

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* VICTOR W. THOMAS, SR., ROBERT K. KAY,  
JAYANT SHARMA, PHILIP R. MASS, ROSARIO ROBERT,  
COLIN ANGLE, LEE F. SWORD, JOSEPH L. JONES,  
PAUL E. SANDIN, JOHN P. O'BRIEN, BENJAMIN L. WIRZ,  
MARK CHIAPPETTA and GIDEON COITOF

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Appeal 2006-2180  
Application 10/752,180  
Technology Center 1700

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Decided: September 28, 2006

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

WARREN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the decision of the Examiner finally rejecting claims 1 through 6, 9 through 11, 13 through 15, 42 through 44, and 51 through 62. Claims 12, 45 through 50, and 63 through 68 have been allowed by the Examiner.

Claim 1 illustrates Appellants' invention of a floor cleaner device, and is representative of the claims on appeal:

1. A floor cleaner device for cleaning a floor, the floor cleaner device having a front and a rear, the floor cleaner device comprising:

a scrubber for wetting and cleaning the floor, the scrubber having a front and a rear; and

a burnisher for burnishing the floor, the burnisher positioned in closer proximity to the rear of the scrubber than to the front of the scrubber, wherein the scrubber comprises a scrubber brush having an axis of rotation substantially parallel to the floor and substantially perpendicular to an axis running from the front to the rear of the floor cleaner device, said burnisher comprising a burnisher pad and a motor for spinning the burnisher pad at a speed at or above 1000 revolutions per minute, wherein the burnisher and the scrubber are positioned relative to one another such that a front-most point of the burnisher pad is located less than 40 centimeters from a rear-most point of contact of the scrubber brush with the floor.

The references relied on by the Examiner are:

Mendelson	US 2,622,254	Dec. 23, 1952
Huften	US 3,992,747	Nov. 23, 1976
Nagayama	US 4,910,824	Mar. 27, 1990
Blehert	US 5,093,955	Mar. 10, 1992

The Examiner has advanced the following grounds of rejection on appeal:

claims 1, 4, 5, 9 through 11, 13 through 15, 44, and 51, 53, 56, 57, and 59 through 62 under 35 U.S.C. § 103(a) as being unpatentable over Mendelson in view of Nagayama (Answer 3-5);

claims 2, 3, 6, 52, 54, 55, and 58 under 35 U.S.C. § 103(a) as being unpatentable over Mendelson in view of Nagayama as applied to claims 1 and 11, and further in view of Blehert (*id.* 5-6); and

claims 42 and 43 under 35 U.S.C. § 103(a) as being unpatentable over Mendelson in view of Nagayama and Huften (*id.* 6-7).

Appellants argue the appealed claims as a group, subsuming the second and third grounds of rejection, which involve "tertiary" references,

within the first ground of rejection for purposes of argument (Br. 6). Thus, we decide this appeal based on appealed claim 1 as representative of the grounds of rejection and Appellants' groupings of claims. 37 C.F.R. § 41.37(c)(1)(vii) (2005).

We affirm.

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.

### OPINION

We have carefully reviewed the record on this appeal and based thereon find ourselves in agreement with the supported position advanced by the Examiner that, *prima facie*, the claimed floor cleaner device encompassed by appealed claim 1 would have been obvious over the combined teachings of Mendelson and Nagayama<sup>1</sup> to one of ordinary skill in this art at the time the claimed invention was made. Accordingly, since a *prima facie* case of obviousness has been established by the Examiner, we again evaluate all of the evidence of obviousness and nonobviousness based on the record as a whole, giving due consideration to the weight of Appellants' arguments in the Brief and Reply Brief. *See generally, In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984).

We agree with the Examiner's findings of fact from the references, conclusions of law based on this substantial evidence and response to

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<sup>1</sup> We note again here that Appellants do not argue Hufton and Blehert as applied with Mendelson and Nagayama by the Examiner (Br. 6).

Appellants' arguments as set forth in the Answer to which we add the following for emphasis.

The issues in this appeal are whether one skilled in the art would have modified the floor cleaner device of Mendelson by replacing polishing roll **23** and motor **14** with a polishing or burnishing pad and a motor which can spin that pad at or above 1,000 rpm as disclosed by Nagayama, and whether this person would have positioned the front point of the polishing or burnishing pad within 40 centimeters, that is, 15.74 inches, of the rear point of contact with the floor of scrubbing roll **22**.

We initially consider the claim term "burnishing" as used in the context of claim 1 and the written description in the specification to indicate the same floor cleaning operation as the term "polishing" to one of ordinary skill in this art. Indeed, as the Examiner points out, it is disclosed in the specification that "[t]he term 'burnishing' as used herein means the relatively high-speed *polishing* of the coating surface of the floor after scrubbing to provide a glossy, reflective surface" (specification 7:3-4, emphasis supplied; see Answer 8). This use of the term comports with Nagayama's acknowledgement that in the prior art, "a floor burnishing or polishing work for buffing and polishing up a floor after a wax is applied" to the scrubbed floor and the disclosure of using polishing pad **12** with the "speed of rotation [set] to a polishing speed (2,000 rpm)" to buff a waxed floor (Nagayama col. 1, ll. 13-26, and col. 6, ll. 38-47). The use of the term is also in keeping with ordinary dictionary meaning thereof as "[t]o rub with

a tool that serves especially to smooth or polish.”<sup>2</sup> *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).

Appellants submit that one of ordinary skill in this art would not have modified the floor cleaning device of Mendelson by using Nagayama’s burnishing or polishing pad because neither reference teaches “a scrubber and a separate burnisher on a single floor cleaning machine,” contending that this person “would not recognize the polishing roll 23 of Mendelson to be the presently claimed burnisher” (Br. 8). Appellants argue that Mendelson would have taught that “the polishing roll is a wet operation” in disclosing that “[l]iquid for waxing and/or polishing purposes is obtained from a tank **81** . . . through a supply pipe **82** discharging above the roll **23**, a control valve **83** being provided in said pipe for regulating the supply of material” (Br. 8; Mendelson col. 4, ll. 41-46). In this respect, Appellants contend that this person would have recognized “that this is entirely different than a burnishing operation which conventionally is a substantially dry operation” (Br. 8). Appellants further argue that the floor cleaning device of Nagayama uses one pad for scrubbing operations which are wet, and another pad for polishing or burnishing operations which are dry (*id.* 8-9). Appellants advance similar arguments in the Reply Brief (Reply Br. 2-3).<sup>3</sup>

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<sup>2</sup> *See generally, The American Heritage Dictionary Of The English Language* 250 (4th ed., Boston, Houghton Mifflin Company, 2000).

<sup>3</sup> Appellants submitted a document appended to the Reply Brief in support of their argument therein. The Examiner entered the Reply Brief but did not

We cannot subscribe to Appellants' position. We find no limitation in appealed claim 1 which requires that the "burnisher pad" is such that it can only be used under dry conditions, that is, in the absence of any manner of wax or polishing liquids. Indeed, we pointed out above that Appellants use the term "polishing" in disclosing the term "burnishing" in the specification. Furthermore, we find that one of ordinary skill in this art would not have found in or inferred from the disclosure of Mendelson<sup>4</sup> that polishing roll **23** must be used with liquid waxes or polishes, and in this respect, the Examiner correctly points out that valve **83** can be used to shut off the flow of liquid from tank **81**. We point out in this respect that Nagayama would have disclosed that polishing pad **12** can be used on a floor that has already been scrubbed and coated with wax. Indeed, there is no limitation in claim 1 or disclosure in the references which states that a waxed floor cannot be scrubbed in a manner to remove debris and then polished with a polishing pad at the spinning speed disclosed in Nagayama

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specifically enter the document. This document constitutes evidence submitted after the filing of a notice of appeal which evidence "may be admitted if the examiner determines that the . . . evidence overcomes all rejections on appeal and that a showing of good and sufficient reasons why the . . . evidence is necessary and was not earlier presented has been made." 37 C.F.R. § 41.33(d)(1) (2005). Since the Examiner has not arrived at the required determinations, the document cannot be entered by rule.

<sup>4</sup> It is well settled that a reference stands for all of the specific teachings thereof as well as the inferences one of ordinary skill in this art would have reasonably been expected to draw therefrom, *see In re Fritch*, 972 F.2d 1260, 1264-65, 23 USPQ2d 1780, 1782-83 (Fed. Cir. 1992); *In re Preda*, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968), presuming skill on the part of this person. *In re Sovish*, 769 F.2d 738, 743, 226 USPQ 771, 774 (Fed. Cir. 1985).

with or without additional wax or polishing liquid. Thus, Appellants' further arguments that the use of Nagayama's polishing pad and motor in place of Mendelson's polishing roll and motor would destroy the principles of operation of Mendelson's floor cleaning device fail as well.

Turning now to the issue of the placement of the polishing pad vis-à-vis the scrubbing roll, we find that one of ordinary skill in this art would not have found in or inferred from the disclosure in Mendelson any direction on the placement of the scrubbing roll vis-à-vis the polishing roll. Thus, we agree with the Examiner that this person would have placed these components on Mendelson's platform or carriage **10** in a manner which would provide a workable or optimum arrangement for the conditions in which that person intended to operate the floor cleaning device. We find no evidence establishing the criticality of the distance between the scrubber and burnisher components specified in claim 1 in the parts of the written description in the specification relied on by Appellants which merely indicates that Appellants exercised judgment in placing these components and not that this exercise achieved an unobvious result (Reply Br. 4-6). *See In re Aller*, 220 F.2d 454, 456-58, 105 USPQ 233, 235-37 (CCPA 1955) (“[W]here general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.”); *cf. In re Woodruff*, 919 F.2d 1575, 1577-78, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990) (“The law is replete with cases in which the difference between the claimed invention and the prior art is some range or other variable within the claims. [Citations omitted.] These cases have consistently held that in such a situation, the applicant must show that the

particular range is *critical*, generally by showing that the claimed range achieves unexpected results relative to the prior art range. [Citations omitted.]”).

Accordingly, based on our consideration of the totality of the record before us, we have weighed the evidence of obviousness found in the combined teachings of Mendelson and Nagayama and as further combined with Blehert and with Hufton with Appellants’ countervailing evidence of and argument for nonobviousness and conclude that the claimed invention encompassed by appealed claims 1 through 6, 9 through 11, 13 through 15, 42 through 44, and 51 through 62 would have been obvious as a matter of law under 35 U.S.C. § 103(a).

The Examiner’s decision is affirmed.

Appeal 2006-2180  
Application 10/752,180

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2005).

AFFIRMED

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