOWICZ, Administrative Patent Judge.

Decision on Appeal

This appeal is from the final rejection of claims 1-7, all the claims pending in the application.

The invention pertains to pressure monitoring apparatus. Claim 1, the only independent claim, is illustrative and reads as follows:

¹ Application for patent filed June 9, 1994.

Appeal No. 97-1074
Application 08/170,224

1. A pressure measurement device for measuring the pressure within an infusion tube (12) as a medicamentous substance flows through the infusion tube by operation of an infusion pump that is connected to the infusion tube, said device comprising;

a pressure sensor (20),

a housing (14) comprising at least one chamber (16) with one side of said chamber being defined by a deformable membrane (18) contacting a wall of the infusion tube, and said chamber containing said sensor at a location within said chamber that is spaced from said membrane, and

a fluid (24) within said chamber between said membrane (18) and said sensor (20), said fluid being nonliquid, said fluid having a Poisson ratio of at least 0.49, and said fluid having an instantaneous modulus of elasticity of under 10 Mpa, so that said sensor has a linear pressure response curve.

The references relied upon by the examiner as evidence of obviousness are:

Koen et al. (Koen)	4,993,265	Feb 19, 1991
Stuebe et al. (Stuebe)	5,117,827	Jun 02, 1992
Kalinoski et al. (Kalinoski)	5,209,125	May 11, 1993

Claims 1-7 stand rejected under 35 U.S.C. § 103 as being unpatentable over Koen in view of Kalinoski and Stuebe.

The respective positions of the examiner and the appellant with regard to the propriety of these rejections are set forth in the final rejection (Paper No. 9), the examiner's answer (Paper No. 15) and the examiner's second answer (Paper No. 17) and the appellant's brief (Paper No. 14) and reply brief (Paper No. 16).

Appeal No. 97-1074
Application 08/170,224

Appellants' Invention and
the Prior Art

An adequate description of the invention and the prior art is given at pages 1-4 of the brief and will not be repeated here.

The Rejection under 35 U.S.C. §103

After consideration of the positions and arguments presented by both the examiner and the appellant, we have concluded that the rejection of claims 1-7 should not be sustained. In the rejection of claim 1, it is considered that the examiner has shown that it would have been obvious to combine the teachings of the applied prior art as the references are at least from analogous arts. Nevertheless, the examiner has not shown that the combined prior art applied against claim 1 includes the claim requirements that the claimed fluid be a non-liquid having a Poisson ratio of at least 0.49 or have an instantaneous bulk modulus of elasticity of under 10 Mpa. Nor has it been established that the above would have involved obvious modifications of the combined prior art. Such being the case, a prima facie case of obviousness has not been established, and we will not sustain the rejection of claim 1. In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783-84 (Fed. Cir. 1992).

Appeal No. 97-1074
Application 08/170,224

Whereas claims 2-7 depend from claim 1, the rejection of these claims over Koen, Stuebe and Kalinoski will not be sustained for the same reason that the rejection of claim 1 will not be sustained.

REVERSED

STANLEY M. URYNOWICZ)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
KENNETH W. HAIRSTON))
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
)	
ERROL A. KRASS))
Administrative Patent Judge)	

Appeal No. 97-1074
Application 08/170,224

SMU/kis
HOLLAND & HART
P. O. Box 8749
Denver, CO 80201-8749