

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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

Appeal No. 2005-1982
Application No. 10/155,006

ON BRIEF

Before KIMLIN, OWENS, and TIMM, *Administrative Patent Judges*.
TIMM, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal involves claims 1-9, all the claims pending in the application. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 134.

INTRODUCTION

The claims are directed to a dryer for car mats. According to the specification, the dryer includes pairs of rollers to squeeze water from a wet floor mat. After passing through the rollers, the mat exits the back of the dryer (specification, ¶ 11). Claim 1 is illustrative of the subject matter on appeal:

1. A dryer for car mats comprising:

a housing, said housing having a front, a back, a top, a bottom, a left side and a right side,

an inlet in said front of said housing,

an outlet in said back of said housing, and

a first set of rollers in said housing, said first set of rollers comprising a top roller and a bottom roller.

The Examiner rejects the claims under 35 U.S.C. § 103(a). As evidence of unpatentability, the Examiner relies upon the following prior art references:

Smith	US 4,104,755	Aug. 8, 1978
Ingram	US 4,968,166	Nov. 6, 1990
Ueda et al. (Ueda)	US 5,217,561	Jun. 8, 1993
Foote	US 5,511,471	Apr. 30, 1996
Spitko	US 6,026,884	Feb. 22, 2000

To reject claims 1-2, the Examiner relied upon Foote alone. To reject claims 3-4, the Examiner adds Spitko. To reject claims 5-6, the Examiner adds Ueda. To reject claim 7, the Examiner adds Ingram. To rejection claims 1, 8, and 9, the Examiner relies upon Smith.

Appellant states that claims 1-7 stand or fall together (Brief, p. 2) and there are no separate arguments directed to dependent claims 2-7. Appellant also states that claims 8 and 9 stand or fall together. To represent the issues on appeal, we select claims 1 and 9.

Considering the issues on appeal as presented by Appellant, we find no reversible error on the part of the Examiner. Consequently, we affirm. Our reasons follow.

OPINION

Turning first to the rejection of representative claim 1 over Foote, we note that the Examiner has identified in Foote each and every structure recited in the claim (Answer, p. 3). The sole difference between the dryer of Foote and the claimed dryer is the orientation of the housing. In the claimed dryer housing, the inlet is in the front and the outlet is in the back such that the mat is fed through the dryer horizontally. In the housing of Foote, the inlet is in the top and the outlet in the bottom such that the mat is fed through the housing vertically. Turning the dryer of Foote on one of its sides results in the claimed front to back inlet/outlet arrangement or horizontal orientation. We conclude that the Examiner has established a case of prima facie obviousness based on the reasoning that the horizontal, instead of vertical, orientation of the dryer would have been a minor matter of design choice as both orientations would serve the

intended purpose of allowing the conveyance of the mat through the dryer. See *In re Kuhle*, 526 F.2d 553, 555, 188 USPQ 7, 8-9 (CCPA 1975)(There being no novel or unexpected result, placement of an electrical contact in a battery found to be an obvious matter of design choice within the skill of the art); *In re Rice*, 341 F.2d 309, 314, 144 USPQ 476, 480 (CCPA 1965)(concluding that minor differences between the prior art and a claimed device may be a matter of design choice absent evidence to the contrary).

Appellant argues that the Examiner's conclusion is unsubstantiated because the Examiner does not rely upon a teaching combinable with the disclosure of Foote (Brief, p. 2). Appellant also argues that the vertical orientation of Foote has a disadvantage over the claimed horizontal orientation because the vertical orientation of Foote allows water that is squeezed from the mat by the rollers to be reabsorbed by the mat because the water and the mat travel in the same direction. According to Appellant, this disadvantage is not present in the claimed invention because water squeezed from the mat falls downwardly as the mat travels horizontally (Brief, pp. 2-3).

We find the Appellant's arguments insufficient for two reasons.

First, Appellant has not cited any objective evidence showing that, indeed, there is an improvement in drying or that such a result would have been unexpected to one of ordinary skill in the art. *Kuhle* and *Rice* indicate that the burden is on Appellant to

present such evidence. Attorney argument in the brief does not suffice. *In re Lange*, 644 F.2d 856, 862-63, 209 USPQ 288, 293 (CCPA 1981).

Second, in actuality, there is no structural difference between the dryer of Foote and that claimed. The so called “difference” is merely a change in the orientation of the dryer of Foote by rotating it 90°. Once the dryer of Foote is so rotated, the side 14 with the inlet becomes the front of the housing, the bottom 16 with the outlet becomes the back of the housing, and the rollers are in the required top and bottom arrangement. The structure is the same, only the orientation changes. That the dryer is described in Foote as in a different orientation during use is of no matter: How an apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the structural limitations of what is claimed. *Ex parte Masham*, 2 USPQ2d 1647, 1648 (Bd. Pat. App. & Int. 1987); see also *Schreiber*, 128 F.3d at 1477, 44 USPQ2d at 1431 and cases cited therein. We note that lack of novelty is the ultimate or epitome of obviousness. *In re Fracalossi*, 681 F.2d 792, 794, 215 USPQ 569, 571 (CCPA 1982).

Turning to the rejection of claim 9 over Smith, the Examiner finds all the structures of the claim in the apparatus of Smith, the difference merely lying, again, in the orientation of the apparatus (Answer, p. 5). The Examiner has established a prima facie case of obviousness.

Appellant again argues that there is no teaching of a horizontal orientation and no suggestion to modify the apparatus of Smith. For the reasons stated above, we are not persuaded by this argument.

Appellant further argues that the roller 83 and brush 54 of Smith “do not squeeze water from the mat as the brush 54 is designed for a scrubbing action.” (Brief, p. 3). But the claim merely requires the presence of a first set of rollers comprising a top roller and a bottom roller. The Examiner finds that brush 54 and roller 83 are rollers within the meaning of the claim. Appellant does not dispute that finding. Moreover, brush 54 serves as a roller in that it acts along with roller 83 to convey the mat through the apparatus. Given that there is no requirement stated in the claim that the rollers be of a structure capable of squeezing water from the mat, we are not persuaded by Appellant’s argument.

For the above reasons, we find no reversible error in the Examiner’s conclusion of obviousness with respect to the subject matter of claims 1-9.

CONCLUSION

To summarize, the decision of the Examiner to reject claims 1-9 under 35 U.S.C. § 103(a) is affirmed.

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

AFFIRMED

EDWARD C. KIMLIN
Administrative Patent Judge

TERRY J. OWENS
Administrative Patent Judge

CATHERINE TIMM
Administrative Patent Judge

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