

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

Paper No. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* ALAIN VIRON

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Appeal No. 1997-1796  
Application 08/422,491

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ON BRIEF

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Before GARRIS, WARREN and TIMM, *Administrative Patent Judges*.

WARREN, *Administrative Patent Judge*.

*Decision on Appeal and Opinion*

This is an appeal under 35 U.S.C. § 134 from the decision of the examiner finally rejecting claims 1 through 12.<sup>1</sup>

We have carefully considered the record before us, and based thereon, find that we cannot sustain any of the grounds of rejection advanced by the examiner in the answer. With respect to the ground of rejection of the appealed claims under 35 U.S.C. § 112, second paragraph (answer, page 3), we cannot agree with the examiner's position that the introductory phrase "[i]n an extruder assembly" renders the appealed claims indefinite, because we find no basis in the plain language of the appealed claims, when interpreted in light of appellant's specification as it would

be interpreted by one of ordinary skill in this art, *see In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997), which would even lead to consideration of whether the claim language signifies that a “Jepson” claim format may be intended.<sup>2</sup> Thus, we reverse this ground of rejection.

Turning now to the grounds of rejection based on Oas,<sup>3</sup> we find that not until the discussion of appellant’s arguments at pages 5-6 of the answer does the examiner explain the basis for his finding that the reference anticipates appealed claim 1 under 35 U.S.C. § 102(b). Appellant submits (brief, page 6) that the “helical surface of the check ring 31 [in Oas] does not provide any re-centering effect of the valve” and argues that this structure in Oas does not correspond to or perform the function defined by the limitations in claim 1 that the “check valve includes a seat that is *orientated at a given angle* to said longitudinal axis” and the “support points [of the pin] are formed by flats *oriented at said given angle* such that when said flats come into engagement with said seat said screw point is aligned about said longitudinal axis” (emphasis supplied). The examiner responds that the appealed claims do not contain a limitation with respect to “recentering” and finds, *inter alia*, that the “support points [of the pin] formed by flats orientated at said given angle wherein said flats engage with said front seat [of the check valve] so that said screw point is aligned about said longitudinal axis,” pointing out that “since Oas meets all of the claimed limitations, a re-centering effect (although not claimed) is achieved” (*id.*, page 6). The examiner explains, in this respect, that “[a]s shown in [Oas] Figure 8B, flats of pin 65 engage with [sic] front seat of check ring 31” (*id.*).

We have carefully compared the limitations of appealed claim 1 with the disclosure of Oas in light of the examiner’s discussion of this reference and find that we agree with appellant. We interpret the plain language of the limitations of claim 1 set forth above in light of the specification (e.g., pages 4 and 6, and specification Figure 4) as it would be interpreted by one of ordinary skill in the art, *see Morris, supra*, to specify that the orientation of the seat of the check valve and of the flats is at an angle

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<sup>1</sup> Amendment of March 8, 1996 (Paper No. 7).

<sup>2</sup> The examiner has dropped his criticism of the term “piston” (answer, page 5).

<sup>3</sup> The references relied on by the examiner with respect to the grounds of rejection are listed at pages 2-3 of the answer.

which causes the flats to engage the seat “such that . . . said screw point is aligned about said longitudinal axis.” This disclosure establishes that the engagement of the seat and flats specified in claim 1 will result in recentering. It is not apparent from any disclosure in Oas, and the examiner has not pointed to any, that the apparent angle of 90 degrees formed when the flats of pin 65 engage the front seat of check ring 31 as shown in Oas Figure 8B would align the screw point about the center axis, thus recentering it. Indeed, it is not apparent from Oas Figure 8B that the mere engagement of the flats of retainer end 65 and valve seat 31 would provide for the alignment of the screw point of piston screw **28** given the tolerance evident between barrel **12** and retainer end **65**. Thus, it is not apparent from the examiner’s explanation that the extruder assembly for an injecting molding machine shown in Oas would meet expressly or inherently meet each and every limitation of the claimed extruder assembly for an injecting molding machine encompassed by claim 1, arranged as required by this claim. *See generally, In re King*, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986); *Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick, Co.*, 730 F.2d 1452, 1457, 221 USPQ 481, 485 (Fed. Cir. 1984). We further find that the examiner has not responded to appellant’s argument that “[t]here is no disclosure in [Oas] that the angle of the screw point is calculated to prevent a reduction in the cross sectional area of the extruding head in the area of the pin” (brief, page 7).

Accordingly, we reverse the ground of rejection of claims 1, 4, 6, 7, 10 and 12 under 35 U.S.C. § 102(b) over Oas as well as the ground of rejection of claims 2, 3, 5, 8, 9 and 11 under 35 U.S.C. § 103(a) over Oas as applied to claims 1, 4, 6, 7, 10 and 12 further in view of Haines et al., Strassheimer and Wogerer (answer, page 4). As to the latter ground of rejection, we find that, as noted by appellant (brief, pages 7-8), the secondary references do not cure the deficiency that we identified in Oas above with respect to the limitations of claim 1. Indeed, the examiner admits in the subsequent ground of rejection that Haines et al., Strassheimer and Wogerer “do not disclose the pin matching the taper angle of the check valve” (answer, page 5). Thus, we reverse the ground of rejection which is based on these three references in view of Oas as well (*id.*, pages 4-5).

The examiner’s decision is reversed.

*Reversed*

BRADLEY R. GARRIS	)	
Administrative Patent Judge	)	
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	)	
	)	
CHARLES F. WARREN	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
CATHERINE TIMM	)	
Administrative Patent Judge	)	

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