

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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

Appeal No. 2006-3010
Application No. 10/442,288

HEARD: December 12, 2006

Before HAIRSTON, DIXON, and SAADAT, Administrative Patent Judges.

HAIRSTON, Administrative Patent Judge.

DECISION

This is an appeal from the final rejection of claims 1 through 7, 9 through 26, 28, 29 and 32 through 35.

The disclosed invention relates to a sample analyzer that marks a container containing a sample.

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Claim 34 is illustrative of the claimed invention, and it reads as follows:

34. A sample analyzer comprising:

a conveyer for automatically conveying a sample container containing a sample;

a marking unit comprising a marker for marking the sample container conveyed by the conveyer; and

a controller for controlling whether the marker marks the sample container or not based on sample information.

The reference relied on by the examiner is:

Watson et al. (Watson) 2004/0005245 Jan. 8, 2004
(filed May 9, 2003)

Claims 1 through 7, 9 through 26, 28, 29 and 32 through 35 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Watson.

Reference is made to the brief and the answer for the respective positions of the appellant and the examiner.

OPINION

We have carefully considered the entire record before us, and we will reverse the anticipation rejection of claims 1 through 7, 9 through 26, 28, 29 and 32 through 35.

Anticipation is established when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited structural limitations. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1983).

All of the claims on appeal mark a container that already holds a sample. In Watson (paragraph 0190), the container (i.e., the secondary tube) is marked with a label (Figure 10, step H) prior to placing the sample into the container (Figure 10, step I). Thus, the anticipation rejection¹ of claims 1 through 7, 9 through 26, 28, 29 and 32 through 35 is reversed since Watson does not mark a container already containing a sample.

¹ Since an obviousness rejection is not before us on appeal, we will refrain from offering our opinion as to whether it would have been obvious to the skilled artisan to reverse steps H and I in Watson.

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DECISION

The decision of the examiner rejecting claims 1 through 7, 9 through 26, 28, 29 and 32 through 35 under 35 U.S.C. § 102(e) is reversed.

REVERSED

KENNETH W. HAIRSTON)
Administrative Patent Judge)
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) BOARD OF PATENT
JOSEPH L. DIXON) APPEALS
Administrative Patent Judge) AND
) INTERFERENCES
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MAHSHID D. SAADAT)
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