

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 8

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRUCE E. WIGTON and MARK H. MILLER

Appeal No. 97-2548
Application No. 08/381,545¹

ON BRIEF

Before ABRAMS, FRANKFORT and STAAB, *Administrative Patent Judges*.
ABRAMS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the decision of the examiner finally rejecting claims 1 through 5, which constitute all of the claims of record in the application.

The appellants' invention is directed to a trap system for reducing the entry of flying insects into a predetermined area,

¹Application for patent filed January 31, 1995.

Appeal No. 97-2548
Application No. 08/381,545

and to a method of doing so. The subject matter before us on appeal is illustrated by reference to claim 1, a copy of which can be found in an appendix to the Appeal Brief.

THE REFERENCE

The reference relied upon by the examiner to support the final rejection is:

Dieguez *et al.* (Dieguez) 5,382,422 Jan. 17, 1995

THE REJECTIONS

Claims 1 through 3 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Dieguez.

Claims 4 and 5 stand rejected under 35 U.S.C. § 103 as being unpatentable over Dieguez.

The rejections are explained in Paper No. 4.

The opposing viewpoints of the appellants are set forth in the Brief.

OPINION

In reaching our decision on the issues raised in this appeal, we have carefully assessed the claims, the prior art applied against the claims, and the respective views of the examiner and the appellants as set forth in the Answer and the

Appeal No. 97-2548
Application No. 08/381,545

Brief. As a result of our review, we have determined that none of the rejections should be sustained. Our reasoning in support of this conclusion follows.

The Rejection Under Section 102

Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of the claimed invention. See *RCA Corp. v. Applied Digital Data Systems, Inc.*, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.), cert. dismissed sub nom., *Hazeltine Corp. v. RCA Corp.*, 468 U.S. 1228 (1984).

Claim 1 is directed to a trap system for reducing the entry of flying insects into a predetermined area which is defined by a continuous perimeter. The system comprises

a plurality of insect traps . . . positioned at predetermined spacings around said continuous perimeter . . . such that said plurality of spaced traps cooperate to form a barrier for preventing flying insects from crossing over said perimeter into said predetermined area.

Claim 1 stands rejected as being anticipated by Dieguez, the subjects of which are a method and apparatus for formation and delivery of insect attractant. Dieguez discloses an insect trap, and teaches that "a series" of them can be "arranged in grid configuration" (column 5, lines 6 and 7). It is the examiner's

Appeal No. 97-2548
Application No. 08/381,545

position that "[t]he specifics of where the plurality of traps are located with respect to each other is found to be intended use" which "fails to impart patentability in an apparatus claim" (Final Rejection, page 2). We do not agree.

Claim 1 is directed "[a] trap system" (emphasis added). According to the specifics of the claim, this system comprises a plurality of traps, which are positioned in a particular relationship to the area which they are guarding and to each other. These requirements do not constitute an intended use, but are the limitations which define the inventive system. As such, they cannot be ignored. While the reference discloses an insect trap, and teaches that a plurality of them can be arranged in a grid configuration, it does not suggest that the grid configuration be in accordance with the last four lines of the claim. Therefore, each and every limitation in the claim is not found in Dieguez, and the reference cannot be considered as anticipatory of the claimed subject matter.

The rejection of independent claim 1 is not sustained nor, it follows, is the rejection of dependent claims 2 and 3 on the same grounds.

Claim 4 is drawn to a method of reducing the entry of flying insects into an area, and it sets forth the steps of defining the

Appeal No. 97-2548
Application No. 08/381,545

area by determining a perimeter around it, and positioning a plurality of insect traps at predetermined spacings along the perimeter, so that the traps cooperate to keep flying insects from crossing over the perimeter. This claim is rejected as being unpatentable over Dieguez, which means that the teachings of the reference would have suggested the claimed invention to one of ordinary skill in the art. See, for example, *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

As we have pointed out above with regard to the rejection under Section 102, the extent of the teachings set out by Dieguez is merely that a series of traps be arranged in a "grid configuration." It is the examiner's view, however, that one of ordinary skill in the art would have found it obvious to locate the traps along a continuous perimeter surrounding the area to be protected, spaced at such intervals as not to allow insects to have ingress (Answer, pages 3 and 4). The examiner has not explained where the suggestion to do so is found, nor has evidence been presented in support of this position. From our perspective, therefore, absent the hindsight accorded one who first viewed the appellants' disclosure, it would not have been obvious to one of ordinary skill in the art to perform the steps set forth in claim 4.

Appeal No. 97-2548
Application No. 08/381,545

The teachings of Dieguez therefore fail to establish a *prima facie* case of obviousness with respect to the subject matter of claim 4, and we therefore will not sustain the rejection of claim 4 or its dependent claim 5.

The decision of the examiner is reversed.

REVERSED

NEAL E. ABRAMS)	
Administrative Patent Judge))	
)	
)	
CHARLES E. FRANKFORT)	BOARD OF PATENT
Administrative Patent Judge))	APPEALS AND
)	INTERFERENCES
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LAWRENCE J. STAAB)	
Administrative Patent Judge))	

Appeal No. 97-2548
Application No. 08/381,545

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