

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 34

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES E. SWON
AND HENRY HOFER

Appeal No. 97-1884
Application 08/051,377¹

ON BRIEF

Before HAIRSTON, KRASS, and TORCZON, Administrative Patent
Judges.

HAIRSTON, Administrative Patent Judge.

¹ Application for patent filed April 23, 1993.

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DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 3, 11 and 14 through 20. In the final rejection, claims 4 through 10 and 13 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In an Amendment After Final (paper number 16), claim 11 was amended, and claims 4 and 13 were rewritten in independent form. In an Advisory Action (paper number 17), the examiner indicated that claims 4 through 11 and 13 were allowed, and that claims 1 through 3 and 14 through 20 were rejected. Appellants' amendment (paper number 29) filed in response to a new ground of rejection of claims 14 through 19 in the Answer (paper number 27) was not entered by the examiner (paper number 30). Appellants' Petition to the Commissioner (paper number 31) requesting entry of the amendment and a reply brief was denied (paper number 32). As a result of appellants' failure to file a timely response to the new ground of rejection of claims 14 through 19, the appeal as to these claims is dismissed.

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Accordingly, claims 1 through 3 and 20 remain before us on appeal.

The disclosed invention relates to a laboratory stirring shaft and solution monitoring comparator device.

Claim 1 is illustrative of the claimed invention, and it reads as follows:

1. A laboratory stirring shaft and solution monitoring comparator device comprising in combination: monitoring means adapted for use in association with a downwardly-directed revolvable linearly-extending stirring shaft having a distal end at least one of (a) carrying and (b) adapted to carry at least one stirring blade, said monitoring means being for measuring physical attributes of the downwardly directed revolving linearly-extending stirring shaft when the linearly-extending stirring shaft has the distal end stably mounted and positioned to be revolved within media such that the at least one stirring blade is enabled to agitate the media within a vessel stably positioned relative to the linearly-extending stirring shaft in which physical attributes include at least one of (a) wobble during revolving thereof, (b) verticality, (c) rate of revolutions, and (d) current magnitude of wobble-induced vibrations; and a visual display means for visually displaying data measured by said monitoring means of said physical attributes.

The reference relied on by the examiner in the only remaining rejection is:

Pollard

4,594,883

June 17,

1986

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Claims 1 through 3 and 20 stand rejected under 35 U.S.C.
§ 102(b) as being anticipated by Pollard.

Reference is made to the brief and the answer for the
respective positions of the appellants and the examiner.

OPINION

We have carefully considered the entire record before us, and we will reverse the 35 U.S.C. § 102(b) rejection of claims 1 through 3 and 20.

In Figure 1 of Pollard, an impeller 4 mounted on the end of a shaft 3 is rotated at a constant angular velocity by motor 12. Vibrations induced in shaft 3 by virtue of the stirring action of impeller 4 are sensed by a transducer 5 mounted on the shaft. Pollard indicates that viscosity of the material being stirred may be inferred from measurements of shaft vibration (column 4, lines 18 through 25).

The examiner is of the opinion that the vibrations measured by Pollard "are a measure of wobble and changes in verticality" (Answer, page 4). Appellants argue (Brief, page 18) that Pollard has absolutely nothing to do with wobble. Pollard indicates that properties of a material are monitored by "using the material under test as the means of generating the vibrations" (column 2, lines 55 through 60). Thus, we agree with appellants that the vibrations in Pollard are not

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caused by wobble or changes in verticality of the stirring shaft 3.

The examiner acknowledges (Answer, page 5) that "Pollard lacks teaching of providing means to measure the revolutions per unit time of the stirring shaft teaching instead that the stirring shaft is rotated at a constant angular velocity (eg. see column 6[,] lines 19-21)."

In summary, the 35 U.S.C. § 102(b) rejection of claims 1 through 3 and 20 is reversed because Pollard does not measure wobble, verticality or rate of revolutions.

DECISION

The decision of the examiner rejecting claims 1 through 3 and 20 under 35 U.S.C. § 102(b) is reversed.

REVERSED

KENNETH W. HAIRSTON)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
ERROL A. KRASS)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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)	

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RICHARD TORCZON)
Administrative Patent Judge)

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