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 STEFAN LARRSON and DAVID PETER WYON

Appeal No. 2006-1171
Application No. 10/221,059

ON BRIEF

Before FRANKFORT, CRAWFORD and BAHR, Administrative Patent Judges.

BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's rejection of claims 25-36, 39, 40, 43-45 and 48. Claims 37, 38, 41, 42, 46 and 47 stand allowed. No other claims are pending in this application.

We REVERSE.

BACKGROUND

The appellants' invention relates to a bed provided with a suction device for drawing air through the bed and a control system for controlling the suction device to control the temperature of an individual lying on the bed. A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

Applied Prior Art

Davis et al. (Davis)	1,142,876	Jun. 15, 1915
Maddison	2,462,984	Mar. 1, 1949
Yonkers	5,730,120	Mar. 24, 1998
Yamada	5,881,410	Mar. 16, 1999

The Rejections

Claims 25-30, 32, 33, 35, 36, 39, 40, 43, 44 and 48[1] stand rejected under 35 U.S.C. § 103 as being unpatentable over Davis in view of Yamada.

Claims 31 and 34 stand rejected under 35 U.S.C. § 103 as being unpatentable over Davis in view of Yamada and Maddison.

Claim 45 stands rejected under 35 U.S.C. § 103 as being unpatentable over Davis in view of Yamada and Yonkers.

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[1] The examiner's omission of claim 48 in the statement of the rejection in both the final rejection (mailed August 24, 2004) and answer (mailed September 22, 2005) appears to have been an inadvertent oversight. It is clear from the discussion of claim 48 in the explanation of the rejection that claim 48 stands rejected as being unpatentable over Davis in view of Yamada.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding this appeal, we make reference to the examiner's answer for the examiner's complete reasoning in support of the rejections and to the appellants' brief (filed June 30, 2005) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art, and to the respective positions articulated by the appellants and the examiner. For the reasons that follow, we cannot sustain any of the examiner's rejections.

We turn first to the rejection of independent claim 25 as being unpatentable over Davis in view of Yamada. Davis discloses a bed provided with means for cooling, ventilating and disinfecting the bed (p. 1, ll. 11-12). The bed comprises a support 1 upholding a box-like casing 2, with a mattress 10 supported on the casing. Secured to the casing and communicating with the interior of the casing is a flexible tube or pipe 3 to which a pump 4 is connected. The mattress is somewhat narrower than the casing so that spaces 11 exist between the edges of the mattress and deflectors 8 of the casing. Between the deflectors 8 and the mattress 10, the upper wall of the casing is perforated as shown at 12. Alternately or additionally, the mattress may be perforated so that air may be pulled therethrough (p. 1, ll. 93-95). In operation, pump 4 creates suction within the casing causing air to be drawn from above the mattress and through the mattress (in the case of a perforated mattress) through the perforations 12 into the casing and out of the casing by way of pipe 3. The air is discharged

through the outlet 6 of the pump and may be sterilized and delivered outside the building in which the bed is located. According to Davis, "[t]he device tends to create a draft of greater or less strength across the top of the mattress 10, thus promoting ventilation and aiding in regulating the temperature" (p. 1, ll. 82-85).

Davis lacks members for measuring air temperature in immediate proximity to the support surface of the mattress and a control unit for controlling the pump depending on the measured temperature, as called for in independent claim 25. To make up for this deficiency, the examiner turns to Yamada.

Yamada discloses an air mat for a surgical bed. The objective of Yamada's air mat is to maintain the body temperature of a patient in a cold operating room. In order to do this, a carbon heater layer 3 is disposed adjacent the lower side of the air mat 5, which is housed in a bag 6. The air mat 5 comprises a plurality of air cells 1b having closed ends and opened ends. Two air supply pipes 2a and 2b extend from a pump P and are alternately connected to the opened ends such that the same air pressure source is connected to every second air cell 1b. While the first group of air cells is supplied with compressed air, the air pressure in the second group of air cells is released. Compressed air is then supplied also to the second group of air cells. After the second group of air cells is sufficiently pressurized, the pressure in the first group of air cells is released. A thin temperature detecting element 9 is buried in the upper portion of the bag 6 to detect a temperature synthesized from the temperature of a body lying on the bag 6 and a temperature of an air layer disposed thereunder. The temperature detected by detecting element 9 is used in a control circuit to control the heater 3. Yamada

gives no hint or suggestion that the detected temperature is used to control the pump P or otherwise control the flow of compressed air into the air cells 1b.

We find no suggestion in Yamada to modify Davis to provide a temperature detector and control means for controlling the pump 4 of Davis depending on the detected temperature as the examiner proposes (answer, pp. 4 and 8). Given the very contrary objectives of Davis (to suction air away from the mattress surface to decrease temperature at the mattress support surface and remove odors) and Yamada (to supply heated compressed air to air cells supporting a patient in an operating room during an operation to maintain the patient's body temperature in the cold operating room), it is not readily apparent that Yamada would have provided any suggestion to one of ordinary skill in the art to modify the air flow system of Davis. Even assuming that a person of ordinary skill in the art would have found motivation in Yamada to provide temperature sensing means in Davis, we agree with the appellants that the only use such a person would have gleaned from Yamada would have been as feedback for a heating and/or cooling element to control the temperature of the mattress. Such a modification, of course, could not result in the invention recited in claim 25, which calls for a control unit that controls **operation of said suction device** depending upon the measured temperature and controls temperature of air surrounding the individual lying on the bed **in the absence of further heating/cooling means**.

In light of the above, we conclude that the combination of Davis and Yamada is insufficient to establish a *prima facie* case that the subject matter of claim 25 would have been obvious to one of ordinary skill in the art. It is therefore unnecessary for us to discuss the declaration of Stefan Larrson submitted with the appellants' brief. The rejection of claim 25, as

well as claims 26-30, 32, 33, 35, 36, 39, 40, 43, 44 and 48 depending therefrom, is not sustained.

The examiner's application of the additional teachings of Maddison and Yonkers provides no cure for the deficiency of the combination of Davis and Yamada discussed above. It follows that the rejections of claims 31 and 34 as being unpatentable over Davis in view of Yamada and Maddison and claim 45 as being unpatentable over Davis in view of Yamada and Yonkers also are not sustained.

CONCLUSION

To summarize, the decision of the examiner to reject claims 25-36, 39, 40, 43-45 and 48 is REVERSED.

REVERSED

CHARLES E. FRANKFORT Administrative Patent Judge	)	
MURRIEL E. CRAWFORD Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
JENNIFER D. BAHR Administrative Patent Judge	)	

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