

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* ANN N. COYNE,  
MICHAEL J. TELEPCHAK,  
PHILIP SPRAKER,  
JAY HARDEE and  
JOHN A. D'ASARO

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Appeal 2008-2001  
Application 10/222,192  
Technology Center 1700

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Decided: March 31, 2008

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Before EDWARD C. KIMLIN, CHUNG K. PAK, and  
ROMULO H. DELMENDO, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-19.

Claim 1 is illustrative:

1. An apparatus for simultaneous processing of multiple fluid samples, said apparatus comprising:

a well plate having a top surface, a bottom surface and a peripheral edge,

a first plurality of cylindrical wells bored into said top surface and partially through said well plate,

each of said first plurality of wells having a circumference sized for closely receiving the barrel of a sample reservoir, each of said first plurality of wells further having a concentric aperture punched completely through to said bottom surface of said well plate, said aperture being sized to receive a tip of a sample reservoir,

said first plurality of wells being arranged in staggered rows such that a line drawn tangent to the circumferences of a first row of wells will intersect an arc in the circumferences of a neighboring row of wells.

The Examiner relies upon the following references as evidence of obviousness:

Root	5,650,323	Jul. 22, 1997
Mohan	5,888,830	Mar. 30, 1999

Appellants' claimed invention is directed to an apparatus for simultaneous processing of multiple fluid samples. The apparatus comprises a well plate having a plurality of cylindrical wells bored into the top surface and partially through the plate. The wells are arranged in staggered rows such that a line drawn tangent to the circumference of a first row of wells will intersect an arc in the circumferences of a neighboring row of wells. The aperture is sized to receive the tip of a sample reservoir.

Appealed claims 1-3, 6-8, 13-17, and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Root. Claims 4, 5, 9-12, and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Root in view of Mohan.

We have thoroughly reviewed the respective positions advanced by the Appellants and the Examiner. In so doing, we find ourselves in agreement with Appellants that the Examiner has failed to establish a prima facie case of obviousness for the claimed subject matter. Accordingly, we will not sustain the Examiner's rejections.

Concerning the § 103 rejection over Root alone, the Examiner cites the upper filter plate (58) of Root as corresponding to the presently claimed well plate. The Examiner acknowledges that Root does not disclose the claimed arrangement for the plurality of wells in the filter plate. This is evident from Figure 7 of Root. However, since the filter plate of Root mates with the cluster plate (40), which has wells configured in the claimed arrangement for the well plate, the Examiner reasons that it would have been obvious for one of ordinary skill in the art to modify the arrangement of the wells in Root's filter plate to correspond with the wells in the cluster plate. Since Root teaches that the membrane should be sufficiently large to provide tissue samples that can be conveniently handled, the Examiner concludes that "[i]t would have been within the ordinary skill in the art to have employed larger diameters in the top wells in the modified device of Root, in order to gain increased working area of the filters, which may be useful 'for conducting a variety of procedures' intended by Root (in addition to the preferred intended use related to the cell and tissue culture techniques)" (Ans. 5, last sentence).

The flaw in the Examiner's reasoning is that Root provides a specific teaching that would militate against modifying the arrangement of the wells in the filter plate in accordance with the claimed arrangement. In particular, Root discloses that "the filter wells **64** are sized to fit freely into the reservoir

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wells of the cluster plate with a substantial gap between the outer surface of wall 66 of the filter well 64 and the inner surface walls 47 of the reservoir wells" (col. 6, ll. 1-4). Hence, the reference provides no suggestion that the size of the filter wells 64 should be modified to essentially correspond to the wells of the cluster plate. As noted by Appellants, Root teaches that "[t]he large wells of the plate in turn maximize the clearance with the walls of the filter wells in the system so as to avoid capillary reaction" (col. 2, ll. 59-61). Accordingly, it is our view that one of ordinary skill in the art would have found no suggestion in Root for modifying the wells of Root's filter plate along the lines offered by the Examiner. If anything, it would seem that Root teaches away from the Examiner's proposed modification.

The Examiner's citation of Mohan for the rejection of claims 4, 5, 9-12, and 18 does not remedy the deficiency of Root set forth above.

In conclusion, based on the foregoing, we are constrained to reverse the Examiner's rejections.

REVERSED

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