

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte JEFFERY W. WALKER and J. PATRICK EPLING

Appeal No. 2005-0335
Application No. 09/569,645

HEARD: FEBRUARY 8, 2005

Before MCQUADE, NASE and BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-4, 7, 10, 13, 14 and 19. Claims 5, 6, 9, 11, 12 and 15-18, the only other claims pending in this application, stand withdrawn from consideration as not being directed to elected species. Claims 8 and 20-24 have been canceled.

We REVERSE.

BACKGROUND

The appellants' invention relates generally to coating with liquid spraying and more particularly to printing with ink that requires an activator and, even more particularly, to transfer printing systems (specification, page 1). A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

The examiner relied upon the following prior art references in rejecting the appealed claims:

Hurst	3,604,434	Sep. 14, 1971
Burgess et al. (Burgess)	3,693,899	Sep. 26, 1972

Appellants' admitted prior art (AAPA) on pages 1 and 2 of the present specification

The following rejections are before us for review.

Claims 1-4, 10, 13, 14 and 19 stand rejected under 35 U.S.C. § 103 as being unpatentable over the AAPA in view of Hurst.

Claim 7 stands rejected under 35 U.S.C. § 103 as being unpatentable over the AAPA in view of Hurst and Burgess.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer (mailed December 24, 2003) for the examiner's complete reasoning in support of the rejections and to the brief (filed October 1, 2003) and reply brief (filed February 23, 2004) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, to the declaration of Jeffrey W. Walker filed June 30, 2003 and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

The AAPA, as described in the last paragraph on page 1 of appellants' specification is as follows:

Liquid solvent activator has been applied to ink images in dip transfer printing with hand held sprayers and with spray nozzles carried on a bar which extends across the top of a dipping tank. The bar carrying the spray nozzles travels back and forth along the length of the bath. The bar is carried on wheels at each end of the bar. The wheels ride along both sides of the bath on tracks. The wheels of such an applicator sometimes bind and slow or even stop the applicator. As a result, the applicator applies liquid activator nonuniformly and the resulting coating is nonuniform.

The AAPA lacks a cantilever comprising a mounting member and a projecting member extending from the mounting member to a distal end, with an activator sprayer mounted to the projecting member, as called for in independent claims 1 and 19. To overcome this deficiency, the examiner relies on the additional teachings of Hurst, which discloses a touch-free car wash comprising an L-shaped spray manifold 37 attached to a carriage movable along a track 24 that surrounds a portion of the periphery of the car, so that the spray manifold borne by the carriage projects spray

against the desired portions of the car as the carriage traverses the track. One of the improvements in Hurst's apparatus is that, since the carriage does not move in a continuous encircling path, but rather is halted and reversed by stop means 31 at each end 27, 28 of the track, swivel structures need not be used for the electrical and liquid connections, thereby simplifying the structure and enhancing the trouble-free performance of the apparatus (column 1, lines 68-75). According to Hurst, the disclosed structure is an improvement over prior carwash devices comprising either a spray arch which passes longitudinally over the vehicle, wherein carriage overruns were a problem, or a spray carriage which moves along an oblong track, both of which experienced problems in achieving effective cleaning action in the more difficult to clean portions of the car without wasting too much liquid on the more easily cleaned areas (column 1, lines 48-52).

According to the examiner, it would have been obvious, in view of the teachings of Hurst, to provide the AAPA printing apparatus with a cantilever liquid spray bar being reciprocated back and forth on a track via a carriage "so as to achieve greater reliability and economy of the operation" (answer, page 3). Appellants argue, first, that Hurst is not analogous art to appellants' invention and, second, that, even assuming Hurst is analogous art, it is so far afield from printing that there is no suggestion to apply any technology in Hurst to a printing system (brief, page 9). We agree with appellants' second argument.

While it is true that Hurst's cantilever sprayer arrangement is considered by Hurst to be an improvement over a longitudinally moving arch sprayer apparatus, the problems addressed by Hurst were carriage overruns which led to problems with the power and liquid supply lines and disturbance of the timing of the changes in spray liquid and spray pattern (col. 2, lines 4-16). There is no indication in Hurst that wheel binding or nonuniform spraying was a problem and, likewise, no evidence that the problems solved by Hurst in the arch sprayer type car washing devices exist in the AAPA printing system. The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification. See In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783-84 (Fed. Cir. 1992); In re Mills, 916 F.2d 680, 682, 16 USPQ2d 1430, 1432 (Fed. Cir. 1990); In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

Finding no suggestion in the teachings of the AAPA and Hurst to modify the AAPA apparatus to provide a cantilever arrangement so as to establish a prima facie case of obviousness of the subject matter of claims 1 and 19, we cannot sustain the examiner's rejection of these claims or dependent claims 2-4, 10, 13 and 14 as being unpatentable over the AAPA in view of Hurst.¹

The examiner's application of Burgess for its teaching of a pneumatic drive provides no cure for the above-discussed deficiency of the combination of the AAPA

¹ It is thus unnecessary for us to discuss the Walker declaration in any detail herein.

and Hurst. We thus also cannot sustain the rejection of claim 7 as being unpatentable over the AAPA in view of Hurst and Burgess.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1-4, 7, 10, 13, 14 and 19 under 35 U.S.C. § 103 is reversed.

REVERSED

JOHN P. MCQUADE)	
Administrative Patent Judge)	
)	
)	
)	
)	
)	BOARD OF PATENT
JEFFREY V. NASE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
JENNIFER D. BAHR)	
Administrative Patent Judge)	

Appeal No. 2005-0335
Application No. 09/569,645

Page 7

ALSTOM POWER INC.
INTELLECTUAL PROPERTY LAW DEPT.
P.O. BOX 500
WINDSOR, CT 06095