

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

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ROBERT M. KALINSKY

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Appeal No. 2004-0241  
Application No. 09/773,366

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ON BRIEF

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Before ABRAMS, FRANKFORT, and McQUADE, Administrative Patent Judges.  
ABRAMS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-20, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellant's invention relates to a multi-spindle machine. An understanding of the invention can be derived from a reading of exemplary claim 1, which appears in the appendix to the appellant's Brief.

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

Schubert	3,747,444	Jul. 24, 1973
Zugel	4,644,819	Feb. 24, 1987
Manning (Manning '031)	5,676,031	Oct. 14, 1997
Manning (Manning '037)	5,730,037	Mar. 24, 1998
Cucchi	6,044,736	Apr. 4, 2000

Claims 1, 2, 15 and 16 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Schubert.

Claims 1-3 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Zugel in view of Cucchi.

Claims 4-14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Zugel in view of Cucchi and Manning '031.

Claims 17-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Schubert in view of Manning '037.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the Answer (Paper No. 10) for the examiner's reasoning in support of the rejections, and to the Brief

(Paper No. 9) and Reply Brief (Paper No. 11) for the appellant's arguments thereagainst.

### 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. As a consequence of our review, we make the determinations which follow.

The appellant's invention is an improvement to the feeding of stock into multi-spindle machines which simultaneously drive a number of machining devices from a single main motor. According to the appellant, it is typical in the prior art systems to feed new stock into a machine at the same high speed that subsequently is used to drive the tools which work upon the stock, which causes new stock to impact and bounce back from the stock stops that align it in the work position, which is undesirable. The appellant's invention slows down the feeding of new stock into a machine prior to the stock engaging a stock stop. In furtherance of this objective, all of the claims call for a stock feeder mechanism comprising a brake arrangement operative to slow the speed of the feeder mechanism and a controller which operates to control the braking arrangement "to slow the speed of the feeder mechanism during stock feeding" (claim 1, emphasis added).

*The Rejection Under Section 102*

The examiner is of the view that the subject matter recited in claims 1, 2, 15 and 16 is anticipated by Schubert and has found, inter alia, that Schubert's brake arrangement 56 is operative to slow the speed of the feeder mechanism during stock feeding (Answer, page 4). In response to the appellant's challenge of this determination, the examiner points to Schubert's teaching that the gears of the feeding mechanism can easily be changed, and then takes the position that "Schubert is capable of at least two different feed speeds" and therefore "inherently teaches a machine controller to control the various functions and elements of the machine tool," thus disclosing a machine controller that "is fully capable of functioning (braking during a feeding operation) in the manner set forth in claim 1" (Answer, page 8).

Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of the claimed invention. See, for example, RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). A reference anticipates a claim if it discloses the claimed invention such that a skilled artisan could take its teachings in combination with his own knowledge of the particular art and be in possession of the invention. In re Graves, 69 F.3d 1147, 1152, 36 USPQ2d 1697, 1701 (Fed. Cir. 1995), cert. denied, 116 S.Ct. 1362 (1996), quoting from In re LeGrice, 301 F.2d 929, 936,

133 USPQ 365, 372 (CCPA 1962). Applying this guidance of our reviewing court to the situation at hand leads us to conclude that the evidence adduced by the examiner does not support a rejection under Section 102. Our reasoning follows.

It is true that Schubert discloses a system in which gears in the drive mechanism can be changed and brakes can be applied in order to alter the speeds of various drive shafts (columns 1, 3 and 4). However, the examiner has not directed our attention to an explicit teaching in Schubert of slowing the speed of the stock feeder mechanism during stock feeding, as is required by all of the appellant's claims. Nor does Schubert appear to recognize the problem to which the appellant has directed his inventive efforts or, for that matter, any other problem which would be solved by such operation of the stock feeder. Even if the Schubert stock gear feeder system were capable of operating in such a fashion as to slow the feeder mechanism during stock feeding, there appears to be no disclosure or teaching of a machine controller (independent claim 1) or a brake system (independent claim 16) which directs it to do so. This being the case, Schubert does not anticipate the subject matter recited in independent apparatus claims 1 and 15, and we will not sustain the Section 102 rejection of claims 1, 2, 15 and 16.

*The Rejections Under Section 103*

The test for obviousness is what the combined teachings of the prior art would have suggested to one of ordinary skill in the art. See, for example, In re Keller,

642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In establishing a prima facie case of obviousness, it is incumbent upon the examiner to provide a reason why one of ordinary skill in the art would have been led to modify a prior art reference or to combine reference teachings to arrive at the claimed invention. See Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Int. 1985). To this end, the requisite motivation must stem from some teaching, suggestion or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art and not from the appellant's disclosure. See, for example, Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1052, 5 USPQ2d 1434, 1439 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988).

The first of these rejections is that claims 1-3 are unpatentable over Zugel in view of Cucchi. The examiner finds all of the subject matter in these claims to be disclosed or taught by Zugel, except for a brake to slow the feeding mechanism during stock feeding. However, it is the examiner's view that such is taught by Cucchi, and it would have been obvious to one of ordinary skill in the art to add brakes to the Zugel system "to provide reliable braking free from de-synchronization with the machine tool" (Answer, page 5).

Zugel is directed to a high-low speed drive system for multiple spindle machines. Zugel states in the opening paragraphs that in such machines low speed is used during the machining operation and high speed is provided to accomplish a number of portions

of the work cycle, including withdrawing the tool slides, indexing carriers, opening and closing the collets, bringing the slides up to the work, as well as to “feed the bar stock” (column 1, lines 27-33). The objective of the Zugel invention is to provide a drive system that more smoothly changes the speed of the main drive shaft from high to low speeds (column 2, lines 5-11).

While brakes are used in the Zugel system, contrary to the examiner’s assertion, Zugel fails to disclose or teach a braking arrangement that is operated to slow the speed of the feeder mechanism during stock feeding. In fact, as the above-noted portion of the Zugel specification clearly states, feeding of the stock is accomplished at high speed, with low speed being engaged only for the machining operations. Thus, in addition to the shortcoming in Zugel regarding the lack of a brake, which is admitted by the examiner, it is our position that this reference also fails to disclose or teach slowing the speed of the feeder mechanism during stock feeding.

Cucchi discloses a positioning system for a rotary loader that feeds bars to a lathe. As explained in column 1, a rotatable drum carrying the bar stock is braked and located in position to feed the bars by the interaction of a plurality of pins 17 carried on the drum with a cam surface 20. Cucchi teaches that after the drum is stopped in rotation by the braking and positioning mechanism “the loader can perform,” which from our perspective indicates that the feeder mechanism does not begin to operate, that is to move the stock laterally into position to be worked, until after the brake means has

been applied. In any event, even if one were to accept, arguendo, the examiner's conclusion that Cucchi teaches slowing the feed mechanism during stock feeding, we fail to perceive any teaching, suggestion or incentive which would have led one of ordinary skill in the art to modify the Zugel system by adding such a brake if for no other reason than it would cause Zugel to be unable to accomplish the stated objective of not slowing the speed of the feeder mechanism until the beginning of the machining step, and this would operate as a disincentive for one of ordinary skill in the art to make such a modification. In this regard, the mere fact that the prior art structure could be modified does not make such a modification obvious unless the prior art suggests the desirability of doing so. In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

It therefore is our conclusion that the combined teachings of Zugel and Cucchi fail to establish a prima facie case of obviousness with regard to the subject matter recited in independent claim 1 and, it follows, of dependent claims 2 and 3. As a consequence, this rejection of claims 1-3 cannot be sustained.

Claims 4-14, all of which are dependent from claim 1, stand rejected as being unpatentable over Zugel in view of Cucchi and Manning '031, the latter being added for its teaching of using stock stopping devices. Be that as it may, Manning '031 fails to overcome the deficiency discussed above in the combination of Zugel and Cucchi against parent claim 1, and we therefore will not sustain this rejection.

Claims 17-20, which are dependent from claim 15, stand rejected on the basis of Schubert in view of Manning '037, which was applied for teaching a stock feeder mechanism comprising a detection system. As we determined above in evaluating the Section 102 rejection of claim 15, Schubert fails to disclose or teach a brake system to slow the speed of the feeder mechanism during the stock feeding operation. Considering Schubert in the light of Section 103 does not alter this finding, for the examiner has adduced no evidence to support a conclusion that it would have been obvious to provide this feature in the Schubert system. Manning '037 fails to overcome this deficiency, and therefore the present rejection cannot be sustained.

CONCLUSION

None of the rejections is sustained.

The decision of the examiner is reversed.

REVERSED

NEAL E. ABRAMS  
Administrative Patent Judge

CHARLES E. FRANKFORT  
Administrative Patent Judge

JOHN P. McQUADE  
Administrative Patent Judge

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