

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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 IRIS GAIL REDD and JOHN LAWRENCE REDD

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Appeal No. 2006-1329  
Application No. 10/243,318

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ON BRIEF

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Before FRANKFORT, CRAWFORD, and FETTING, Administrative Patent Judges.  
CRAWFORD, Administrative Patent Judge.

#### DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 17 to 24 and 27 to 29. Claims 30 to 33 have been allowed. Claims 6 to 8 have been withdrawn from consideration. Claims 1 to 5, 9 to 16, 25 and 26 have been cancelled.

The appellants' invention relates to a system to deliver breathing gases to individuals (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

The Prior Art

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

|           |           |               |
|-----------|-----------|---------------|
| Kishida   | 3,744,236 | Jul. 10, 1973 |
| Ryder     | 5,320,092 | Jun. 14, 1994 |
| Mischenko | 5,374,239 | Dec. 20, 1994 |
| Culton    | 6,386,196 | May 14, 2002  |

The Rejections

Claims 27 to 29 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Culton.<sup>1</sup>

Claims 17, 18 and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Culton in view of Ryder.

Claims 19 and 21 to 24 stand rejected under 35 U.S.C. § 103 as being unpatentable over Culton, Ryder in view of Mischenko and Kishida.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer (mailed November 17, 2004) for the examiner's complete reasoning in support of the rejections, and to the brief (filed September 27, 2004) and reply brief (filed January 18, 2005) for the appellants' arguments thereagainst.

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<sup>1</sup> The examiner's rejection of claims 27 to 29 under 35 U.S.C. § 102(b) as being anticipated by

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Ryder has been withdrawn (answer at page 3).

OPINION

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

We turn first to the examiner's rejection of claims 27 to 29 under 35 U.S.C. § 102(e) as being anticipated by Culton. We initially note that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegaal Bros. Inc. v. Union Oil Co., 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir.), cert. denied, 484 U.S. 827 (1987). The inquiry as to whether a reference anticipates a claim must focus on what subject matter is encompassed by the claim and what subject matter is described by the reference.

The examiner's findings regarding this rejection can be found on pages 3 to 4 of the answer and with reference to Appendix A to the answer.

Appellants, referring to Appendix A, argue that Culton's elements 14 and 20 can not reasonably be considered part of the flow indicator. Rather, in appellants view, element 24 is the flow meter. Appellants argue that the inlet port of element 24 is not connected to the distal end of a conduit through which gas flows from a gas source

because element 23 is not a conduit and that the outlet port is not connected to the inlet of a device for introducing gas to a person's airway.

We agree with the examiner that:

Regarding the term "conduit", the examiner utilizes the following broadest definition: "a channel for conveying fluids" (the American Heritage Dictionary , 1992 [answer at page 10].

In this regard, we note that it is axiomatic that, in proceedings before the PTO, claims in an application are to be given their broadest reasonable interpretation consistent with the specification, and that claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art. In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983). As such, in our view, element 23 , at 23b, constitutes or includes a portion readable as a conduit as broadly claimed.

In regard to the recitation in claim 27 of connecting an outlet port of the flow indicator to an inlet of the device for introducing gas to a persons' airway, it is our opinion that the outlet port of the flow meter 24 is connected, through couplers 14 and 20, to the device for introducing gas to a person's airway. In this regard, claim 27 does not recite *directly* connecting the outlet port of the flow meter to the device for introducing gas to a person's airway and as such is broad enough to include an indirect connection as is disclosed in Culton.

We additionally note that in the embodiment depicted in Figure 6 of Culton the flow meter is formed so as to be integral with the connector 123 and whistle

mechanism. This integrally formed flow meter is disclosed as being adapted to be directly connected to the conduit through which gas flows from a gas source at one end and the device for introducing gas to a person's airway at the other end.

In view of the foregoing, we will sustain this rejection.

We turn next to the examiner's rejection of claims 17 to 18 and 20 under 35 U.S.C. § 103 as being unpatentable over Culton in view of Ryder. The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). Moreover, in evaluating such references it is proper to take into account not only the specific teachings of the references but also the inferences which one skilled in the art would reasonably be expected to draw therefrom. In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

The examiner finds that Culton discloses the invention of claim 17 except that Culton does not disclose a device for introducing gas into a person's airway. The examiner relies on Ryder for teaching a device for introducing gas into a person's airway and concludes:

. . . it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the warning indicator for oxygen delivery system failure of Culton, so as to replace Culton's device for introducing gas to a person's airway with the device having at least one outlet through which the gas passes from the device to the person's

airway, as taught by Ryder, because both are well known alternative types of gas delivery devices which will perform the same function, if one is replaced with the other, of delivering gas to a patient [answer page 7].

Appellants argue that Culton does not describe a flow indicator that is interposed between the distal end of the conduit from the gas source and the inlet of the device for introducing the gas into the person's airway.

We do not agree. Clearly the flow indicator 24 of Culton is disposed between the distal end of the conduit from the gas source and the inlet for the device for introducing the gas into the person's airway. In this regard, we note that claim 17 does not recite that the flow indicator is disposed *directly* between the distal end of the conduit from the gas source and the device for introducing the gas into the person's airway.

Appellants also argue that Culton does not describe the functional limitation of determining whether gas is flowing out of the distal end of the conduit and into the device for introducing the gas into the person's airway. Rather, according to appellants, Culton determines whether gas is flowing out of the gas source into the

proximal end of a tube thereby solving a different problem than the problem addressed by appellants' invention.

We do not find these arguments persuasive because it is not commensurate in scope with the language of claim 17 which does not recite that it is determined whether the gas is flowing out of the distal end of the conduit and into the device for introducing the gas into the person's airway. Rather, claim 17 recites the step of determining whether the gas is flowing through the system. As flow indicator is disposed in the system, flow indicator 24 does indeed determine whether gas is flowing in the system i.e. between gas source and the coupler 14.

Appellants direct our attention to the declarations filed in this case and argue that these declarations are evidence of nonobviousness of the appellants' invention.

We do not find these declarations persuasive because the declarations are not directed to the elements recited in claim 17. In this regard, the declarations are directed to a gas delivery system in which the flow indicator is disposed *directly* between the conduit from the gas source and the device for delivering gas to a patient. However, the claim 17 is not limited to a flow indicator that is disposed *directly* between the conduit from the gas source and the device for delivering gas to the patient.

In addition, as discussed above, Culton discloses in Figure 6, a flow meter adapted to be directly connected between a conduit from a gas source and a device for

introducing gas to a person's airway. As such, the flow meter of Figure 6 is adapted to determine whether gas is flowing into the device for introducing gas to a person's airway.

In view of the foregoing, we will sustain the examiner's rejection of claim 17. We will likewise sustain the rejection as it is directed to claims 18 and 20 because appellants have not argued the separate patentability of these claims. See, In re Nielson, 816 F.2d 1567, 1572, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987)

We turn next to the examiner's rejection of claims 19 and 21 to 24 under 35 U.S.C. § 103 as being unpatentable over Culton and Ryder and further in view of Mischenko and Kishida.

The appellants have relied on the arguments made for the rejection of claim 17. Claims 19 and 21 to 24 depend from claim 17. Therefore we will sustain this rejection for the same reasons as noted above for the rejection of claim 17 (brief page 21).

The examiner's rejections are sustained.

AFFIRMED

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