

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

Ex parte JOEL VATSKY

---

Appeal No. 1999-0020  
Application No. 08/641,021

---

ON BRIEF

---

Before ABRAMS, STAAB and BAHR, Administrative Patent Judges.

BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 11-13. Claims 8-10, the only other claims remaining in this application, stand withdrawn from further consideration under 37 CFR § 1.142(b) as being directed to a non-elected invention. We reverse.

BACKGROUND

The appellant's invention relates to a combination of a furnace and a secondary air nozzle provided with an adjustable damper blade designed to discharge secondary air into the furnace in two distinct air patterns so as to direct one stream toward the center of the furnace to support combustion and a second stream toward the furnace boundary wall to minimize corrosion and slagging (appellant's specification, page 2). The nozzle housing (10) is mounted, by means of a pair of U-shaped mounting plates (20) and shafts (24,26), to at least one wall of the housing for pivotal movement about a horizontal axis. Claim 11, the only independent claim on appeal, is reproduced in the opinion section of this decision.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Chadshay	4,425,855	Jan. 17, 1984
Newman	5,461,990	Oct. 31, 1995

The following rejection is before us for review.

Claims 11-13 stand rejected under 35 U.S.C. § 103 as being unpatentable over Chadshay in view of Newman.

Reference is made to the brief (Paper No. 10) and the final rejection and answer (Papers No. 8 and 11) for the respective positions of the appellant and the examiner with regard to the merits of this rejection.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. For the reasons which follow, we cannot sustain the examiner's rejection.

Independent claim 11 reads as follows:

11. In combination, a furnace comprising at least one wall; and an air nozzle comprising a housing having an inlet for receiving air and an outlet for discharging the air, a mounting member for mounting the housing to the at least one wall of the furnace for pivotal movement about a first axis to vary the air discharge pattern from the outlet so that the air is discharged into the interior of the furnace in a variable discharge pattern, and a damper blade mounted in the housing about a second axis extending transversely to the first axis for splitting the discharging air into two streams.

Chadshay, the primary reference relied upon by the examiner in rejecting the claims, discloses a furnace having walls and vertically tiltable (column 2, lines 11-12, and column 5, line 3) secondary air nozzles (9). Secondary air passes through a transition section (15), which comprises louvers (18) for regulating the total secondary air received into the transition section and two turning vanes (19, 20) which divide the transition section (15) into separate channels (21, 22, 23). Flappers (25, 26, 27) are provided in the channels to control the amount of air received in each channel. This combination of louvers and dampers permits plenary control of all divisions and velocity of the secondary air through the transition section with the result that the nozzle set (9) discharges the secondary air in a pattern and velocity and direction as desired

by the furnace operator (column 6, lines 2-6). Chadshay does not disclose the details of the mounting structure for tiltably mounting the nozzles (9) to the furnace walls.

Newman discloses a mounting and linkage system for mounting an air discharge device (32, 56) to a wall of a furnace in such a manner that the air discharge device may be tilted upwardly and downwardly relative to the furnace walls, the mounting and linkage system comprising a pair of U-shaped mounting plates (28a, 28b) and either a pair of mounting pins or rods (34a, 34b) or, in the alternative, a single pin (80) which extends between the mounting plates. The examiner contends that it would have been obvious to provide a mounting structure as taught by Newman, comprising a pair of U-shaped mounting plates and a shaft extending through an opening in the nozzle housing, to tiltably mount the nozzles (9) of Chadshay to the furnace walls.

Even if Chadshay were modified to provide a mounting structure as taught by Newman for mounting the nozzles (9) of Chadshay to the furnace walls so as to permit vertical tilting of the nozzles relative to the walls, the modified device would still not result in the invention recited in claim 11. Specifically, claim 11 requires that the damper blade be mounted in the housing and a mounting member for mounting the housing to the furnace wall for pivotal movement. The dampers (flappers 25, 26, 27) of Chadshay are not mounted in the pivotally mounted housing (nozzle 9), as required by the claim. Rather, the Chadshay dampers are mounted in the transition section (15), which is not disclosed as being mounted for pivotal

movement. We do not understand the examiner's position to be that Newman would have suggested also pivotally mounting the transition section (15) to the walls. However, to the extent that this may have been a component of the examiner's position in rejecting the claims, we agree with appellant (brief, pages 3 and 4) that the examiner has not adduced any rationale as to why one of ordinary skill in the art would have been motivated to so modify the structure of Chadshay.

For the foregoing reasons, we shall not sustain the examiner's 35 U.S.C. § 103 rejection of independent claim 11 or of claims 12 and 13 which depend therefrom.

CONCLUSION

To summarize, the decision of the examiner to reject claims 11-13 under 35 U.S.C. §  
103 is reversed.

REVERSED

NEAL E. ABRAMS	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
LAWRENCE J. STAAB	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
JENNIFER D. BAHR	)	
Administrative Patent Judge	)	

Appeal No. 1999-0020  
Application No. 08/641,021

Page 7

JDB/pgg

Waren B. Kice  
Haynes and Boone  
3100 Nationsbank Plaza  
901 Main Street  
Dallas, TX 75202-3789