

*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 GLENN J. MATUSZ, KURT D. HARSH,
and GREG A. BILEK

Appeal 2006-3045
Application 10/141,153
Technology Center 1700

Decided: March 6, 2007

Before CHUNG K. PAK, CATHERINE Q. TIMM and
LINDA M. GAUDETTE, *Administrative Patent Judges*.

PAK, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on an appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1 through 4, 6 through 15, 17 through 41, and 43, all of the claims pending in the above-identified application. We have jurisdiction pursuant to 35 U.S.C. § 6.

I. APPEALED SUBJECT MATTER

The subject matter on appeal is directed to a vacuum cleaner having an improved agitator configuration. (Specification 2). The improved agitator configuration includes at least two agitation chambers with each chamber containing at least one half-section agitator member (Specification 1).

Details of the appealed subject matter are recited in representative claims 1, 10, and 25, which are reproduced below:

1. A floor care appliance, comprising:
a suction nozzle for removing dirt particles from a surface to be cleaned;
a motor-fan assembly for creating a suction airstream originating at the suction nozzle;
at least two agitator chambers;
at least one agitator half-section disposed in each of said at least two agitator chambers.

10. A floor care appliance, comprised of:
a suction nozzle for removing dirt from a surface to be cleaned;
a motor-fan assembly for creating a dirt laden airstream originating at the suction nozzle;
at least two agitator chambers; and
at least one rotary agitator comprised of a right agitator half-section and a left agitator half-section;
wherein the right agitator half-section is disposed in one agitator chamber of said at least two agitator chambers and the left agitator half-section is disposed in another agitator chamber of said at least two agitator chambers.

25. A floor care appliance, comprised of:
a suction nozzle for removing dirt particles from a surface to be cleaned;
a motor-fan assembly for creating a suction airstream originating at the suction nozzle;
at least two agitator chambers;

two rotary agitators each comprised of a right agitator half-section and a left agitator half-section; and

wherein the right agitator half-sections of said two rotary agitators are disposed in one agitator chamber and the left agitator half-sections are disposed in the other agitator chamber of said two agitator chambers.

II. PRIOR ART

As evidence of unpatentability of the claimed subject matter, the Examiner has relied upon the following references:

Radimak	US 1,417,768	May 30, 1922
Agar	US 1,607,500	Nov. 16, 1926
Browne	US 2,651,803	Sep. 15, 1953
Venturini	US 4,850,077	Jul. 25, 1989
Brundula	US 5,495,634	Mar. 5, 1996

III. REJECTIONS

The Examiner has rejected the claims on appeal as follows:

- 1) Claims 1 through 3, 10 through 12, 23 through 27, 31, 37, and 39 through 41 under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Agar and Radimak;
- 2) Claims 4, 7 through 9, 13, 18, and 28 under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Agar, Radimak, and Venturini;
- 3) Claims 6, 14, 15, 17, 29, and 30 under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Agar, Radimak, Venturini, and Brundulak; and
- 4) Claims 19 through 22 under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Agar, Radimak, Venturini, and Browne.

IV. ISSUE

The dispositive question is whether the prior art references relied upon by the Examiner teach or would have suggested the claimed at least two agitator chambers with at least one agitator half-section disposed in each of said chambers within the meaning of 35 U.S.C. § 103 (2007).

V. FINDINGS OF FACT

1. Agar illustrates a floor waxing or polishing apparatus comprising a motor for rotating four half-section agitator members and a single chamber for accommodating the agitator members.
2. Radimak discloses a polishing apparatus having, inter alia, a pair of conduits and a suction fan for sucking up materials dislodged by agitator members.
3. The Examiner has not relied on Radimak, Venturini, Browne, and Brundulak to show the claimed at least two agitator chambers containing the agitator members.
4. The Examiner has not supplied any reason, suggestion or motivation to provide at least two agitator chambers for a waxing or polishing apparatus.

VI. PRINCIPLES OF LAW

Under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *In re Fine*, 837 F.2d 1071, 1073-74, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner is expected to make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966) and to provide a

reason why one having ordinary skill in the pertinent art would have been led to combine the prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art references as a whole or knowledge generally available to one having ordinary skill in the art. *Pro-Mold & Tool Co. v. Great lakes Plastics, Inc.*, 75 F.3d 1568, 1573, 37 USPQ2d 1626, 1629-30 (Fed. Cir. 1996); *ACS Hosp. Sys., Inc. v. Montefiore Hosp.*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the Examiner are an essential part of complying with the burden of presenting a prima face case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

VII. ANALYSIS

Here, in spite of the Appellants' arguments at pages 4 through 6 of the Brief, the Examiner has not demonstrated that the prior art references relied upon disclose at least one agitator half-section disposed in each of at least two agitator chambers (artificially or naturally two enclosed spaces). (See the Answer in its entirety). It is apparent from Figures 2-4 of Agar, for example, casing 8 does not extend to two opposite walls to form at least two agitator chambers. The Examiner also has not supplied any explanation why one having ordinary skill in the pertinent art would have been led to provide such agitator chambers in the waxing or polishing apparatus of Agar. (See the Answer in its entirety). Thus, based on this record, we are constrained to agree with the Appellants that the Examiner has not carried the burden of establishing a prima facie case of obviousness. As such, we reverse the

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Examiner's decision rejecting the claims on appeal under 35 U.S.C. §
103(a).

VII. ORDER

The decision of the Examiner is reversed.

REVERSED

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