

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 ADOLFO M. CANDRAY, CONOR CURTIN,  
and STEVEN L. HULL

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Appeal No. 2004-0504  
Application No. 09/455,735

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ON BRIEF

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Before WALTZ, KRATZ, and PAWLIKOWSKI, Administrative Patent Judges.

WALTZ, Administrative Patent Judge.

**DECISION ON APPEAL**

This is a decision on an appeal from the primary examiner's final rejection of claims 5 through 8 and 20, which are the only claims remaining in this application. We have jurisdiction pursuant to 35 U.S.C. § 134.

According to appellants, the invention is directed to a tubing connector having two pieces, with the first piece connected to a first tubing segment, the second piece connected to a second tubing segment, and a toothed arm on one piece which

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engages a one-way ratchet on the other piece to maintain the engagement of the tubing connector (Brief, pages 2-3).

Illustrative independent claim 5 is reproduced below:

5. A device for maintaining a connection between a first tubing segment including a first tubing segment connector and a second tubing segment including a second tubing segment connector, the first tubing segment connector and the second tubing segment connector being connectable to establish fluid connection from the first tubing segment through the second tubing segment comprising: a first tube holder for holding the first tubing segment; and a second tube holder for holding the second tubing segment, the first tube holder being engagable with the second tube holder, wherein said first tube holder has [sic, has] an arm that is parallel to the first tubing segment, said arm being engagable by the second tube holder, and wherein said arm has one or more notches along at least one of its edges, and said second tube holder has one or more teeth slidably engagable with said notches.

The examiner relies on the following references as evidence of obviousness:

|   |           |               |
|---|-----------|---------------|
| Raabe   | 1,989,823 | Feb. 05, 1935 |
| Hogendijk et al. (Hogendijk)<br>(filed Mar. 02, 1998) | 6,051,007 | Apr. 18, 2000 |

The claims on appeal stand rejected under 35 U.S.C. § 103(a) as unpatentable over Raabe in view of Hogendijk (Answer, page 3). We reverse the rejection on appeal for the reasons stated below.

#### **OPINION**

The examiner finds that Raabe discloses a clamp and a connection maintaining method comprising a first tube holder, a second tube holder, a release mechanism, where the first tube

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holder is engageable with the second tube holder by means of lamp socket CL (Answer, page 3). The examiner recognizes that Raabe fails to disclose a first tube holder arm having one or more notches, a second tube holder having one or more teeth slidably engageable with the notches, and that the holders are made of plastic (Answer, sentence bridging pages 3-4). The examiner applies Hogendijk for the teaching of a closure device or clamps with a first clamp having one or more notches along one edge, a second clamp having one or more teeth slidably engageable with the notches, and both clamps made from plastic (Answer, page 4). From these findings, the examiner concludes that it would have been obvious to one of ordinary skill in this art at the time the invention was made "to substitute Raabe's clamp connection with Hogendijk's notches and teeth connection, since it would merely constitute substitution of functionally equivalent connection methods." *Id.*

It is well settled that the examiner bears the initial burden of presenting a *prima facie* case of obviousness based on the disclosures of the applied prior art references. See *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). It is insufficient to establish obviousness that the separate elements of the claimed subject matter existed in the

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prior art, absent some teaching or suggestion in the prior art to combine these elements. See *Arkie Lures, Inc. v. Gene Larew Tackle, Inc.*, 119 F.3d 953, 957, 43 USPQ2d 1294, 1297 (Fed. Cir. 1997). "[T]here must be some logical reason apparent from positive, concrete evidence of record which justifies a combination of primary and secondary references." *In re Regel*, 526 F.2d 1399, 1403 n.6, 188 USPQ 136, 139 n.5 (CCPA 1975).

The only reason stated by the examiner for combining Raabe and Hogendijk is that substituting the Hogendijk notches and teeth connection for Raabe's clamp connection "would merely constitute substitution of functionally equivalent connection methods." Answer, page 4. "Expedients which are functionally equivalent to each other are not necessarily obvious *in view of* one another." *In re Scott*, 323 F.2d 1016, 1019-20, 139 USPQ 297, 299-300 (CCPA 1963). On this record, the examiner has not established by positive, concrete evidence that the "connection methods" of Raabe and Hogendijk would have been considered "functionally equivalent," much less established the obviousness of substituting one connection method for another. As found by the examiner (Answer, page 3), Raabe discloses a set screw s21 that provides for adjustment by means of sliding connection s20 (see Figure 7 and page 2, right col., ll. 14-17). Similarly,

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Raabe discloses that jaws J3 and J30 are "slidingly connected to one another" in the embodiment of Figure 8, with no apparent connection mechanism (see Figure 8 and page 2, right col., ll. 29-32). The examiner has not presented any reasons or technical explanation, much less convincing reasons or explanation, why the notches and teeth "locking mechanism" of Hogendijk (col. 6, ll. 10-13) would have been substituted or considered "functionally equivalent" and obvious in view of these sliding mechanisms in the spring clamp disclosed by Raabe. As correctly argued by appellants (Brief, pages 4 and 9), the examiner has not established any motivation or suggestion for combining the references as proposed in the rejection on appeal.

For the foregoing reasons, we determine that the examiner has not established a *prima facie* case of obviousness in view of the reference evidence. Accordingly, we cannot sustain the examiner's rejection of claims 5-8 and 20 under 35 U.S.C. § 103(a) over Raabe in view of Hogendijk.

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The decision of the examiner is reversed.

**REVERSED**

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| Thomas A. Waltz             | ) |                 |
| Administrative Patent Judge | ) |                 |
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|                             | ) | BOARD OF PATENT |
| Peter F. Kratz              | ) | APPEALS         |
| Administrative Patent Judge | ) | AND             |
|                             | ) | INTERFERENCES   |
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| Beverly A. Pawlikowski      | ) |                 |
| Administrative Patent Judge | ) |                 |

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