

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte RICHARD L. ROETKEN, WILLIAM J. ROY  
and NINEV KARL ZIA

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Appeal No. 2001-1302  
Application 08/811,230

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ON BRIEF

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Before FRANKFORT, PATE, and STAAB, Administrative Patent Judges.  
FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 3, which are all of the claims pending in this application.<sup>1</sup>

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<sup>1</sup> This is the second time we have seen this application on appeal. In our prior opinion in Appeal No. 1999-1768 (Paper No. 8, mailed March 30, 2000) we affirmed the examiner's rejection of claims 1 through 3, as they existed at that time, under 35 U.S.C. § 103, although on a somewhat different basis than urged by the examiner.

Appellants' invention relates to an apparatus and method for heating an enclosure, and more particularly to a method and apparatus for ensuring that a proper level of combustion air is provided to the furnace depending on the type of installation that is involved. As noted on pages 2-3 of the specification, prior to the time that a furnace is installed, it is not known whether the furnace will be vented horizontally or vertically. Thus, in the prior art, in order to provide an adequately strong inducer motor, the motor would have to be sized for the more onerous conditions associated with horizontal venting. If the furnace were installed with vertical venting, the inducer motor would be oversized, with the oversized motor resulting in a decrease in efficiency and increased noise. Appellants' solution to this problem is to provide a two speed inducer motor that can be used as a single speed inducer motor with either a vertically or horizontally vented furnace. More specifically, appellants note on pages 3 and 4 of the specification that

[t]he inducer has a common terminal, a low speed terminal and a high speed terminal. In conventional two-speed Furnace inducer systems, one lead is attached to each of the three terminals and the control automatically selects a speed. However, in the present invention, one lead is attached to the common terminal and, depending on whether the furnace is vented horizontally or vertically, either the high speed or low speed terminal is used. If the furnace is vented vertically, one lead is connected to the common



OPINION

In reaching our decision in this appeal, we have given careful consideration to appellants' specification and claims, to the applied prior art reference, and to the respective positions articulated by appellants and the examiner. As a consequence of our review, we have made the determination that the examiner's above-noted rejection of claims 1 through 3 will not be sustained. Our reasons for this determination follow.

In rejecting claims 1 through 3 under 35 U.S.C. § 102(b) based on Nelson, we note that the examiner has not specifically pointed out how or why the system as disclosed in Nelson anticipates the now claimed subject matter. Nelson makes no comment whatsoever concerning the orientation of the vent pipe connected to the furnace therein having a relationship to the manner of wiring the inducer motor (61), and clearly provides no teaching of having the second wire associated with the inducer motor (61) connected only to the low speed terminal when the vent pipe is installed in a vertical position or only to the high speed terminal when the vent pipe is installed in a horizontal orientation "such that the inducer motor operates at all times at one speed, with the other speed not being used," as now set forth in claim 1 on appeal and in similar language in method claims 2

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and 3 on appeal. In this regard, nothing in Nelson discloses or teaches that a two-speed inducer motor can be used as a single-speed motor wherein the inducer motor speed is permanently selected at the time of its installation based upon whether the furnace is vented vertically or horizontally, as required in the claims now before us on appeal.

Since the examiner has not presented a *prima facie* case of anticipation, we will not sustain the rejection of claims 1 through 3 on appeal under 35 U.S.C. § 102(b) based on Nelson.

As for the examiner's alternative rejection of claims 1 through 3 under 35 U.S.C. § 103 based on Nelson, we must agree with appellants' arguments in the brief and reply brief that a person of ordinary skill in the art reading the Nelson patent would not find any reason or suggestion to modify the heating system disclosed in Nelson so that the inducer motor (61) of that system would operate solely and at all times at its lower speed for the entire life of the furnace, as has been urged by the examiner (answer, page 4). Like appellants, we are of the view that the clear teaching in Nelson is away from any such continuous derated operation of the furnace therein. Accordingly, the examiner's rejection of claims 1 through 3 under 35 U.S.C. § 103 will not be sustained.

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In light of the foregoing, the examiner's decision rejecting claims 1 through 3 of the present application under 35 U.S.C. § 102(b) based on Nelson and under 35 U.S.C. § 103(a) based on Nelson alone is reversed.

REVERSED

CHARLES E. FRANKFORT	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
WILLIAM F. PATE, III	)	
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
	)	
LAWRENCE J. STAAB	)	
Administrative Patent Judge	)	

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