

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 MANFRED SCHAUERTE

Appeal 2007-1002
Application 10/257,830
Technology Center 1700

Decided: March 15, 2007

Before EDWARD C. KIMLIN, CHUNG K. PAK, and
PETER F. KRATZ, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-23. Claims 1 and 19 are illustrative:

1. Use of a static mixer element for mixing media, having a housing with at least one stationary deflection surface arranged within the housing at an angle of 70 to 110° with respect to the flow direction of the media for the production of a drilling liquid.

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19. Static bentonite-water suspension mixer element having a housing with oblique surfaces of the housing which taper in the manner of a funnel with a nozzle which is directed at a stationary deflection surface arranged at an angle of 70 to 110° with respect to the flow direction of the media and at least one passage between the deflection surface and the housing.

The Examiner relies upon the following references in the rejection of the appealed claims:

Frischknecht (CH '064)	CH 182,064	Jan. 31, 1936
Kalthoff (DE '926)	DE 687,926	Jan. 18, 1940
Tsien	US 4,087,862	May 2, 1978
Yao	US 4,124,309	Nov. 7, 1978
Farrar	US 6,305,835 B1	Oct. 23, 2001
Schauerte (EP '235)	EP 0,994,235	Sep. 12, 2002

Appellant's claimed invention is directed to a static mixer for producing a bentonite-water suspension. The mixer has a housing with a stationary deflection surface at an angle of 70 to 110° with respect to the flow direction (claim 1), and at least one passage between the deflection surface and the housing (claim 19).

Appealed claims 1-3, 6-8, 12, 15, and 16 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Farrar. Claims 19, 20, and 21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Yao. Claims 19, 20, and 21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by DE '926. Also, claims 19, 20, 21, and 23 stand rejected under 35 U.S.C. § 102(b) as being anticipated by CH '064. In addition, the appealed claims stand rejected under 35 U.S.C. § 103(as) follows:

- (a) claim 23 over Yao in view of DE '926 and Tsien,
- (b) claims 1-7 and 9-22 over EP '235 in view of Yao, and

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(c) claims 8 and 23 over EP ‘235 in view of Yao and Tsien.

We have carefully considered each of Appellant’s arguments for patentability. However, we find ourselves in complete agreement with the Examiner’s reasoned analysis and application of the prior art, as well as his cogent and thorough disposition of the arguments raised by Appellant. Accordingly, we will adopt the Examiner’s reasoning as our own in sustaining the rejections of record, and we add the following for emphasis only.

Appellant’s arguments against the § 102 rejection over Farrar are, for the most part, not germane to the claimed subject matter on appeal. For instance, Appellant contends that “[i]n contrast to Farrar, the deflection plates recited in claim 1 do not allow for flow through the plate” (Br. 16, last para.). However, claim 1 contains no recitation that precludes flow through the deflection surface. Also, we are not persuaded by Appellant’s argument that the perforations in the plate of Farrar disqualify it from being a deflection surface. Manifestly, as explained by the Examiner, the non-perforated portions of Farrar’s plate deflect the media through the perforations. The appealed claims fail to define any particular structure for the recited “deflection surface.”

As for separately argued claim 8, we are not persuaded by Appellant’s argument that “[t]he Victaulic clamp in Farrar does not brace ‘top’ and ‘end’ pieces as described by the present application” (Br. 21, penultimate para.). As pointed out by the Examiner, it is the claims, not the specification, that

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define a patented invention and limitations in the Specification are not to be read into the claims. Hence, we find no merit in Appellant's statement that "the Victaulic clamp is structurally quite different from the tensioning means of claim 8" (Br. 21, last para.). Claim 8 on appeal utterly fails to define any structure for the clamp.

Regarding the § 102 rejection of claims 19, 20, and 21 over Yao, we do not subscribe to Appellant's argument that "Yao does not disclose a passageway between the housing and the deflection surface as recited by the claim" (Br. 23, last sentence). Rather, we concur with the Examiner's explanation at pages 28-29 of the Answer that passages 6 are located between the deflection surface and the housing 1. As for Appellant's argument that Yao does not disclose a static bentonite-water suspension mixer, we agree with the Examiner that the recitation "[s]tatic bentonite-water suspension mixer" is a recitation of intended use that does not impart any particular structure to the claimed mixer other than that specifically recited in the claim. We also agree with the Examiner that Appellant has not proffered the requisite objective evidence to support the suggestion that the mixer of Yao is not capable of mixing a bentonite-water suspension.

Turning to the § 102 rejection of claims 19-21 over DE '962, we agree with the Examiner that figure 1 of the reference depicts passages f located between the deflection surface opposite the nozzle c and the housing h. Also, as noted above, we find no merit in Appellant's argument that the reference mixer is not a bentonite-water suspension mixer.

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Concerning the § 102 rejection of claims 19-21 and 23 over CH ‘064, the Examiner is on sound footing in maintaining that the claims do not preclude an intermediary element, such as plate 16 of the reference, between the nozzle and the stationary deflection surface. We find no error in the Examiner’s reasoning that the nozzle of the reference “is clearly directed is [sic, in] a downstream direction where fluid emanating from the nozzle will contact the stationary deflection surface 18” (Answer 32, second para.).

As for the § 103 rejection of claims 1-7 and 9-22 over EP ‘235 and Yao, we are in complete agreement with the Examiner that one of ordinary skill in the art would have found it obvious to employ the static mixer of Yao in the system of EP ‘235 for making a bentonite-water suspension. Appellant’s arguments directed to the asserted deficiencies of the structure of the Yao mixer have been discussed above.¹

As a final point, we note that with respect to the § 103 rejections, Appellant bases no argument upon objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the *prima facie* case of obviousness established by the Examiner.

In conclusion, based on the foregoing and the reasons well stated by the Examiner, the Examiner’s decision rejecting the appealed claims is affirmed.

¹ It would seem that the Examiner’s discussion at pages 7-19 of the Answer is an excessive restatement of the entirety of the reference disclosure that unnecessarily burdens the record.

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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) (2006).

AFFIRMED

clj

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