

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* TONY NICOSIA,  
CRAIG L. DERUYTER, and  
JEFFARY R. SONNENTAG

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Appeal 2008-4058  
Application 10/882,026  
Technology Center 2800

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Decided: September 30, 2008

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Before CHARLES F. WARREN, THOMAS A. WALTZ, and  
LINDA M. GAUDETTE, *Administrative Patent Judges*.

WALTZ, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants seek review under 35 U.S.C. § 134 from the Examiner's rejections of claims 1, 3, 6-10, 12, 13, 15, 16, 24 and 25 in the Final Office Action, dated January 24, 2007. This Board has jurisdiction under 35 U.S.C.

§ 6(b). For the reasons below, the rejections of the Examiner are AFFIRMED.

The invention of the present application is directed to an oil dipstick for an oil reservoir of an engine, the oil dipstick having a cap with indicia of the oil level and oil temperature in the reservoir. Claim 1 is illustrative and reproduced below:

1. A dipstick adapted for use with an engine and a fluid reservoir containing fluid, the dipstick comprising:
  - a cap securable to the fluid reservoir to enclose the fluid reservoir;
  - a first sensor adapted to sense the temperature of the fluid within the fluid reservoir;
  - a second sensor adapted to sense the level of the fluid within the fluid reservoir; and
  - an indicator on the cap adapted to display the fluid temperature and fluid level external to the reservoir when the cap is secured to the fluid reservoir.

The Examiner cites the following prior art references as evidence of unpatentability:

Mackley	4,145,105	May 15, 1979
Enander	4,437,497	Mar. 20, 1984
Little	6,370,952	Apr. 16, 2002

The Examiner maintains the following rejections of the pending claims:

1. Claims 1, 3, 6-10, 12, 13, 15 and 16 stand rejected under 35 U.S.C. § 103(a) as obvious over Mackley in view of Little.
2. Claims 24 and 25 stand rejected under 35 U.S.C. § 103(a) as obvious over Mackley in view of Little and further in view of Enander.

*Grouping of Claims*

In their Brief, Appellants organize their arguments traversing the rejections into two groups: Group I consisting of independent claim 1 and its dependent claims 3, 6-9 and 24, and Group II consisting of independent claim 10 and its dependent claims 12, 13, 15, 16 and 25. For each group, Appellants do not argue the dependent claims separately, but rely on the independent claims on which these each depend. Further, Appellants repeat the same arguments for Group II and claim 10 as they do for Group I and claim 1. Appellants also do not present arguments for the separate rejection of claims 24 and 25 over Mackley in view of Little and Enander. *See* App. Br. 3 – 7. Therefore, we elect to address the claims as a single group, to stand or fall together, with claim 1 as representative. 37 C.F.R. § 41.37(c)(1)(vii).

FINDINGS OF FACT (FF)

1. Mackley discloses an oil dipstick with a cap for the oil reservoir of a motorcycle, the oil dipstick having mounted thereon a temperature sensor and a gauge mounted in the cap showing indicia of the oil temperature measured by the sensor. Col. 3. ll. 7-22. The invention is primarily intended for use on a motorcycle. Col. 2, ll. 31-35.

2. Little discloses an oil dipstick for a vehicle oil reservoir, the dipstick including a sensor for sensing the level of oil in the reservoir and a remote indicator for displaying the oil level in the oil reservoir.

3. Little teaches mounting the oil level indicator proximate to the fuel door of a vehicle to facilitate checking the oil level in a vehicle's engine while fuel is added to the vehicle. Col. 4, ll. 57-60.

## PRINCIPLES OF LAW

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007).

The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of ordinary skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966)

“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR*, 127 S. Ct. at 1739.

## DISCUSSION

### *Obviousness over Mackley in view of Little*

In the Final Office Action, claim 1 was rejected as obvious over Mackley in view of Little. The Examiner found Mackley taught a cap or cover element to the oil reservoir on a motorcycle engine, the cap having a temperature sensor stem and an indicator or gauge in the cap which displays the temperature. Ans. 4-5. Little teaches, according to the Examiner, using a sensor coupled to the oil dipstick with an external display so that the level could be checked without removing the dipstick cap. Ans. 5. The Examiner

then concluded that one of ordinary skill in the art would have found Appellants' invention an obvious combination of the teachings of Mackley and Little, with the reasoning that one could not only read the oil temperature, but could also read the indication of the oil level, as well, without removing the cap. Ans. 5.

Appellants do not dispute the Examiner's findings of the teachings of the prior art references (App. Br. 5), but dispute his conclusion of the obviousness of the combination. Appellants assert that the purpose of Little was to provide a remote indicator of the oil level, and that by placing that indicator back on the oil dipstick cap, the purpose of Little would be defeated. *Id.*

We do not find Appellants' argument persuasive. Little discloses positioning the oil level indicator by the fuel door of a typical passenger car, so that the oil level could be checked while adding gasoline to the fuel tank. FF 3. However, in Mackley, the invention is primarily intended for use on a motorcycle. FF 1. Mackley, Fig. 1, illustrates a motorcycle with an oil reservoir cap disposed on the operator's console, adjacent to the gas tank. *See* col. 3, ll. 19-22. Thus, placing the oil level indicator on the cap of this motorcycle oil dipstick (*see* col. 2, ll. 42-47) would still achieve the object of Little to have the oil indicator viewable while refueling the vehicle, as well as its further goal of providing low cost of manufacture.

We conclude that one skilled in the art would have found it obvious to combine the motorcycle oil dipstick cap with oil temperature sensor and indicator, as taught in Mackley, with a level sensor and remote indicator, as taught in Little, the remote indicator mounted in the dipstick cap allowing viewing while the motorcycle is being refueled. *KSR*, 127 S.Ct. at 1739.

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The Examiner's rejection of claim 1, as well as claims 3, 6-10, 12, 13, 15, and 16 by representation, is sustained. Since Appellants have not presented any arguments against claims 24-25 (App. Br. 3-7), we adopt our remarks from above, as well as the Examiner's findings from Enander and conclusion of law (Ans. 6). The decision of the Examiner is affirmed.

#### TIME PERIOD FOR RESPONSE

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).

AFFIRMED

tf/ls

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