

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.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 ANDREAS BLUMENSTOCK

Appeal No. 1999-0530
Application No. 08/722,682

ON BRIEF¹

Before KRASS, HECKER, 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 1-9. We reverse.

BACKGROUND

The invention at issue in this appeal is a method for detecting the presence of a tanking operation on a vessel such as a fuel tank of a motor vehicle. When tanking a vehicle, a

¹An oral hearing scheduled for October 25, 2000, was waived. (Paper No. 16.)

slight overpressure occurs. More specifically, the pressure in the tank at the start of the tanking operation increases significantly and drops again to its original level after the tanking operation.

Such a characteristic pressure trace is used to detect tanking operations via pressure measurement in the tank and especially during the check of operability of a tank-venting system with a diagnostic system. The measurement of the pressure trace during a tanking operation is made within an interval. This avoids the situation that, for an open tank cap in which tanking has not yet started, a fault is announced by the diagnostic system. Also, a conclusion can be reliably drawn as to a tanking operation based on the time-dependent development of the characteristic pressure trace.

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

1. A method for detecting a filling or tanking operation on a receptacle having a receptacle cover, the filling or tanking operation including: opening the receptacle, introducing a fill nozzle, tanking,

removing the fill nozzle and closing the receptacle,
the method comprising the steps of:

measuring pressure with respect to said
receptacle to obtain a trace of pressure as a
function of time which is characteristic for a
tanking operation; and,

concluding that a tanking operation is present
from said trace.

The reference relied on in rejecting the claims follows:

Fujino 5,193,511 Mar. 16, 1993.

Claims 1-9 stand rejected under 35 U.S.C. § 103(a) as obvious
over Fujino. Rather than repeat the arguments of the
appellant or examiner in toto, we refer the reader to the
brief 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 1-9.
Accordingly, we reverse.

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. Section 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 appellants' argument.

The examiner makes the following assertions and admissions.

Fujino teaches:

a measurement of pressure with respect to the receptacle as an inherent function of time (col. 3, lines 39+) which is the same in characteristic as a "tanking" (ie filling) operation, as claimed.

Fujino fails to explicitly teach obtaining a "trace of pressure" from said pressure measurement. Therefore, Fujino fails to teach "concluding that a

tanking operation is present from said trace". However, it would have been obvious to one of ordinary skill in the art to conclude that a "trace of pressure" is present from said pressure measurement. The motivation being that since a pressure measurement is obtained, then a pressure trace would have to be present or the pressure measurement would have never even existed, and thus a decision based upon said measurement will also be based upon a pressure trace being present.

(Examiner's Answer at 4-5.) The appellants argue, "[a]ppellant has reviewed Fujino but was unable to find any suggestion as to how a pressure measurement is to be made during a tanking operation, much less, how detecting a tanking operation is to be inferred therefrom." (Appeal Br. at 7.)

Claims 1-4 specify in pertinent part the following limitations: "measuring pressure with respect to said receptacle to obtain a trace of pressure as a function of time which is characteristic for a tanking operation"

Similarly, claims 5-9 specify in pertinent part the following limitations: "measuring pressure with respect to said tank to obtain a trace of pressure as a function of time"

Accordingly, claims 1-9 require measuring the pressure in a

receptacle to obtain a trace of the pressure as a function of 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. v. SGS Importers Int'l, 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, although Fujino measures the pressure in a receptacle, it does not obtain a trace of the pressure as a function of time. To the contrary, it obtains a graph of the pressure as a function of temperature. Specifically, "FIG. 3 is a graph showing a relationship between gasoline vapor pressure and temperature in the fuel tank 1, with an abscissa representing gasoline temperature (°C) and an ordinate representing gasoline vapor pressure (mmHg)." Col. 3, ll. 24-28.

Because Fujino merely teaches measuring pressure as a function of temperature, we are not persuaded that teachings from the applied prior art would appear to have suggested the claimed limitations of "measuring pressure with respect to said receptacle to obtain a trace of pressure as a function of time which is characteristic for a tanking operation" or "measuring pressure with respect to said tank to obtain a trace of pressure as a function of time" The examiner

fails to establish a prima facie case of obviousness.

Therefore, we reverse the rejection of claims 1-9 as obvious over Fujino.

CONCLUSION

In summary, the rejection of claims 1-9 under 35 U.S.C. § 103(a) is reversed.

REVERSED

ERROL A. KRASS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
STUART N. HECKER)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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