

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MAKOTO TABATE

Appeal No. 2005-2488
Application 10/150,497¹

ON BRIEF

Before PAK, KRATZ, and TIMM, 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 claims 1 through 6, which are all of the claims pending in the above-identified application.

¹ Application for patent filed on May 20, 2002.

Appeal No. 2005-2488
Application No. 10/150,497

APPEALED SUBJECT MATTER

Claim 1 is representative of the subject matter on appeal and reads as follows:

1. A probe for an infrared clinical thermometer which detects infrared rays radiated from an ear drum to measure a body temperature comprising:

a cylindrical trunk section comprising a rigid member for insertion into an external ear canal; and

a thin film section which has infrared permeability for sealing the distal end of the cylindrical trunk section,

wherein the cylindrical trunk section and the thin film section are integrally molded by the same resin material such that the outer peripheral surfaces of the cylindrical trunk section and the thin film section are smoothly connected to each other.

PRIOR ART REFERENCES

The prior art references relied upon by the examiner in support of the Section 103 rejections before us are:

Meyst et al. (Meyst)	4,911,559	Mar. 27, 1990
O'Hara et al.(O'Hara)	5,179,936	Jan. 19, 1993
Beerwerth et al.(Beerwerth)	6,195,581	Feb. 27, 2001

REJECTION

The appealed claims stand rejected as follows:

1. Claims 1, 2, 5 and 6 under 35 U.S.C. § 103(a) as

Appeal No. 2005-2488
Application No. 10/150,497

unpatentable over the combined disclosures of Beerwerth and O'Hara; and

2. Claims 3 and 4 under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Beerwerth, O'Hara and Meyst.

OPINION

We have carefully reviewed the claims, specification and 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 not well-founded. Accordingly, we reverse the examiner's Sections 103 rejections. Our reasons for these determinations follow.

As is apparent from the examiner's finding at page 3 of the Answer, Beerwerth teaches a probe for an infrared clinical thermometer having a plastic outer wall 102 corresponding to the claimed cylindrical trunk section and a thin film window 103 corresponding to the claimed thin film section. See also Beerwerth, columns 6 and 7, together Beerwerth, Figure 1. According to column 6, lines 49-55, of Beerwerth, the window 103 can be made with various materials, including polyethylene, polypropylene or copolymers thereof. Consistent with the teachings of Beerwerth, O'Hara teaches using both the outer wall

(the claimed cylindrical trunk) and the window (the claimed thin film section) of an infrared clinical thermometer probe, which can be made from the same plastic or resin materials, such as polyethylene and polypropylene. See O'Hara, column 4, lines 48-53 and column 5, lines 12-15 and 35-40.

The dispositive question is, therefore, whether the examiner has correctly determined that Beerworth teaches "the cylindrical trunk section and the thin film section [which] are integrally molded by the same resin material such that the outer peripheral surfaces of the cylindrical trunk section and the thin film section are smoothly connected to each other (emphasis ours)" as recited in claim 1.² On this record, we answer this question in the negative.

According to page 5 of the specification, the phrase "'outer peripheral surfaces are smoothly connected to each other' means that a step or a seam is not formed in the connection portion between the outer peripheral surface of the trunk section and the outer peripheral surface of the thin film section." Moreover, in reference to Figure 4 which shows a single piece structure defining cylindrical trunk and thin film sections (without any

² The examiner relies on the disclosure of Meyst to show only the features recited in claims 3 and 4.

seam), the specification states that such sections are "integrally molded by the same resin material." See page 12. Thus, notwithstanding the examiner's suggested interpretation at pages 6 and 7 of the Answer to the contrary, we concur with the appellant that the claimed probe is required to have a single piece structure defining the claimed cylindrical trunk and thin film sections as shown by Figure 4. See the Reply Brief in its entirety for the appellant's remark. This single piece (seamless) structure, of course, is not taught by Beerwerth or O'Hara. As correctly pointed out by the appellant (e.g., the Brief, page 4), both Beerwerth, as shown by its Figure 1, and O'Hara, as shown by Figure 2, teach at least a seam between the window and the outer wall of the probe (see also Beerwerth, column 6, lines 40-42 and column 7, lines 1-6 in reference to Figure 1 and O'Hara, column 4, line 48 to column 5, line 6 in reference to Figure 2).³ Thus, we concur with the appellant that the examiner has not established a prima facie case of obviousness regarding the claimed subject matter within the meaning of Section 103.

³ The examiner has not asserted that Beerwerth and O'Hara would have suggested a single piece structure defining cylindrical trunk and thin film sections. See the Answer in its entirety.

Appeal No. 2005-2488
Application No. 10/150,497

CONCLUSION

In view of the foregoing, we reverse the examiner's decision rejecting claims 1 through 6 under 35 U.S.C. § 103(a).

REVERSED

Chung K. Pak)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
Peter F. Kratz)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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Appeal No. 2005-2488
Application No. 10/150,497

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