

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

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JURGEN PEHMOLLER, STEPHAN WOLFF, and IRENE MAURER

Appeal No. 2007-0267
Application No. 10/641,159
Technology Center 3700

HEARD: February 8, 2007

Decided: March 22, 2007

Before TERRY J. OWENS, MURRIEL E. CRAWFORD, STUART S. LEVY,
Administrative Patent Judges.

MURRIEL E. CRAWFORD, *Administrative Patent Judge.*

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. §134 from the examiner's final rejection of claims 1, 3 to 10, and 12 to 20, which are all of the claims pending in this application. Claims 2 and 11 have been cancelled.

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The appellants' invention relates to a method and apparatus for applying an additive, preferably a liquid additive, to a moving, spread-out filter material web used in the tobacco-processing industry with at least one spreading element. An understanding of the invention can be derived from a reading claim 1 which is reproduced below:

1. A method of applying an additive to a moving, spread-out filter material web used in the tobacco-processing industry, comprising:

adjusting a window that includes at least one adjustable covering element that at least partially defines an opening of the window wherein the adjusting step includes moving the at least one adjustable covering element across the window; and

applying the additive through the opening of the window onto the spread-out web of filter material as the web of filter material moves past wherein the amount of additive applied to the filter material is adjusted via the movement of the adjustable covering element.

The references of record relied on by the examiner as evidence of obviousness is:

Arthur	4,511,420	Apr. 16, 1985
Pryor	4,525,385	June 25, 1985
Wahle	4,776,351	Oct. 11, 1988
Butterworth	6,758,923	July 6, 2004

The examiner rejected claims 1, 3 to 10, 12, 14 to 16, and 18 to 20 under 35 U.S.C. § 103 as being unpatentable over Pryor in view of Butterworth.

The examiner rejected claims 1, 3 to 5, 7 to 10, 12, 14 to 15, 17 to 20 under 35 U.S.C. § 103 as being unpatentable over Arthur in view of Butterworth.

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The examiner rejected claims 6 and 13 under 35 U.S.C. § 103 as being unpatentable over Arthur and Butterworth and further in view of Wahle.

The examiner contends that Pryor and Arthur disclose the invention as claimed except that Pryor and Arthur do not disclose an adjustable covering or an adjusting step. The examiner relies on Butterworth for disclosing a window with an adjustable covering element or shutter.

The appellants contend that Butterworth does not disclose an adjustable covering element or shutter.

ISSUE

The sole issue for our consideration is whether the appellants have shown that the examiner erred in finding that Butterworth discloses the step of adjusting a window that includes at least one adjustable covering element that at least partially defines an opening of the window wherein the adjusting step includes moving the at least one adjustable covering element across the window as recited in claim 1. This issue as it relates to claim 10 is whether the appellants have shown that the examiner erred in finding that Butterworth discloses a window including at least one adjustable covering element that at least partially defines an opening of the window wherein movement of the at least one adjustable covering element across the window adjusts the size of the opening.

FINDINGS OF FACT

The appellants' specification discloses and depicts in Figure 1, a displaceable covering sheet 7 which is used to control the amount of additive applied to the filter tow by increasing or decreasing the size of the application area

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12 to delimit the spray cone 4 (specification page 11). This adjusting step amounts to more than just controlling whether the additive is applied but includes adjustment of the amount of additive applied.

Butterworth discloses a shutter which can selectively cover or uncover spray apertures 92 so that cleaning fluid does not reach spray apertures 92 (col. 11, lines 17 to 23) . Butterworth does not disclose a shutter that is adjustable so as to adjust the amount of cleaning fluid that reaches the aperture but rather covers the aperture 92 or doesn't cover the aperture.

ANALYSIS

As Butterworth does not disclose an adjustable shutter, the combination of Pryor and Arthur would not have rendered the invention of claims unpatentable over the teachings of Pryor in view of Butterworth or Arthur in view of Butterworth.

CONCLUSION

It is our conclusion that the examiner erred in rejecting the claims under 35 U.S.C. § 103.

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ORDER

The decision of the examiner is reversed.

REVERSED

TERRY J. OWENS Administrative Patent Judge))))))))
MURRIEL E. CRAWFORD Administrative Patent Judge))	BOARD OF PATENT APPEALS AND INTERFERENCES
STUART S. LEVY Administrative Patent Judge))))

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