

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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

Appeal No. 2005-2705
Application No. 08/978,055

HEARD: DECEMBER 13, 2005

Before FRANKFORT, 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, 12, 13, 19 and 21-24, which are all of the claims pending in this application.¹

BACKGROUND

¹ Claim 21 was amended subsequent to the final rejection (see amendment filed May 13, 2004) to correct a minor informality. Although the advisory action mailed May 24, 2004 does not indicate whether this amendment was entered, the examiner's agreement on page 2 of the answer (mailed October 20, 2004) with the appellant's statement on page 2 of the brief (filed July 28, 2004) that the amendment has been entered indicates the examiner's approval of entry of the amendment.

The appellant's invention relates to a method of inerting a vat containing a consumable liquid such as wine, wherein the inerting gas is injected into the vat below the upper wall of the vat and above but close to the free surface of the liquid (specification, page 1). A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

The Applied Prior Art

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

Lindberg 3,814,147 Jun. 4, 1974
Spencer WO 93/20181 Oct. 14, 1993

Lewis, "Blanketing in Storage Tanks," The Australian Grapegrower & Winemaker, pp. 96-99, April 1990.

Westrick, "Managing Oxygen in White Wine Production," Practical Winery & Vineyard, pp. 49-52, May/June 1996.

Allen, "Gas Diffuser Proves Beneficial," Winepress, p. 14, June 1996.

The Rejections

The following rejections are before us for review.

Claims 1-3, 12, 13 and 21-24 stand rejected under 35 U.S.C. § 103 as being unpatentable over Lewis or Westrick in view of Lindberg.

Claims 4 and 13 stand rejected under 35 U.S.C. § 103 as being unpatentable over Lewis or Westrick in view of Lindberg and further in view of Spencer.

Claim 19 stands rejected under 35 U.S.C. § 103 as being unpatentable over Lewis or Westrick in view of Allen.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the answer for the examiner's complete reasoning in support of the rejections and to the brief and reply brief (filed December 3, 2004) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

Lewis discloses a method of inerting a wine storage tank by injecting an inerting gas, such as carbon dioxide, by lowering a gas diffuser to the liquid surface. Westrick discloses a method of inerting a wine tank by layering argon onto the surface of the tank by lowering a gassing bell slowly to the bottom of the tank, filling the tank and then gassing any head space left by applying argon slowly to the surface of the wine (presumably by lowering a gassing bell to the surface of the wine). Neither of Lewis and Westrick discloses any of the details of the venting or purging of gas from the wine tank or vat and thus neither fully meets the limitations of appellant's independent claims 1 and 21. In particular, neither reference meets the limitations directed to the single vat opening and a tubular connector fitted into the opening, with the connector having two

passages comprising an inlet for the inerting gas and an outlet for the excess gas and the side wall of the connector being provided with a purge orifice.

In order to fill the gaps in the disclosures of Lewis and Westrick, the examiner relies on the teachings of Lindberg directed to a fluid filling system for filling a tank, such as a stationary fuel tank, without disturbing the sediment collected at the bottom of the tank. Lindberg discloses passing a filling pipe 12 into entrance conduit 11 of the tank, the lower portion of the pipe 12 being provided with a series of transverse slots 36 through which the fuel or other liquid with which the tank is to be filled exits from the filling pipe. A slideable sealing fixture 17 is mounted near the upper end of the filling pipe for partially sealing the upper edge of the entrance conduit 11. A closure valve 24 is formed in the sidewall of the fixture 17. The closure valve 24 is normally closed at the start of the filling operation and will remain closed if the tank being filled has a vent of its own. If the tank has no vent, or if its vent is closed, the pressure within the tank will open the valve 24 and permit air to escape.

Like the examiner, we appreciate that the teachings of Lindberg are not directed exclusively to stationary fuel tanks. Nevertheless, as they are directed to the filling of the tank and not to inerting of a tank or introduction of inerting gas into the tank, they would have provided no suggestion to one of ordinary skill in the wine making art to modify the structure of either Lewis or Westrick for inerting wine tanks so as to establish a *prima facie* case of obviousness of the subject matter of claims 1 and 21. Thus, we cannot sustain the rejection of independent claims 1 and 21, and claims 2, 3, 12, 13 and

22-24 depending therefrom, as being unpatentable over Lewis or Westrick in view of Lindberg.

The examiner's application of Spencer provides no cure for the deficiency of the combination of Lewis or Westrick in view of Lindberg discussed above. It thus follows that we also cannot sustain the rejection of dependent claims 4 and 13 as being unpatentable over Lewis or Westrick in view of Lindberg and further in view of Spencer.

In rejecting claim 19, the examiner's position is that it would have been obvious to use a diffuser as taught by Allen in the process of Lewis or Westrick because it reduces the amount of gas usage and, further, that it would have been obvious to modify that diffuser so that the upper and lower disk portions are attached by perforated means as a matter of design choice (answer, page 6). Be that as it may, such a modification would still not result in the subject matter recited in claim 19. Specifically, such combination still does not address the limitations in claim 1, from which claim 19 depends, directed to the single vat opening and a tubular connector fitted into the opening, with the connector having two passages comprising an inlet for the inerting gas and an outlet for the excess gas and the side wall of the connector being provided with a purge orifice.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1-4, 12, 13, 19 and 21-24 under 35 U.S.C. § 103 is reversed.

REVERSED

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