

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HEINZ-GEORGE WASSENHOVEN

Appeal No. 97-1975
Application No. 08/315,002¹

ON BRIEF

Before CALVERT, MCQUADE, and NASE, Administrative Patent Judges.

CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

¹ Application for patent filed September 29, 1994.

Appeal No. 97-1975
Application No. 08/315,002

This is an appeal from the final rejection of claims 1 to 6. Claim 7, the other claim in the application, has been indicated as allowable, subject to being rewritten in independent form.

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The claims on appeal are drawn to an open-end spinning device, and are reproduced in Appendix A of the appellant's brief.

The references applied in the final rejection are:

Le Chatelier	3,668,854	Jun. 13,
1972 Stahlecker	3,927,516	Dec.
23, 1975		
Miyamoto et al. (Miyamoto)	4,291,528	Sep. 29,
1981		

The appealed claims stand finally rejected under 35 U.S.C.

§ 103 as unpatentable over the following combinations of references:

- (1) Claims 1, 3, 4 and 6, Stahlecker in view of Miyamoto;
- (2) Claims 2 and 5, Stahlecker in view of Miyamoto and Le Chatelier.

Rejection (1)

The basis of this rejection is fully set forth by the examiner on pages 4 to 6 of the answer.

After fully considering the record in light of the arguments presented in appellant's brief and reply brief, and in the examiner's answer, we conclude that the rejection should not be sustained.

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In reading claim 1 on Stahlecker, the examiner interprets Stahlecker's cover 5 as being the cover element recited in part (c) of the claim, and swivel housing 4 as the cover extension recited in part (d). According to the examiner, the cover

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extension 4 of Stahlecker is "replaceably mounted" to the cover element 5, as recited in part (d), because it can be replaced by removing the pin on which it is pivotally connected to cover element 5, together with the nuts and bolts around shaft 9 (answer, page 8). Nevertheless, whatever may be the merits of this argument, we do not consider that Stahlecker's element 5 can be read as the claimed "cover element," because claim 1 further requires that the cover element "defin[e] a guide conduit for delivering fiber into the spinning rotor." Since element 5 of Stahlecker is simply a cover for element 4, and does not define a guide conduit, it cannot be interpreted as appellant's claimed "cover element." The only structure disclosed by Stahlecker which does define a guide conduit for the fiber, and therefore might be considered to correspond to appellant's "cover element," is swivel housing 4.

At the upper right hand part of Stahlecker's swivel housing 4, facing rotor 6 when swivel housing 4 is in the closed (Fig. 1) position, is a structure which may possibly be attached to the remainder of housing 4 by some type of fastener (perhaps a rivet), and on which is mounted what the

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examiner identifies as a yarn draw-off nozzle (answer page 5, lines 1 and 2). If the swivel housing 4 is read as the "cover element" of claim 1, as it must be in order to meet the limitations of part (c), then the

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noted structure at the upper right of housing 4 is the only thing disclosed by Stahlecker which might conceivably be the claimed "cover extension." However, Stahlecker is so devoid of disclosure with regard to this structure that we do not consider that the limitations recited in claim 1 concerning the cover extension would have been obvious to one of ordinary skill in the art therefrom. Stahlecker does not describe the structure in the specification, and it is not even clear, for example, whether or not it is removably attached to the remainder of housing 4. Moreover, we find no disclosure in Miyamoto which would supply the noted deficiencies in Stahlecker. It appears, therefore, that the examiner's conclusion that the claimed structure would have been obvious was based on hindsight gleaned from appellant's disclosure, rather than from the teachings of Stahlecker and Miyamoto.

Rejection (2)

Since the deficiencies in the prior art applied in rejection (1) are not obviated by the additional reference, Le Chatelier, applied in rejection (2), rejection (2) will likewise not be sustained.

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Conclusion

The examiner's decision to reject claims 1 to 6 is reversed.

REVERSED

IAN A. CALVERT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JOHN P. McQUADE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
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)	
JEFFREY V. NASE)	
Administrative Patent Judge)	

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Karl S. Sawyer, Jr.
Kennedy, Covington, Lobdell & Hickman, L.L.P.
NationsBank Corporate Center, Suite 4200
100 North Tryon Street
Charlotte, NC 28202-4006

Shereece

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APJ CALVERT

APJ NASE

APJ MCQUADE

REVERSED

Prepared: September 21, 1999