

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

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JOSEF THEURER  
and MANFRED BRUNNINGER

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Appeal No. 2006-0461  
Application 10/457,198

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ON BRIEF

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Before PAK, WARREN and KRATZ, *Administrative Patent Judges*.

WARREN, *Administrative Patent Judge*.

*Decision on Appeal and Opinion*

We have carefully considered the record in this appeal under 35 U.S.C. § 134, and based on our review, find that we cannot sustain the rejection of appealed claim 1, the sole claim in the application, under 35 U.S.C. § 103(a) as being unpatentable over Plasser in view of Bleeker (answer, pages 3-4).

We refer to the answer and to the brief and reply brief for a complete exposition of the positions advanced by the examiner and appellants.

It is well settled that in order to establish a *prima facie* case of obviousness under § 103(a), the examiner must show that some objective teaching, suggestion or motivation in the applied prior art taken as a whole and/or knowledge generally available to one of ordinary skill in this art would have led that person to the claimed invention as a whole, including each and every limitation of the claims arranged as required by the claims, without recourse to the

teachings in appellants' disclosure. *See generally, In re Rouffet*, 149 F.3d 1350, 1358, 47 USPQ2d 1453, 1458 (Fed. Cir. 1998); *Pro-Mold and Tool Co. v. Great Lakes Plastics, Inc.*, 75 F.3d 1568, 1573, 37 USPQ2d 1626, 1629-30 (Fed. Cir. 1996); *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); *In re Fine*, 837 F.2d 1071, 1074-76, 5 USPQ2d 1596, 1598-1600 (Fed. Cir. 1988); *In re Dow Chem. Co.*, 837 F.2d 469, 473, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

In order to review the examiner's application of prior art to claim 1, we must first interpret the language thereof by giving the claim terms the broadest reasonable interpretation in their ordinary usage in context as they would be understood by one of ordinary skill in the art in light of the written description in the specification, including the drawings, unless another meaning is intended by appellants as established in the written description of the specification, and without reading into the claims any limitation or particular embodiment disclosed in the specification. *See, e.g., In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364, 70 USPQ2d 1827, 1830 (Fed. Cir. 2004); *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997); *In re Zletz*, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989). As illustrated by specification **Figs. 1** and **2**, the plain language of the claim specifies a method comprising at least the steps of a) screening in unit **8** any encrusted ballast **6** to separate any manner and amount of detritus **13** therefrom; b) washing in any manner in installation **11** the screened ballast with any amount of water **12** while at the same time removing the separated detritus **13** of step a) on a conveyor belt unit **14**; c) clarifying the washing water **12** of step b) in any manner in installation **17** to produce a clarified water portion and any manner of washing water sludge **18**; and d) disposing of the washing water sludge **18** of step c) by moving it to conveyor belt **14** which is removing the separated detritus **13** as specified in step b) for common removal of said separated detritus **13** and the washing water sludge **18** of step c) on the same conveyor belt **14**. We find that the term "sludge" as used by appellants in the written description in the specification (e.g., page 2, first full paragraph) comports with the common dictionary meaning of the term in context, "[s]emisolid material . . . [m]ud, mire, or ooze . . ."<sup>1</sup>

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<sup>1</sup> *See generally, The American Heritage Dictionary Of The English Language* 1639 (4th ed., Boston, Houghton Mifflin Company. 2000); *see also* reply brief, page 2.

We agree with the examiner that claimed method steps a) and b) are satisfied by the apparatus operated according to the method disclosed by Plasser since screened ballast **4** can be washed by water from nozzles **18** in the screening box **9** at the same time that the detritus separated from encrusted ballast **3** is removed by conveyor **12** (page 2, ll. 110-128, and page 3, ll. 1-11, 30-32, and 99-104; **Figs. 1** and **2**). This is because the water striking encrusted ballast **3** falling into the screening box **9** can further wash screened ballast **4** (page 2, ll. 110-123; **Figs. 1**).

However, as appellants point out, while Plasser separates dirty wash water collected in collecting arrangements **21,22** into a clarified clean water portion and washing water “sand” sludge using a water-cleaning device (page 3, ll. 80-90; **Figs. 1**) as required by claimed step c), there is no teaching in Plasser which would have led one of ordinary skill in this art to dispose of the washing water “sand” sludge by moving it to conveyor **12** for common removal with the separated detritus already on that conveyor as required by claimed step d).

We do not find any teaching in Bleeker which would have led one of ordinary skill in the art to modify the apparatus operated according to the method disclosed by Plasser to move the washing water “sand” sludge to conveyor **12** for common removal with the separated detritus as required by claimed step d). Bleeker would have disclosed to this person an apparatus operated according to a method which separates water containing suspended sludge into a clarified water portion and a water sludge portion, wherein the water sludge portion is moved by discharge conveyor **34** into container **35** (cols. 3-4; **FIG. 2**). Thus, as appellants contend, at best, one of ordinary skill in this art would have been led by the combined teachings of Plasser and Bleeker to use the apparatus and method illustrated by Bleeker **FIG. 2** as a water cleaning device to separate the dirty wash water collected in collecting arrangements **21,22** into a clarified clean water portion and washing water “sand” sludge as disclosed by Plasser.

Thus, the combined references taken as a whole would not have resulted in the claimed method encompassed by appealed claim 1 as we interpreted this claim above, *see Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 1050-54, 5 USPQ2d 1434, 1438-41 (Fed. Cir. 1988), and accordingly, in the absence of an established *prima facie* case of obviousness, we reverse the ground of rejection.

The examiner’s decision is reversed.

*Reversed*



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