

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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 KEVIN FRANCIS ALBERT and DAVID CHARLES BURKE

Appeal No. 2005-1348
Application No. 09/534,466

ON BRIEF

Before KRASS, LEVY and SAADAT, Administrative Patent Judges.
KRASS, Administrative Patent Judge.

Decision On Appeal

This is a decision on appeal from the final rejection of claims 1-11, and 13-17.

The invention pertains to printing press webs. In particular, the tension of the web is controlled by increasing an infeed tension in response to a signal indicating a change to a printing mode from a white web mode and by decreasing the infeed

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tension in response to a further signal indicating a change from the printing mode to the white web mode.

Representative independent claim 1 is reproduced as follows:

1. A method for controlling tension in a web of a printing press, the printing press including an infeed, printing units and a folder, the method comprising the steps of:

increasing an infeed tension in the web between the infeed and the printing units in response to a signal indicating a change to a printing mode from a white web mode; and

decreasing the infeed tension in the web in response to a further signal indicating a change from the printing mode to the white web mode.

The examiner relies on the following references:

Huth	4,838,498	Jun. 13, 1989
Jurkewitz et al. (Jurkewitz)	5,996,492	Dec. 7, 1999
Sainio et al. (Sainio)	6,085,956	Jul. 11, 2000

(filed Aug. 4, 1998)

Claims 1, 2, 6, 10, 11, and 14 stand rejected under 35 U.S.C. § 102(e) as anticipated by Jurkewitz.

Claims 1, 13, and 15-17 stand rejected under 35 U.S.C. § 102(b) as anticipated by Huth.

Claims 3-5, 8, and 9 stand rejected under 35 U.S.C. § 103 as unpatentable over Jurkewitz.

Claim 7 stands rejected under 35 U.S.C. § 103 as unpatentable over Jurkewitz in view of Sainio.

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Reference is made to the briefs and answer for the respective positions of appellants and the examiner.

OPINION

A claim is anticipated only when a single prior art reference expressly or inherently discloses each and every element or step thereof. Constant v. Advanced Micro-Devices Inc., 848 F.2d 1560, 1570, 7 USPQ2d 1057, 1064 (Fed. Cir. 1988); RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). If the examiner presents a reasonable basis for alleging inherency, the burden shifts to appellants to come forward, if they can, with evidence to the contrary. In re King, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986); In re Ludtke, 441 F.2d 660, 664, 169 USPQ 563, 566-67 (CCPA 1971); In re Swinehart, 439 F.2d 210, 213, 169 USPQ 226, 229 (CCPA 1971).

In the instant case, with regard to Jurkewitz, the examiner contends that Jurkewitz increases and decreases the infeed tension of the web in response to a signal from the web speed measuring device 32 indicating the printing press operating mode based on press speed. The examiner's reasoning is set forth at pages 3-4 of the answer:

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As shown in Fig. 2 of Jurkewitz..., when the printing press is run up to operating speed from S_0 to S_1 , the tension P in the web remains at a low steady P_1 and when the printing press speed goes beyond S_1 , (mode change from white web mode to a printing mode) the tension P in the web starts to increase as indicated by arrow 38a. When the printing press speed decreases from S_2 to S_0 (from printing mode to white web mode) as indicated by leftward arrow 38b, the tension P in the web starts to decrease as indicated by a vertical down arrow 38b upon reaching speed S_0 . Since the web moving under a non-printing condition is defined as a white web by the present application, the web speed S_0 in the Jurkewitz patent during which the printing press is stopped or running at a very slight web speed while no printing is taking place qualifies as a white web mode.

Thus, it is clear that the examiner is relying on Jurkewitz's low or no speed value as being equivalent to the claimed white web mode.

We refer to the instant specification for a definition of "white web." At page 1, we find a description of the web press running in a print and a non-print mode (lines 17-23), and a definition at lines 23-24: "The web in this non-printing condition is known as a white web, since ink is not applied to the web."

Accordingly, a white web condition has little, if anything, to do with web speed. Rather, a white web condition is determined when there is no ink applied to the web.

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The examiner contends that, in Jurkewitz, at the end of a printing job when the web is running at a very slight speed, before it stops, printing does not take place and the web tension is lowered. The examiner further asserts, at page 7 of the answer, that it is clear, in Jurkewitz, that

printing takes place when the web reaches speed S_1 . During the web run up period before it reaches speed S_1 from S_0 , the web is running through the press but is not being printed. Therefore, when the web is running through the press from speeds S_0 to S_1 or after the printing operation from S_1 to S_0 , the printing press is in a white web mode since printing does not take place.

Appellants argue that the increase in tension in the instant invention is independent of press speed and that while Jurkewitz may teach increasing and decreasing infeed tension, it teaches these changes in tension as being responsive to speed. In contrast, the instant claims require the infeed tension to be increased and decreased responsive to a signal indicating a change to/from a printing mode from/to a white web mode.

We find for appellants.

In reviewing the reference, as well as the arguments of appellants and the examiner, contrary to the examiner's position, we find nothing in Jurkewitz indicating or suggesting that the printing press is not printing at very low speeds, e.g., near S_0 .

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The examiner's assertion that during the run up to operating speed from S_0 to S_1 , Jurkewitz's press is in a white web mode since printing does not take place, is pure speculation since Jurkewitz indicates no such thing. The examiner has not, and cannot, point to any portion of Jurkewitz indicating that printing does not take place during this run up to operating speed. While it might appear reasonable, at first, to assume this, since one might expect printing operations to begin after operating speed is obtained, appellants have offered more than enough evidence within Jurkewitz to nullify any such assumption. For example, while Jurkewitz appears to change modes based on web speed, there is no indication therein that changes in infeed tension occur as a result of a signal indicating a change of mode from/to a printing mode to/from a white web mode. Further, as indicated by appellants, at page 2 of the reply brief, the pressure P provided to the web in Jurkewitz allows printing and the web in Jurkewitz can be printed between S_0 and S_1 . Further, as pointed out by appellants, at page 2 of the reply brief, it would appear reasonable to assume that there is a printing operation occurring in Jurkewitz during this time period because the reference indicates that the value for S_1 is in terms of

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copies per hour, suggesting that there is printing occurring (see column 4, lines 22-23).

We also agree with appellants that if the increase in web tension in Jurkewitz is what indicates the mode change, as asserted by the examiner, mapping the signal P in the reference, then the increase in web tension cannot be "in response to a signal indicating a change in printing mode from a white web mode," as recited in instant claim 1. This is so because the increasing of the web tension **is** the signal (see page 2 of the reply brief).

Thus, when we weigh the arguments of both sides, appellants' arguments appear to be based more on evidence provided by the reference while the examiner's arguments appear to us to be more speculative. Since a rejection under 35 U.S.C. § 102(e) cannot be based on speculation, we will not sustain the rejection of claim 1 under 35 U.S.C. § 102(e) over Jurkewitz. Nor will we sustain the rejection of claims 2 and 14, dependent on claim 1, under 35 U.S.C. § 102(e).

Since independent claim 6 has similar language, we also will not sustain the rejection of claim 6, or of claims 10 and 11, dependent thereon, under 35 U.S.C. § 102(e).

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We also will not sustain the rejection of claims 3-5, 8, and 9 under 35 U.S.C. § 103 over Jurkewitz because of the deficiencies noted supra with regard to the increase and decrease of the infeed tension responsive to a signal indicating a change in the printing mode from/to a white web mode. The examiner has not shown that this would have been obvious in view of Jurkewitz.

Similarly, we will not sustain the rejection of claim 7 under 35 U.S.C. § 103 because the added reference to Sainio does not provide for the deficiencies of Jurkewitz regarding the lack of an under 35 U.S.C. § 103 over Jurkewitz because of the deficiencies noted supra with regard to the increase and decrease of the infeed tension responsive to a signal indicating a change in the printing mode from/to a white web mode.

We now turn to the rejection of claims 1, 13, and 15-17 under 35 U.S.C. § 102(b) as anticipated by Huth.

At the outset, we note that although the statement of rejection includes claims 15-17, it does not include claim 14 from which claim 15 depends. Since dependent claim 15, by definition, includes the limitations of claim 14 from which it depends, we will presume that the examiner intended to reject claims 1 and 13-17 under 35 U.S.C. § 102(b) over Huth.

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The examiner contends that Huth discloses the instant claimed subject matter, with the mode change signal coming from the input by an operator, through operator means 36, in the form of push buttons or levers and control means 35. The examiner explains that the white web mode of the instant invention is equivalent to the webbing mode or the reverse mode in Huth since, in both of these modes, no printing is taking place while the web is being fed. Specifically, the examiner points to column 3, lines 26-43, of Huth for a disclosure of slack removal (reverse) and normal running (printing) operation, indicative of different tensions in different modes.

In our view, the examiner reasonably explains that when a new roll of paper is to be installed in Huth, the web needs to be webbed-up through the printing press to the printing unit and any slack removed by reversing the web feed. Such preparatory operations are carried out at a relatively low speed and tension. This is borne out by column 3, lines 26-31, of Huth. Then, when the operator presses the run button, this generates a signal indicating a change to a printing mode from a white web mode, and the printing press starts to run at a greater web speed and tension to carry out the printing operation. Thus, the infeed tension is increased in response to a signal indicating a change

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to a printing mode from a white web mode. Then, when a new roll of paper is to be installed, at the end of a printing job, the operator presses the webbing (37) and reverse (38) buttons to generate a signal indicating a change to a white web mode from a printing mode, lowering the tension to prepare the web for printing.

In view of this rather detailed and reasonable explanation, appellants point to no error in the examiner's rationale; appellants do not dispute any of the examiner's comments. Instead, appellants merely state, with no support, that "there is absolutely no teaching or disclosure in Huth of increasing or decreasing an infeed tension in response to a signal indicating a change from a printing mode to a white web mode" (principal brief-page 7) and that there is "absolutely no indication or teaching that the tension is any different whether the web is printing or in a white web mode. Huth is merely similar to the prior art Fig. 1 described in the present invention" (reply brief-page 3). Yet, appellants offer no support for this allegation, especially unconvincing in light of Huth's disclosure, at column 3, lines 26-31, that slack (lesser tension) is removed and that the press is "subsequently run at a speed

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and tension which are greater than those used in all of the preceding operations."

Since appellants have not overcome the examiner's prima facie case of anticipation, by either argument or objective evidence, we will sustain the rejection of claims 1 and 13-17 under 35 U.S.C. § 102(b) over Huth.

CONCLUSION

We have sustained the rejection of claims 1 and 13-17 under 35 U.S.C. § 102(b) over Huth, but we have not sustained the rejection of claims 1, 2, 6, 10, 11, and 14 under 35 U.S.C. § 102(e) over Jurkewitz and we have not sustained the rejection of claims 3-5, and 7-9 under 35 U.S.C. § 103 over Jurkewitz or Jurkewitz and Sainio.

Accordingly, the examiner's decision is affirmed-in-part.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

ERROL A. KRASS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
STUART S. LEVY)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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