

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FRANK ORLIKOWSKI

Appeal No. 2004-1746
Application 9/902,403

ON BRIEF

Before PAK, OWENS, and WALTZ, Administrative Patent Judges.

PAK, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal under 35 U.S.C. § 134 from the examiner's refusal to allow claim 1, which is the only claim pending in the above-identified application.

The subject matter on appeal is directed to a method of evenly coating a paint-applying roller with paint in preparation

Appeal No. 2004-1746
Application No. 09/902,403

for painting a surface, wherein the improvement lies in using a metal screen on "top of and in contact with" an inclined paint-receiving surface of a rectangular paint tray "so as to have areas of said paint-receiving surface align with cooperating screen openings and serve as closures thereof to provide plural paint-retained sites in said [inclined paint-receiving] surface..." See claim 1, the specification, pages 2-5 and Figures 1-6, together with the Brief, pages 2-3. The metal screen is said to prevent "uneven distribution of paint about the roller surface and a correspondingly uneven distribution of paint on the surface being painted." See the specification, page 1. This advantage is accomplished by preventing the roller from sliding, thus obviating "any squeegee phenomenon". See the Brief, page 2, together with the specification, pages 1-2. Further details of the appealed subject matter are recited in claim 1 which is appended to this decision.

The prior art references relied upon by the examiner are:

Drum	2,659,917	Nov. 24, 1953
Mulcahy	2,763,880	Sep. 25, 1956

Smith et al., *Painting & Wallpapering*, Chevron Chemical Company (April, 1983), pp. 34-35 (hereinafter referred to as "Smith").

Appeal No. 2004-1746
Application No. 09/902,403

Claim 1 stands rejected under 35 U.S.C. § 103 as unpatentable over the combined disclosures of either Smith or Mulcahy, and Drum.

We have carefully reviewed the claims, specification and applied prior art references, including all of the arguments advanced by both the examiner and the appellant in support of their respective positions. This review has led us to conclude that the examiner's Section 103 rejections are well founded. Accordingly, we will sustain the examiner's Section 103 rejections for essentially those reasons set forth in the Answer and below.

Under 35 U.S.C. § 103, to establish a *prima facie* case of obviousness, there must be some objective teachings or suggestions in the applied prior art references and/or knowledge generally available to a person having ordinary skill in the art that would have led such person to arrive at the claimed subject matter. See generally *In re Oetiker*, 977 F.2d 1443, 1447-48, 24 USPQ2d 1443, 1446-47 (Fed. Cir. 1992) (*Nies, J., concurring*); *In re Vaeck*, 947 F.2d 488, 493, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991). The knowledge generally available to a person having ordinary skill in the art includes the appellant's admission regarding what was known at the time of the invention. See *In re Nomiya*, 509 F.2d 566, 570-71, 184 USPQ 607, 611-12 (CCPA 1975) (the admitted prior art in an applicant's specification may

be used in determining the patentability of a claimed invention);
see also In re Davis, 305 F.2d 501, 503, 134 USPQ 256, 258 (CCPA
1962).

Smith, like the appellant, teaches (page 35) that:

A plastic or metal grid, also called a screen, can help
ensure that your [paint-applying] roller is evenly
loaded. The grids can be used in trays...

Smith goes on to illustrate pictures depicting a 9-inch paint-
applying roller for walls and ceilings and a rectangular paint
tray for loading paint on a roller having a paint supply storage
well and a grid placed on "top of and in contact with" its
inclined paint-receiving surface. See page 34. Mulcahy, like
Smith, teaches using a grill (wire in grill form or perforated
sheet) on "top of and in contact with" an inclined interior
surface of a container adapted for use with the roller type of
applicator so as to provide "a rough surface which will cause the
roller to roll when applied thereto." In other words, Mulcahy,
like the appellant, teaches that the grill prevents the roller
from sliding, which according to the appellant obviates "any
squeegee phenomenon" and promotes even distribution of paint
about the roller surface as indicated *supra*. Thus, we concur
with the examiner that it would have been *prima facie* obvious to
evenly load or coat a paint-applying roller with paint in the
conventional manner taught by Drum and/or acknowledged by the
appellant at pages 2 and 3 of the specification using a

conventional rectangular paint tray having a paint supply storage well and a metal grid or grill placed on "top of and in contact with" its inclined paint-receiving surface.

Contrary to the appellant's argument at page 5 of the Brief, one of ordinary skill in the art, upon urging the roller in the conventional manner relative to the metal grill or grid to load paint from the abovementioned tray, would have reasonably expected to release some paint from the roller into small containing spaces formed by the open mesh of the metal grill or grid contacting the inclined surface of the tray and transfer some paint from the small containing spaces onto the roller. In any event, it can be inferred from the above teachings of Smith that urging the roller in an optimum number of alternating movements relative to the metal grill or grid until paint is evenly distributed to the roller is well within the ambit of one of ordinary skill in the art.

Thus, after due consideration of all of the evidence and arguments proffered by both the examiner and the appellant, we determine that the preponderance of evidence weighs in favor of obviousness. Accordingly, we affirm the examiner's decision rejecting claim 1 under 35 U.S.C. § 103.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR

Appeal No. 2004-1746
Application No. 09/902,403

§ 1.136(a).

AFFIRMED

CHUNG K. PAK)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
TERRY J. OWENS)	APPEALS AND
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Appeal No. 2004-1746
Application No. 09/902,403

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APPENDIX

1. In painting a surface using a paint-applying roller, a method of evenly coating said roller with paint preparatory to painting use thereof comprising the steps of:

A. using a tray in a rectangular configuration having disposed therein an inclined paint-receiving surface and at a distal end of said surface walls bounding a paint supply storage well;

B. filling said well with a supply of paint of a viscous nature;

C. dipping a roller having an absorbent external surface into said supply of paint;

D. using a screen with porosity and of metal construction material having edges bounding said porosity thereof delimiting openings therethrough;

E. placing said screen on top of and in contact with said inclined paint-receiving surface so as to have areas of said paint-receiving surface align with cooperating screen openings and serve as closures thereof to provide plural paint-retained sites in said surface;

F. urging said roller with said viscous paint applied to said absorbent external surface thereof in preliminary alternating movement along said screen to cause retained deposits of said viscous paint at said sites in said screen to provide temporary adhesive attachment at an interface of said roller with said retained deposits of said viscous paint;

G. urging said roller in subsequent alternating movement relative to said screen in said operative position thereof upon said inclined paint-receiving surface effective to release said roller from said temporary attachment thereof to said retained deposits of said viscous paint and permitting rotation of said roller; and

Appeal No. 2004-1746
Application No. 09/902,403

H. projecting during said alternating movement said roller external surface into said porosity openings to cause rotation thereof and to transfer paint thereonto;

whereby said roller rotation and paint transfer contribute to evenly applying a coat of paint to said roller external surface.