

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.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

Appeal No. 2005-2552
Application No. 10/418,528

ON BRIEF

Before KIMLIN, PAK and OWENS, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-11 and 13. Claim 1 is illustrative:

1. An apparatus for modulating fluid flow comprising a first flow path, a second flow path generally defining a longitudinal axis that extends transverse to the first flow path, the second flow path having a fluid inlet that includes at least one aperture having a fixed cross-sectional flow area which opens onto the first flow path, whereby a portion of fluid flowing along the first flow path is diverted into the second flow path, the amount of fluid diverted being variable by rotating the fluid inlet about the axis into multiple rotated positions between an

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upstream position and a downstream position, wherein the entire cross-sectional area of the fluid inlet is in continuous fluid communication with the first flow path during rotation of the fluid inlet about the axis.

The examiner relies upon the following references in the rejection of the appealed claims:

Helme	2,548,788	Apr. 10, 1951
De Young	2,811,982	Nov. 5, 1957

Appellants' claimed invention is directed to an apparatus for modulating fluid flow. The apparatus comprises a first flow path and a second flow path that diverts fluid from the first flow path. The second flow path is transverse to the first flow path and has a fluid inlet which opens into, and thereby controls, flow through the first path. The amount of fluid diverted from the first flow path can be varied by rotating the fluid inlet of the second flow path about its longitudinal axis between an upstream and a downstream position.

Appealed claims 1-7, 9-11 and 13 stand rejected under 35 U.S.C. § 102(b) as being anticipated by De Young. Claim 8 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over De Young in view of Helme.

In accordance with the grouping of claims set forth at page 5 of the principal brief, claims 1-7, 9-11 and 13 stand or

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fall together. Appellants provide a separate argument for claim 8.

We have thoroughly reviewed each of appellants' arguments for patentability. However, we are in complete agreement with the examiner's reasoned analysis and application of the prior art, as well as his disposition of the arguments raised by appellants. Accordingly, we will sustain the examiner's rejections for the reasons set forth in the Answer, and we add the following primarily for emphasis.

We consider first the examiner's § 102 rejection over De Young. De Young, like appellants, describes an apparatus for modulating fluid flow through a first flow path by use of a second flow path which diverts fluid from the first path. A principal argument of appellants is that "De Young fails to disclose any other rotated positions of holes 38, 40 besides upstream or downstream relative to the direction of flow in the main line 12" (page 8 of principal brief, second paragraph). However, since De Young admittedly discloses that the inlets to the second flow path can face upstream or downstream to control flow through the first path, we agree with the examiner that the apparatus of De Young is capable of rotating the inlet to the

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second flow path into multiple rotated positions. As explained by the examiner, appellants fail to "point out any structural detail of the claimed invention missing from the reference to De Young but rather relies on the functional limitations of the claim for distinction" (page 7 of Answer, penultimate paragraph). Furthermore, appellants have not set forth an argument that the apparatus of De Young is incapable of rotating the fluid inlet into multiple rotated positions. Moreover, and most significantly, the claim language on appeal does not require anything more than the fluid inlet being rotated between the upstream and downstream positions. In other words, the recited "multiple rotated positions" is met by De Young's rotation between the upstream and downstream positions, and vice versa. Moreover, we find that De Young fairly describes to one of ordinary skill in the art the movement of the inlet to various positions between the upstream and downstream positions in order to regulate flow in the first path.

Appellants also contend that De Young "fails to disclose an aperture in the feed lines 14 having 'a fixed cross-sectional area' as required by claims 1 and 13" (page 9 of principal brief, last paragraph). However, the examiner correctly explains that

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once the inlet holes of De Young are set, as with appellants' fluid inlet, De Young's inlet to the second flow path has the recited fixed cross-sectional area.

As for the claim 8 recitation that "the fluid inlet comprises two apertures circumferentially spaced about the conduit," we fully concur with the examiner that Helme evidences the obviousness of providing two such apertures. While appellants maintain that the openings of Helme "are not shown as rotatable between upstream and downstream positions" (page 10 of principal brief, second paragraph), the examiner appropriately points out that De Young is cited for disclosing a rotatable inlet. Appellants have not addressed the thrust of the examiner's rejection concerning the obviousness of modifying the rotatable inlet of De Young in accordance with the disclosure of Helm. We also note that appellants base no argument upon objective evidence of nonobviousness, such as unexpected results.

In conclusion, based on the foregoing and the reasons well stated by the examiner, the examiner's decision rejecting the appealed claims is affirmed.

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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) (effective Sep. 13, 2004; 69 Fed. Reg. 49960 (Aug. 12, 2004); 1286 Off. Gaz. Pat. Office 21 (Sep. 7, 2004)).

AFFIRMED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
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CHUNG K. PAK)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
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TERRY J. OWENS)	
Administrative Patent Judge)	

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