

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DONALD J. SANDERS, MARY E. BARKER, BRUCE A. OWEN,
MICHAEL J. COLLOM, JOHN H. HISE,
BRIAN L. BRIEBENOW AND ROBERT D. HERBERG

Appeal No. 98-2691
Application No. 08/529,041¹

ON BRIEF

Before CALVERT, COHEN, and STAAB, Administrative Patent Judges.

CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

¹ Application for patent filed September 15, 1998. According to appellants this application is a continuation of Application No. 08/423,424, filed April 18, 1995, now abandoned.

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This is an appeal from the final rejection of claims 1 to 23, 25, 27 and 28. Claims 24 and 26, the other claims in the application, stand withdrawn from consideration under 37 CFR § 1.142(b) as being drawn to a nonelected invention.

The subject matter involved in this appeal concerns a system for directing fluid in a particular repetitive pattern onto a moving substrate, such as for high pressure water cutting of a web of absorbent material to make components of disposable diapers. The appealed claims are directed to apparatus for directing a fluid (claims 1, 3 to 12, 27 and 28) and for cutting (claims 2), and a method for directing a fluid (claims 13, 15 to 23 and 25) and for cutting (claim 14).² The claims on appeal are reproduced in Appendix 1 of appellants' brief.³

The references applied in the final rejection are:

Pearl	4,328,726	May 11,
1982		

² In reviewing the application, we note that the tubing coil recited in claims 8 and 17 is not shown in the drawings, as required by 37 CFR § 1.83(a).

³ All references herein to appellants' brief are to the revised brief filed on February 2, 1998.

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Croteau 1992	5,083,487	Jan. 28,
Coleman 1994	5,339,715	Aug. 23,

The appealed claims stand finally rejected as follows:

- (1) Claims 1 to 12, 27 and 28, unpatentable for failure to comply with 35 U.S.C. § 112, second paragraph;
- (2) Claims 1 to 9, 11, 13, 19, 21 to 23, 25, 27 and 28, unpatentable over Croteau in view of Coleman, under 35 U.S.C. § 103(a);
- (3) Claims 12 and 20, unpatentable over Croteau in view of Coleman and Pearl, under 35 U.S.C. § 103(a).

Rejection (1)

The basis of this rejection is stated on pages 4 and 5 of the examiner's answer as:

In claims 1 and 2, no structural cooperation for the actuating servo has been recited, thus rendering the claims indefinite. What is the actuating servo connected to? In claim 1, the recitations of "an actuating servo connected to move. . ." and "regulating means connected to control. . ." are vague and indefinite since it is unclear what the elements are connected to. Similarly, in claim 12, there is insufficient structural cooperation recited for the gearing encoder. The recitation of the encoder "connected to monitor. . ." is vague and indefinite. What is the gearing encoder connected to?

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"The legal standard for definiteness is whether a claim reasonably apprises those of skill in the art of its scope." In re Warmerdam, 33 F.3d 1354, 1361, 31 USPQ2d 1754, 1759 (Fed. Cir. 1994). In the present case, we do not consider that the language specified by the examiner renders the scope of the claims unclear. The expression "an actuating servo connected to move said nozzle," for example, simply covers an actuating servo which is connected to the other claimed apparatus in such a fashion to move the nozzle; the fact that the claims does not specify what particular part of the claimed apparatus the servo

is connected may cause the claims to be broad, but they are not indefinite. Likewise, the expression "an actuating servo configured to move said cutter nozzle" in claim 2⁴ is of relatively broad scope, but is not indefinite.

Rejection (1) will therefore not be sustained.

Rejection (2)

In applying the combination of Croteau and Coleman, the examiner takes the position with regard to independent claims 1, 2, 13 and 14 that Croteau discloses all the recited apparatus or steps except "an actuating servo for moving the nozzle along the selected path and the data set of the regulating means to include a sequence of numbers with each number representing a desired motor angle provided for the actuating servo." (answer, page 5). However, the examiner notes that "Coleman discloses that it is known in art to use a servomotor (27, 28) for moving a nozzle along a delivery path, a motor encoder (56) connected to the servomotor, and a

⁴ This expression is not referred to in the portion of the examiner's answer quoted above, but the examiner includes it in the discussion on page 8 of the answer.

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controller (30) for controlling the servomotor" (id., pp. 5 and 6), and concludes (id., page 6):

In view of Coleman and what is known in the art, it would have been obvious to one having ordinary skill in the art to provide Croteau with an actuating servo and a motor encoder connected to the actuating servo, wherein the data set of the regulating means has a sequence of numbers with each number representing a desired motor angle provided for by the actuating servo, in order to facilitate movement of the nozzle along the selected path.

Appellants argue, in essence, that the combination of Croteau and Coleman does not disclose either the designating means (identifying step) or the regulating means (or step) recited in the claims. According to appellants, Croteau only senses the speed of the substrate (by wheel 7), and neither Croteau nor Coleman teaches identifying a plurality of selected article lengths along the substrate, as claimed. Also Croteau and Coleman do not teach regulating as set forth in the claims (brief, pages 17 to 20).

The examiner responds to appellants' first argument that Croteau's sensing wheel 7 is the equivalent of appellants' disclosed encoder since each "identifies when a predetermined or desired length of the moving web has been advanced and

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sends that information to the control which controls the cutting operation" (answer, page 9). As to the second argument, the examiner finds the recited regulation to be present in the combination of Croteau and Coleman because (id., page 10):

In Coleman, the controller constitutes regulating means which is connected to control the servomotors by employing a selected, electronically stored data set which has a sequence of numbers, each number represents a desired motor angle provided for by the actuating servo since encoder (58) monitors the position or angle of the servomotor, and the nozzle is directed along the selected delivery path to provided the selected pattern onto the workpiece, see column 3, lines 10-56. Thus, when Croteau is modified to have a servomotor and encoder as taught by Coleman, the regulating means of the modified device of Croteau controls the servo by employing a selected, electronically stored data set which has a sequence of numbers with each number representing a desired motor angle provided for by the actuating servo, and the sequence has a predetermined correspondence with movement positions of the substrate to thereby direct the nozzle along the selected delivery path and provide the selected pattern on the substrate.

After fully considering the record in light of the arguments presented in appellants' brief and the examiner's answer, we conclude that rejection (2) should not be sustained. In particular, we conclude that Croteau, whether

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or not modified in view of Coleman, does not disclose the claimed designating means or identifying step. While Croteau certainly senses the speed of the web (substrate), he does not identify article lengths along it as appellants do, i.e., by generating a marker pulse 74 for each article length 36, such that the nozzle is directed along the selected delivery path and provides the selected pattern onto each selected article length, as claimed. Although, as the examiner argues, Croteau's sensing wheel 7 is the equivalent of appellants' encoder in that it senses the speed of the web, there is no disclosure in the reference that a plurality of selected article lengths are identified and the pattern is provided onto each such selected length of the substrate.

Rejection (3)

The additional reference, Pearl, applied in this rejection does not overcome the deficiencies of the combination of Croteau and Coleman as discussed above. Rejection (3) therefore will likewise not be sustained.

Conclusion

The examiner's decision to reject claims 1 to 23, 25, 27 and 28 is reversed.

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REVERSED

IAN A. CALVERT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
IRWIN CHARLES COHEN)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
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LAWRENCE J. STAAB)	
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REVERSED

Prepared: January 24, 2000