

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GREGORY L. MITCHELL

Appeal No. 1998-3336
Application No. 08/527,788

ON BRIEF

Before JERRY SMITH, DIXON, and BARRY, Administrative Patent Judges.

BARRY, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the rejection of claims 1, 3-5, and 7-10. We reverse.

BACKGROUND

The invention at issue in this appeal relates to monitoring inlet water usage. The use of control and alarm systems to detect leaks in gaseous or liquid pipes is known in the prior art. Explosive gases and highly destructive liquids

that have to be transported by pipe, for example, require monitoring to insure against underground leakage.

Unfortunately, conventional control and alarm systems are integrally built into overall liquid/fluid transport systems and are complex and costly.

In contrast, the appellant's invention is an easily installed, inexpensive device that allows a homeowner to monitor the water consumed for given periods. It includes an alarm system to alert the homeowner if too much water has been consumed. The invention can also shut down the inflow of water if a particular volume of water per period has been exceeded.

Claim 1, which is representative for our purposes, follows:

Claim 1. A portable system to monitor, control, and provide an alarm for excessive use of an inlet water supply through [sic, through] an inlet pipe from a water source under pressure, comprising:

a measuring means for providing measurements of the inlet pipe volume of water per unit time, said measuring means comprising a rotatable impeller, a timer, and an electronic counter;

a central control box having an interior and an exterior, said central control box sized to be hand-held and portable;

a first user interface means for entering a threshold value of inlet pipe volume of water per unit time, said user interface means housed in said interior of said central control box;

a visual display mounted on said exterior of said central control box for displaying gallons of water used per unit time;

a second user interface means for entering said unit time period, said second user interface means mounted on said exterior of said central control box;

a comparison means for correlating the inputted threshold value and the measurements of the inlet pipe, said comparison means comprising a processor and a computer program readable by said processor for comparing said measurements of inlet pipe volume per unit time and said threshold values of inlet pipe volume per unit time, said comparison means housed in said interior of said central control box;

an alarm means for providing an alarm when the inlet pipe measurement exceeds the inputted threshold value, said comparison means actuating said alarm means when said measurements exceed said threshold values.

The references relied on in rejecting the claims follow:

Bartley et al. (Bartley) 4,108,574 Aug. 22,
1978

Frew et al. (Frew) 4,803,632 Feb. 7, 1989.

Otten et al. (Otten) 5,228,469 July 20, 1993

Claims 1, 3-5, and 7-10 stand rejected under 35 U.S.C. § 103 as obvious over Otten in view of Bartley further in view of Frew. Rather than repeat the arguments of the appellant or examiner in toto, we refer the reader to the briefs and answer for the respective details thereof.

OPINION

In deciding this appeal, we considered the subject matter on appeal and the rejection advanced by the examiner. Furthermore, we duly considered the arguments and evidence of the appellant and examiner. After considering the record, we are persuaded that the examiner erred in rejecting claims 1, 3-5, and 7-10.¹ Accordingly, we reverse.

¹ We note that the examiner improperly applied a new grounds of rejection in the answer by adding Bartley to the combination of Otten and Frew. (See 37 CFR 1.193(a)(2) and reply at page 1). While, this appeal has not proceeded according to the established rules, we will decide the appeal on the merits rather than delay our decision with a remand.

We begin by noting the following principles from In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993).

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).... "A prima facie case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art." In re Bell, 991 F.2d 781, 782, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993) (quoting In re Rinehart, 531 F.2d 1048, 1051, 189 USPQ 143, 147 (CCPA 1976)).

With these principles in mind, we consider the examiner's rejection and the appellant's argument.

The examiner asserts, "Bartley et al. discloses an apparatus used for measuring and controlling the flow rate of a liquid in a piping system. Bartley discloses use of an alarm actuated indicating an unacceptable level of pump impeller performance. The flow rate of the liquid is calculated using pump pressure rise. The difference would tend to increase with the degree of degradation in the impeller performance (col. 12 lines 8-21 and col. 15 lines 49-

57)." (Examiner's Answer at 7.) The appellant argues, "[t]he impellers utilized on the centrifugal pump of the Bartley reference are used to pump fluid through a piping system. The impellers are not rotating because of fluid flowing within a piping system, and do not directly measure fluid flow."

(Reply Br. at 2.)

Claims 1, 3-5, and 7-9 specify in pertinent part the following limitations: "a measuring means for providing measurements of the inlet pipe volume of water per unit time, said measuring means comprising a rotatable impeller" Similarly, claim 10 specifies in pertinent part the following limitations: "a measuring means for providing measurements of volume of inlet water per unit time connected to said inlet water supply, said measuring means including a rotatable impeller" Accordingly, claims 1, 3-5, and 7-10 require a rotatable impeller for measuring a volume of inlet water per unit time.

The examiner fails to show a suggestion of the limitations in the prior art. "Obviousness may not be

established using hindsight or in view of the teachings or suggestions of the inventor." Para-Ordnance Mfg. Inc. v. SGS Importers Int'l Inc., 73 F.3d 1085, 1087, 37 USPQ2d 1237, 1239 (Fed. Cir. 1995), cert. denied, 519 U.S. 822 (1996)(citing W.L. Gore & Assocs., Inc. v. Garlock, Inc., 721 F.2d 1540, 1551, 1553, 220 USPQ 303, 311, 312-13 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984)). "It is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious." In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992) (citing In re Gorman, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991)). "The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." Id. at 1266, 23 USPQ2d at 1784 (citing In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984)).

Here, the examiner admits, "Otten doesn't disclose the claimed rotatable impeller" (Examiner's Answer at 7.)

Although Bartley teaches an impeller, its impeller is not used to measure a volume of inlet water per unit time. To the contrary, the reference's impeller is a "pump impeller," col. 11, l. 66, which is used to pump fluid through Bartley's piping system. See col. 11, l. 63, - col. 12, l. 21. Relying on Frew "to merely teach that displaying the amount of gas and water level is well known in the art," (Examiner's Answer at 22), the examiner fails to allege, let alone show, that the addition of the reference cures the deficiency in the combination of Otten and Bartley.

Because Bartley's impeller is used to pump fluid through the reference's piping system, we are not persuaded that teachings from the applied prior art would appear to have suggested the claimed limitations of "a measuring means for providing measurements of the inlet pipe volume of water per unit time, said measuring means comprising a rotatable impeller" or "a measuring means for providing measurements of volume of inlet water per unit time connected to said inlet water supply, said measuring means including a rotatable impeller" The examiner fails to establish a prima facie

case of obviousness. Here, we find that the prior art applied by the examiner does not teach or fairly suggest the use of an impeller as a measuring means. We do not make any general finding about the obviousness of the use of a rotatable impeller in combination with a counter and timer. Therefore, we reverse the rejection of claims 1, 3-5, and 7-10 as obvious over Otten in view of Bartley further in view of Frew.

CONCLUSION

In summary, the rejection of claims 1, 3-5, and 7-10 under 35 U.S.C. § 103 is reversed.

REVERSED

JERRY SMITH)	
Administrative Patent Judge)	
)	
)	
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)	BOARD OF PATENT
JOSEPH L. DIXON)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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LANCE LEONARD BARRY)	
Administrative Patent Judge)	

LLB/gjh

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APPEAL NO. 1998-3336 - JUDGE

APPLICATION NO. 08/527,788

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APJ JERRY SMITH

DECISION: **REV'D**

Prepared By: APJ BARRY

DRAFT SUBMITTED: 24 Jan 02

FINAL TYPED:

Team 3:

I typed all of this opinion.

Please check spelling, cites, and quotes.

Do NOT change matters of form or style.