

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 10

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL DEILY and NORMAN CRANDALL

Appeal No. 1998-1824
Application No. 08/463,383

ON BRIEF

Before McCANDLISH, Senior Administrative Patent Judge, COHEN,
and LAZARUS, Administrative Patent Judges.
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 16 and 17. These claims constitute all of the claims remaining in the application.

Appellants' disclosed invention pertains to a method for manufacturing a neck flange. A basic understanding of the invention can be derived from a reading of exemplary claim 16,

Appeal No. 1998-1824
Application No. 08/463,383

OPINION

In reaching our conclusion on the obviousness issue raised in this appeal, this panel of the board has carefully considered appellants' specification and claims, the applied teaching,² and the respective viewpoints of appellants and the examiner. As a consequence of our review, we make the determination which follows.

We reverse the examiner's rejection of appellants' claims under 35 U.S.C. § 103.

² In our evaluation of the applied prior art, we have considered all of the disclosure of the Linne document for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings of the Linne patent, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

Appeal No. 1998-1824
Application No. 08/463,383

Claim 16, the sole independent claim on appeal, is specifically drawn to a method for manufacturing a neck flange having a neck engaging portion of a flexible material and an interconnection of a less flexible material and sets forth particular steps.

As indicated above, it is manifestly clear to us that claim 16 expressly addresses the method of manufacturing "a neck flange". Read in light of the underlying disclosure (pages 1 and 3), a neck flange is readily understood to be a particular article of manufacture that secures, positions, and supports a tracheostomy tube to a patient's neck and provides comfort and adjustability.

With the above understanding of the claimed subject matter in mind, we turn now to the evidence that the examiner relies upon in support of the rejection under 35 U.S.C. § 103.

The patent to Linne explicitly discloses a process (Figs. 3 and 4) for forming a unitary seal (Fig. 2). It is at once clear to us, from a reading of this reference, that it does

Appeal No. 1998-1824
Application No. 08/463,383

not teach and would not have suggested a method for manufacturing a neck flange, as now claimed. Thus, notwithstanding our appreciation that the molding procedure of the Linne document is reasonably pertinent and has some relevance to the claimed method, the rejection of appellants' method claims 16 and 17 under 35 U.S.C. § 103 based upon the Linne reference is not well founded.

REMAND TO THE EXAMINER

We remand this application for review of the following matters:

1. The examiner should ascertain whether the recitation of "polymers" on line 2 of dependent claim 17 raises an issue of indefiniteness under 35 U.S.C. § 112, second paragraph, since only "a polymer" is recited on line 3 of parent claim 16.
2. The examiner should consider whether the collective teachings of the Bales and Linne patents would have been suggestive of the subject matter of method claim 16 under 35

Appeal No. 1998-1824
Application No. 08/463,383

U.S.C. § 103, and whether the combined teachings of the Bales, Linne, and Kalt patents would have been suggestive of the subject matter of method claim 17 under 35 U.S.C. § 103.³

In summary, this panel of the board has reversed the examiner's rejection of claims 16 and 17 under 35 U.S.C. § 103 and remanded the application to the examiner for assessment of the matters set forth above.

The decision of the examiner is reversed.

REVERSED AND REMANDED

HARRISON E. McCANDLISH)
Senior Administrative Patent Judge)
)
)
)

³ The Bales (U.S. Patent No. 5,054,482) and Kalt (U.S. Patent No. 5,000,741) documents were extensively discussed in the referenced earlier decision (Appeal No. 97-0082) of the Board of Patent Appeals and Interferences. In particular, on pages 10, 17, and 18 of the decision the Bales teaching is addressed, while on page 15 of the decision the Kalt disclosure is discussed.

Appeal No. 1998-1824
Application No. 08/463,383

IRWIN CHARLES COHEN
Administrative Patent Judge

RICHARD B. LAZARUS
Administrative Patent Judge

)
) BOARD OF PATENT
) APPEALS
) AND
) INTERFERENCES
)
)
)
)
)
)

DAVID A HEY
MALLINCKRODT MEDICAL INC.
675 MCDONNELL BOULEVARD
P.O. BOX 5840
ST LOUIS, MO 63134

Appeal No. 1998-1824
Application No. 08/463,383

ICC:pgg