

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANDRE FEUGIER

Appeal 2008-2397
Application 10/450,363
Technology Center 1700

Decided: April 30, 2008

Before PETER F. KRATZ, ROMULO H. DELMENDO, and
MICHAEL P. COLAIANNI, *Administrative Patent Judges*.

KRATZ, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on an appeal from the Examiner's final rejection of claims 20-26. We have jurisdiction pursuant to 35 U.S.C. § 6.

Appellant's invention is directed to a filter declogging device including a reservoir for storing pressurized inert declogging gas and a nozzle connected by a pipe for feeding inert declogging gas to at least one distribution element wherein the nozzle is configured to inject inert gas aligned with the vertical axis of the wall of the filter. Claim 20 is illustrative and reproduced below:

20. A device for declogging at least one filter of a plant for producing uranium oxide from uranium hexafluouride [sic. hexafluoride], comprising:

a reactor including a jacket having a generally vertical arrangement;

a pipe for injecting uranium hexafluoride, steam and dilution gas entering the jacket of the reactor together with at least one unit for filtering gases evacuated from the reactor having a manifold connected to a pipe for evacuating gases to outside the reactor in which emerges an outlet end of at least one filter having a tubular wall with a vertical axis supported by a plate separating the gas manifold from an inner space of the jacket of the reactor in which the filter is placed, the declogging device having a reservoir for storing pressurized inert declogging gas; and

an arrangement configured to distribute and route inert declogging gas toward the at least one filter of the at least one filtration unit of the reactor, wherein a nozzle configured to inject inert gas aligned with the vertical axis of the wall of the filter, the nozzle connected by a pipe for feeding inert declogging gas to at least one distribution element.

The Examiner relies on the following prior art reference as evidence in rejecting the appealed claims:

Feugier

6,136,285

Oct. 24, 2000

Claims 20-26 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Feugier. We reverse for substantially the reasons set forth in the Brief and Reply Brief.

It is well settled that the burden of establishing a *prima facie* case of non-patentability resides with the Patent and Trademark Office (PTO). *See In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984). Under 35 U.S.C. § 102(b), anticipation is established only when a single prior art reference describes, either expressly or under the principle of inherency, each and every element of a claimed invention. *In re Spada*, 911 F.2d 705, 708 (Fed. Cir. 1990).

Here, the Examiner not only fails to present persuasive factual findings establishing where, in Feugier, a description of a device that satisfies each and every recited claim limitation of any of the rejected claims can be found, but the Examiner also employs the wrong legal standard for an anticipation rejection. In this regard, the Examiner relies on obviousness principles, such as an alleged suggestion and an asserted reasonable expectation together with a reference to *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727 (2007). These assertions and the cited case law may be relevant to a particular rejection under 35 U.S.C. § 103, not the 35 U.S.C. § 102(b) rejection before us in this appeal (Ans. 4 and 5).

Concerning the Examiner's factual determinations and analysis of the here claimed subject matter *vis- à-vis* the device described by Feugier, the factual insufficiency of the Examiner's determinations and alleged anticipation analysis is made apparent by noting the Examiner's improper mixing of portions of the disclosure of Feugier relating to nitrogen backflow for unclogging a filter with portions of Feugier's disclosure with regard to a

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nozzle for injecting reagents as allegedly furnishing an anticipatory description of Appellants' claimed device including a nozzle configured and arranged to distribute and inject inert declogging gas aligned with the vertical axis of the wall of the filter (Ans. 4 and 5; Br. 4 and 5; Reply Br. 3 and 4; Feugier, Figs. 3-5, col. 3, ll. 5-21, and col. 5, l. 63 - col. 6, l. 65).

On this record, we reverse the Examiner's anticipation rejection.

CONCLUSION

The decision of the Examiner to reject claims 20-26 under 35 U.S.C. § 102(b) as being anticipated by Feugier is reversed.

REVERSED

tf/ls

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