

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN MARSHALL, JOE WAY,
KEITH LIPFORD and BRIAN LIPFORD

Appeal 2009-0956
Application 11/029,994
Technology Center 3700

Decided: January 15, 2009

Before JAMESON LEE, RICHARD TORCZON and SALLY C. MEDLEY,
Administrative Patent Judges.

MEDLEY, *Administrative Patent Judge.*

DECISION ON APPEAL

A. Statement of the Case

ADS Inc. (“ADS”), the real party in interest, seeks review under 35 U.S.C. § 134(a) of a Final Rejection of claims 1, 3-6 and 8-18. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

ADS' invention is a kitchen ventilation duct degreasing system that includes a conduit in communication with a water source and a cleaning solution source. The conduit has a plurality of segments and a plurality of nozzle blocks each including a plurality of nozzles. The conduit is supported by a plurality of support arms. Each support arm is attached at one end to the duct conduit and includes a distal roller and a spring mechanism. (Spec. 10-12, 15-17; figs. 2, 9-14).

Representative claim 1, reproduced from the Claim Appendix of the Appeal Brief, reads as follows:

A ventilation degreasing system for cleaning the interior surfaces of a kitchen ventilation duct, comprising:
a duct conduit in fluid communication with a water source, and a cleaning solution source, said duct conduit comprising a plurality of conduit segments attached to a corresponding plurality of nozzle blocks, each nozzle block having a plurality of nozzles, the duct conduit extending substantially the length of said ventilation duct;
a programmable controller connected to a plurality of solenoid valves for controlling distribution of cleaning solvent or water into said duct conduit and to said nozzles;
a drainage assembly for or capturing liquid run-off in said kitchen ventilation duct during operation of said degreasing system; and
a plurality of support arms for supporting said duct conduit centrally in the kitchen ventilation duct, each of said support arms being attached at one end to said duct conduit and further comprising a distal roller at another end and a spring mechanism for imparting lateral spring to said distal roller.

The Examiner relies on the following prior art in rejecting the claims on appeal:

Fritz et al. ("Fritz")	4,484,563	Nov. 27, 1984
Strause	5,235,963	Aug. 17, 1993
Way	5,860,412	Jan. 19, 1999

Gallagher

6,817,356

Nov. 16, 2004

The Examiner rejected the following claims as unpatentable under 35 U.S.C. § 103(a):

claims 1, 5, 6 and 10 over Way and Strause;

claims 1, 3, 5, 6, 8, 10-16 and 18 Way, Strause and Gallagher;

claims 4, 9 and 17 over Way, Strause, Gallagher and Fritz.

B. Issues

Does ADS show that the Examiner erred in determining that the claims are obvious on the basis that the prior art is non-analogous?

Does ADS show that the Examiner erred on the basis that the combinations of prior art do not teach or suggest the claimed invention?

C. Findings of Fact (“FF”)

Way

1. Referring to figure 1 below [numbers from **figure 1** inserted], Way describes kitchen ventilation ducting [14] that includes nozzle means [13] connected to a pressurized fluid supply and pump [19] by way of piping [11] (i.e., multistage duct conduit). (Col. 7, ll. 18-34).

Figure 1, reproduced from Way’s figure 1, is reproduced below.

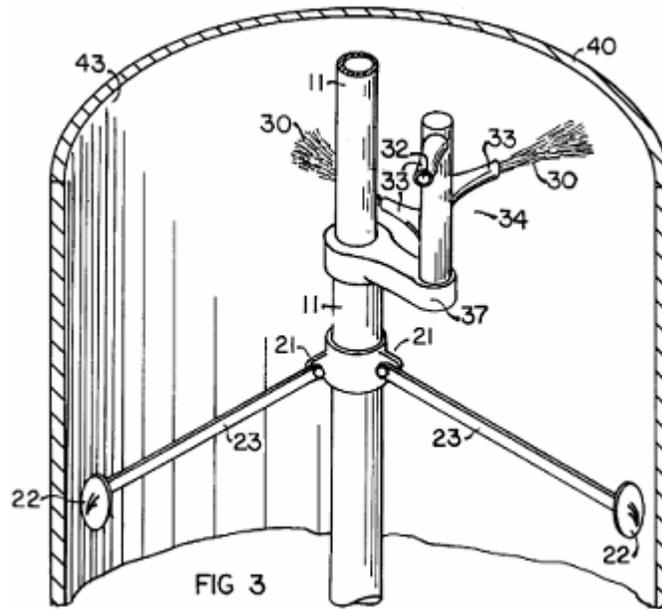


Figure 2 depicts a duct conduit and support arms within the kitchen ventilation duct.

4. Way also describes that although plain water is considered satisfactory, a fluid detergent or other suitable agents added to the water may also be considered desirable. (Col. 6, ll. 34-37).

Strause

5. Referring to figure 3 [numbers from **figure 3** inserted], Strause describes a cleaning system for cleaning a cooking exhaust duct [20] that includes a cleaning liquid manifold [26] constructed to conform to the internal perimeter of the duct [20]. (Col. 3, l. 65-col. 4, l. 21).
6. The manifold [26] includes nozzles [30] in fluid communication with a cleaning liquid and at least one spring loaded roller [56] to ride against the lateral and transverse walls [32],[34] of duct [20] and center the manifold within the duct [20]. (Col. 4, ll. 21-29; col. 5, ll. 2-25).
7. The spring force exerted by the roller [56] is controlled by positioning of clip [58]. (Col. 5, ll. 15-21).

Figure 3, reproduced from Strause's figure 4, is reproduced below.

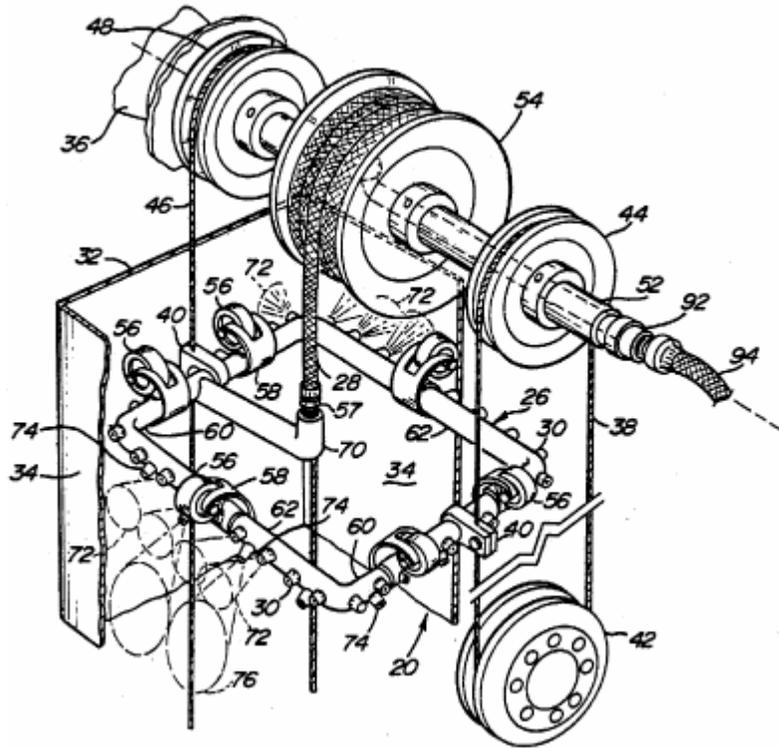


Figure 3 depicts a cleaning manifold including spring loaded rollers within a ventilation duct.

Gallagher

8. Gallagher describes a cooking exhaust hood [12] and an upper exhaust duct [16] that includes upper and lower manifolds [35], [38] and associated nozzles [38], [39]. (Col. 4, ll. 52-56; col. 5, ll. 14-23).
9. The upper and lower manifolds are connected to water feed pipe [40], hot and cold water solenoid valves [41], [42], and a venturi injector [44]. (Col. 4, ll. 13-26).

Fritz

10. Fritz describes a kitchen ventilation hood [23] that includes a filter [23] and a grease receptacle [110] for collecting grease. (Col. 1, ll. 32-66; col. 6, l. 16-col. 7, l. 12; fig. 3).

C. Principles of Law

“Two separate tests define the scope of analogous prior art: (1) whether the art is from the same field of endeavor, regardless of the problem addressed and, (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved.” *In re Bigio*, 381 F.3d 1320, 1325 (Fed. Cir. 2004).

“Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references.” *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

In an obviousness analysis, it is not necessary to find precise teachings in the prior art directed to the specific subject matter claimed because inferences and creative steps that a person of ordinary skill in the art would employ can be taken into account. *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007).

“In determining whether the subject matter of a . . . claim is obvious, neither the particular motivation nor the avowed purpose of the [applicant] controls.” *Id.* at 1741-42.

Argument of counsel cannot take the place of evidence lacking in the record. *Meitzner v. Mindick*, 549 F.2d 775, 782 (CCPA 1977); *see also In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974).

D. Analysis

Non-Analogous Art

ADS argues that Strause, Gallagher and Fritz are non-analogous art because the references are unconcerned with the problems that the instant

invention is designed to overcome. (Br. 7-8, 10, 13). Particular to Strause, ADS argues that a laborious, messy, difficult and expensive process must be undertaken when using Strause's device. (Br. 8). Specific to Gallagher, ADS argues that Gallagher's device is incapable of washing the interior of a kitchen hood and is directed to a device that attaches to the top of a hood to extract grease from an exhaust air stream exiting from the hood which is a different process from washing. (Br. 10).

ADS' arguments are not persuasive because they fail to address whether Strause, Gallagher or Fritz are from the same field of endeavor, regardless of the problem to be solved. The Strause, Gallagher and Fritz references along with the instant application are directed to eradicating grease from kitchen or cooking exhaust ducts. (FF¹s 1, 5, 8, 10). In addition, the Examiner directs attention to the fact that the instant application and the applied references are classified in the same class and subclass. (Ans. 7).

Rejection of Claims 1, 5, 6 and 10 over Way and Strause

Representative claim 1 is independent and recites "a plurality of support arms . . . being attached at one end to said duct conduit and further comprising a distal roller at another end and a spring mechanism for imparting lateral spring to said distal roller." ADS argues that Strause does not describe duct centering arms including a spring mechanism. (Br. 9).

ADS' arguments are not persuasive because the Examiner does not rely on Strause for describing duct centering arms. Instead, the Examiner relies on Way for describing duct centering arms [23] and attachment means [22]. (Final Rejection 2-3; Ans. 3-4, 8; FFs 1-3). The Examiner finds that Strause describes a ventilation degreasing system that includes spring loaded rollers

¹ FF indicates Finding of Fact.

[56]. (Final Rejection 2-3; Ans. 3-4; FFs 5-6). The Examiner concluded that it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify Way's device by substituting Strause's rollers and spring mechanism for Way's attachment means [22]. (Ans. 8). The Examiner finds the motivation to do so is found in Strause's teaching that using spring loaded rollers provides the advantage of allowing the degree of force against the duct wall to be easily adjusted. (Ans. 8, FF 7). Attacking references individually cannot establish non-obviousness when the rejection is based upon the teachings of a combination of references.

For all these reasons, ADS does not sufficiently demonstrate that the Examiner erred in determining that claims 1, 5, 6 and 10 are obvious.
Rejection of Claims 1, 3, 5, 6, 8, 10-16 and 18 over Way, Strause and Gallagher

ADS argues that the combination of Way, Strause and Gallagher is improper because the cited art must suggest that it can accomplish the inventor's results. (Br. 10-11). ADS' arguments are unpersuasive because ADS relies on a non-precedential BPAI decision in support of its argument. More recently, the Supreme Court stated that it is not necessary to find precise teachings in the prior art directed to the specific subject matter claimed because inferences and creative steps that a person of ordinary skill in the art would employ can be taken into account. The Supreme Court has also instructed that neither the particular motivation nor the avowed purpose of the applicant controls in the determination of obviousness.

ADS further argues that there is no inherent teaching, suggestion or motivation to combine the teachings of the references, and if there was, the

result would be incoherent and non-functional. (Br. 11). ADS argues that there is no purpose or means for permanently installing the Gallagher apparatus within a ventilation duct for automated duct washing since Gallagher is a stand-alone extraction device installed above a cooking device. (Br. 11). ADS further argues that one skilled in the art seeking to permanently install an automated duct washing/degreasing system that effectively cleans the hood with a cleaning solution would have no motivation to consider Gallagher's extraction system and no way to combine it with Way's and Strause's duct degreasing systems. (Br. 11).

ADS arguments are not persuasive. The Examiner does not propose permanently installing the Gallagher apparatus within a ventilation duct. Instead, the Examiner finds that one of ordinary skill in the art would have modified the combined Way and Strause device by including Gallagher's soap dispenser, not the entire device. (Final Rejection 4, Ans. 5). The motivation for doing so is to remove grease and further sanitize the surfaces on the inside of the ventilation shaft. (Final Rejection 4, Ans. 5). Furthermore, ADS does not provide objective evidence to support their argument that one skilled in the art would have no motivation or way to combine the teachings of Gallagher with Way and Strause. Argument of counsel cannot take the place of evidence lacking in the record

ADS also argues that the combination of Way, Strause and Gallagher do not teach or suggest the following limitations recited in claims 1 and 6: (1) "a duct conduit in fluid communication with a water source, and a cleaning source" or "a multi-stage duct conduit in fluid communication with a water source, a cleaning solution source"; and (2) "each of said support arms being attached at one end to said duct conduit and further comprising a distal roller

at another end and a spring mechanism for imparting lateral spring to said distal roller” or “each of said support arms comprises distal rollers at each end, and a spring mechanism for imparting lateral spring between said rollers”. (Br. 11-12).

ADS’ arguments are unpersuasive. The Examiner finds that Way describes a ventilation degreasing system including a multi-stage duct conduit [11] in fluid communication with a water source [19] and support arms [23] attached at one end to the duct conduit [11]. (Final Rejection 2-3; Ans. 3-4, FFs 1-2). Although Way suggests using a cleaning solution, the Examiner relies on Strause for describing a ventilation degreasing system that includes a detergent dispenser and a duct supporting mechanism that includes spring loaded rollers. (Final Rejection 2-3, Ans. 3-4, FFs 4-6). Thus, as explained by the Examiner, the Way, Strause and Gallagher references describe the disputed limitations of claims 1 and 6.

ADS further argues that Way, Strause and Gallagher do not teach or suggest the following limitations of claim 11: (1) "a duct conduit in fluid communication with a water source and cleaning solution source"; and (2) "a hood conduit in fluid communication with said water source and cleaning solution source, said hood conduit comprising a plurality of nozzle blocks and associated nozzles supported inside said kitchen ventilation hood and extending substantially the full length of said kitchen ventilation hood”.

As explained before, the Examiner relies on Way and Strause for describing the duct conduit in fluid communication with a water source and cleaning solution source. (Final Rejection 2-3; Ans. 3-4, FFs 1-2, 4-6). The Examiner relies upon Gallagher for teaching dual valve assemblies [36], [39] that clean the area directly above the hood and the ventilation shaft to

remove as much grease as possible. (Final Rejection 4-5; Ans. 5). The Examiner concludes that it would have been obvious to one with ordinary skill in the art to modify the system of Way and Strause to duplicate Way's ducting assembly and also place it in an oven hood. (Final Rejection 4-5; Ans. 5). Thus, as explained by the Examiner, the combination of Way, Strause and Gallagher describe the disputed limitations of claim 11.

For all these reasons, ADS does not sufficiently demonstrate that the Examiner erred in determining that claims 1, 3, 5, 6, 8, 10-16 and 18 are obvious.

Rejection of Claims 4, 9 and 17 over Way, Strause, Gallagher and Fritz

ADS argues that the combination of references is improper because the Examiner pieces together the references with no suggestion or motivation to combine them. (Br. 13). ADS' arguments are not persuasive because ADS does not sufficiently explain how or why the Examiner erred. Moreover, it is not necessary to find precise teachings in the prior art because inferences and creative steps that one of ordinary skill would employ can be taken into account.

ADS also argues that the combination of Way, Strause, Gallagher and Fritz do not describe the same contested limitations of claim 1 discussed above. (Br. 14). For the same reasons as explained above with respect to the Way, Strause and Gallagher combination, the combination of Way, Strause, Gallagher and Fritz describes the contested limitations of claim 1.

For all these reasons, ADS does not sufficiently demonstrate that the Examiner erred in determining that claims 4, 9 and 17 are obvious.

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E. Conclusions of Law

Based on the Findings of Fact and the Analysis above, ADS fails to sufficiently demonstrate that the Examiner erred in determining that the claims are obvious on the basis that the prior art is non-analogous or that the combinations of prior art do not teach or suggest the claimed invention.

F. Decision

The decision of the Examiner rejecting claims 1, 5, 6 and 10 over Way and Strause; claims 1, 3, 5, 6, 8, 10-16 and 18 over Way, Strause and Gallagher; and claims 4, 9 and 17 over Way, Strause, Gallagher and Fritz as unpatentable under 35 U.S.C. § 103(a) is affirmed.

No time period for taking any subsequent action in connection with the appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

ack

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