

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GERARDUS J.A.M. NOTENBOOM

Appeal No. 2000-0477
Application No. 08/834,410

ON BRIEF

Before GARRIS, PAK, and TIMM, Administrative Patent Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the refusal of the examiner to allow claims 6-10 as amended subsequent to the final rejection. These are all of the claims remaining in the application.

The subject matter on appeal relates to a method of manufacturing a sintered structure which comprises providing a substrate with layers of a liquid charged with particles by means of an ink jet printer, evaporating the liquid from each layer and then by means of a laser sintering the particles in the layer

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before providing a succeeding layer. This appealed subject matter is adequately illustrated by claims 6 and 7 which read as follows:

6. A method of manufacturing a sintered structure formed of layers of sintered particles on a substrate, said method comprising providing said substrate with layers of a liquid charged with particles by means of an ink jet printer, evaporating the liquid from each layer and then by means of a laser sintering the particles in said layer before providing a succeeding layer.

7. A method as claimed in Claim 6, wherein the liquid is evaporated by means of a laser.

The references set forth below are relied upon by the examiner in the Section 102 and Section 103 rejections before us:

Masters	4,665,492	May 12, 1987
Drummond et al. (Drummond)	5,132,248	Jul. 21, 1992

Claims 7 and 8 are rejected under the second paragraph of 35 U.S.C. § 112 for failing to particularly point out and distinctly claim the subject matter which the appellant regards as his invention.

Claims 6-8 are rejected under 35 U.S.C. § 102(b) as being anticipated by Masters.¹

¹The final office action includes an alternative Section 103 rejection of these claims over Masters. Because the answer does not include this ground of rejection under Section 103, we consider the rejection to have been dropped by the examiner. See Manual of Patent Examining Procedure (MPEP) § 1208, especially the paragraph bridging pages 1200-16 and 1200-17 (8th Ed., August 2001).

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Claim 10 is rejected under 35 U.S.C. § 103 as being unpatentable over Masters.

Claim 9 is rejected under 35 U.S.C. § 103 as being unpatentable over Masters in view of Drummond.

Finally, claims 6-10 are rejected under 35 U.S.C. § 103 as being unpatentable over Drummond in view of Masters.

We refer to the brief and reply brief and to the answer for a complete discussion of the opposing viewpoints expressed by the appellant and by the examiner concerning the above noted rejections.

OPINION

We cannot sustain any of these rejections.

Concerning the Section 112, second paragraph, rejection, the examiner has incorrectly determined that the claim 7 phrase "a laser" renders this claim (as well as claim 8 which depends therefrom) indefinite as to whether the recited laser is the same as or different from the laser recited in parent claim 6. From our perspective, claim 7 is properly interpreted as encompassing either of these embodiments. Therefore, the claim is merely broad, and it is well settled that breadth is not indefiniteness. In re Gardner, 427 F.2d 786, 788, 166 USPQ 138, 140 (CCPA 1970).

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In light of the foregoing, the examiner's Section 112, second paragraph, rejection of claims 7 and 8 cannot be sustained.

As for the Section 102 rejection, it is the examiner's position that Masters discloses each of the features recited in rejected claims 6-8. In this regard, the examiner points out, for example, that patentee teaches providing particles in the form of a slurry, using inkjet printing technology to deliver particles to a desired point, and fusing particles with a laser. The examiner then argues that the here claimed evaporating and sintering steps would be inherently practiced when using a laser to fuse particles delivered in the form of a slurry via an ink jet printer.

Even assuming Masters discloses each of the features referred to by the examiner, it is clear that the examiner's finding of anticipation is improper. We here emphasize that, for a Section 102 rejection to be proper, the applied reference must clearly and unequivocally disclose the claimed invention or direct those skilled in the art to the invention without any need for picking, choosing, and combining various disclosures not directly related to each other by the teachings of the reference. In re Arkley, 455 F.2d 586, 587-88, 172 USPQ 524, 526

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(CCPA 1972). Here, the several features referred to by the examiner are not clearly and unequivocally disclosed by Masters as a combination of method steps in accordance with the rejected claims. Similarly, these various disclosed features are not directly related to each other by patentee's teachings. Thus, it is apparent that the features in question are combinable, if at all, only from the perspective of an artisan with ordinary skill at the time the appellant's invention was made via the exercise of selectively picking, choosing and combining various disclosures of the Masters reference. Such an exercise may fall within the scope of obviousness but certainly not anticipation. Id.

For these reasons, we cannot sustain the examiner's Section 102 rejection of claims 6-8 as being anticipated by Masters.

The above discussed deficiency of Masters vis-à-vis anticipation is not cured in the Section 103 rejections of claim 10 over Masters or of claim 9 over Masters in view of Drummond. This is because the conclusions of obviousness made by the examiner in these rejections unquestionably do not relate to the issue of combining various features disclosed in the Masters reference in such a manner as to achieve the method defined by

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independent claim 6.² It follows that we also cannot sustain the Section 103 rejection of claim 10 as being unpatentable over Masters or the Section 103 rejection of claim 9 as being unpatentable over Masters in view of Drummond.

Finally, the Section 103 rejection of claims 6-10 as being unpatentable over Drummond in view of Masters likewise cannot be sustained. This is because the rejection is fatally flawed by the examiner's position that the laser annealing step of Drummond corresponds to the laser sintering step of the appealed claims. Utterly no support for this position has been presented by the examiner. On the other hand, the appellant has attached to his reply brief definitions of the terms "anneal" and "sintering" which unquestionably reflect that an annealing step may be completely unrelated to the here claimed sintering step. On this record, the examiner quite plainly has failed to carry her burden of establishing a prima facie case for her previously mentioned position.

²For clarification purposes, we point out that the now-dropped alternative Section 103 rejection of claims 6-8 over Masters also did not involve a conclusion of obviousness with respect to combining certain of patentee's disclosed features such as an inkjet printer, particles in the form of a slurry and a laser for fusing particles in order to sinter them together. Instead, this now-dropped rejection, in essence, replaced the examiner's previously mentioned inherency theory (i.e., regarding the appellant's claimed evaporating and sintering steps) with an alternative theory based on obviousness.

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The decision of the examiner is reversed.

REVERSED

BRADLEY R. GARRIS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
CHUNG K. PAK)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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)	
CATHERINE TIMM)	
Administrative Patent Judge)	

BRG:hh

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