

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. 28

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RAYMOND KEITH FOSTER and RANDALL MARK FOSTER

Appeal No. 1998-1298
Application No. 08/544,962

ON BRIEF

Before COHEN, ABRAMS, and NASE, Administrative Patent Judges.
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 2, 5, 6, 9, 11, 13, and 14. Claims 3, 4, 7, and 8 stand withdrawn as directed to a non-elected species. These claims constitute all of the claims remaining in the application.

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Appellants' invention pertains to a reciprocating floor conveyor for conveying articles having fixed-form wide bases. A basic understanding of the invention can be derived from a reading of exemplary claim 1, a copy of which appears in the APPENDIX to the main brief (Paper No. 15).

The examiner has applied the documents listed below:

Goodman	788,640	May 2, 1905
Moser et al (Moser)	1,964,297	Jun. 26, 1934
Dreffein	2,010,295	Aug. 6, 1935
Klein	3,815,726	Jun. 11, 1974
Foster (Foster '678)	4,580,678	Apr. 8, 1986
Foster (Foster '686)	4,679,686	Jul. 14, 1987
Abraham	4,711,342	Dec. 8, 1987
Foster et al (Foster '522)	5,588,522	Dec. 31, 1996

The following rejections are before us for review.

Claims 1, 2, 5, 11, 13, and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Goodman, Moser, Dreffein, or Abraham in view of Foster '686.

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Claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Goodman, Moser, Dreffein, or Abraham in view of Foster '686, Klein, and Foster '678.

Claims 1, 2, 5, 6, 11, 13, and 14 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of U.S. Patent No. 5,588,522 (Foster '522).

The full text of the examiner's rejections and response to the argument presented by appellants appears in the answer and the response to the Remand (Paper Nos. 16 and 27), while the complete statement of appellants' argument can be found in the main and reply briefs (Paper Nos. 15 and 17).

OPINION

In reaching our conclusion on the issues raised in this appeal, this panel of the board has carefully considered

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appellants' specification and claims, the applied teachings,¹ and the respective viewpoints of appellants and the examiner. As a consequence of our review, we make the determinations which follow.

The rejection of claims 1, 2, 5, 11, 13, and 14
under 35 U.S.C. § 103(a)

We do not sustain the rejection of appellants' claims based upon the respective combined teachings of Goodman and Foster '686, Moser and Foster '686, Drefflein and Foster '686, and Abraham and Foster '686.

The Goodman patent teaches two separate series of bars or rods 2, 3 for supporting and carrying glass through a leer

¹ In our evaluation of the applied prior art, we have considered all of the disclosure of each document for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

(Figs. 2 and 4 through 7). The bed-bars 2 are lifted by lifting bars 5, while the pulling-out bars 3 are movable in backward and forward directions.

The patent to Moser (Figs. 4 and 5) teaches a walking beam conveyor for a furnace chamber. Stools 14 extend in rows both crosswise and lengthwise within the furnace chamber. Rails 16, mounted on the stools, constitute a bed of transport rails for moving work lengthwise of the furnace chamber. Also associated with each stool is a post 21 carrying a yoke 28 which supports rails 29, with the rails together constituting a work lifting bed. Forward movement of the rail bed 16, when the rail bed 29 is lowered, moves the work forwardly, and when the rail bed 29 is elevated to lift the work off the rail bed 16, the rail bed 16 is free to return to its starting position. After rail bed 29 redeposits the work upon the rail bed 16, rail bed 16 can again move the work forwardly.

The Dreflein patent addresses a conveying and supporting mechanism. A plurality of conveyor members or bars 15 (links of I-section), mounted in parallel and spaced relation, are

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supported by flanged rollers 14 (Figs. 2, 3, 7 and 8).
Lifting and supporting bars 35 (links of I-section), located in the spaces between the conveyor members, are carried by blocks 37, cross beams 38, and rods 39. The lifting and supporting bars function to raise and support a load above the conveyor bars until the return movement of the conveyor bars is completed, when the load is again deposited on the conveyor bars.

The Abraham patent teaches a conveyor transfer system used in a foundry (Figs. 1, 2, and 12). Molds are movable between a first path 14 and a second path 16 via shuttle conveyor 20. Horizontal beams 240, 242, outboard of support members 204, 206 (Fig. 12), are supported on rollers 254, 256 and are horizontally movable, while support members 204, 206 are mounted for vertical movement. Molds are transferred to and from the shuttle conveyor.

The Foster '686 patent addresses a reciprocating floor conveyor with groups of independent floor members 1, 2, 3 that advance and retract to move a load L relying upon frictional

forces therebetween (Figs. 2 through 6). In particular, Foster '686 discloses a floor member bearing construction 16 mounted upon a longitudinal guide tube or beam 12 supported upon cross frame members 14 that allows a floor member 10 to be snapped in place (Figs. 8 and 10).

As we see it, one having ordinary skill in the art would have readily appreciated each of the respective conveyor arrangements of Goodman, Moser, Dreffein, and Abraham, relative to the reciprocating floor conveyor of Foster '686, as clearly being a distinctly different conveyor type. As such, we determine that the applied references themselves, absent appellants' own teaching, would not have been suggestive of altering any of the conveyor arrangements of Goodman, Moser, Dreffein, and Abraham by the selective addition of a longitudinal bar arrangement from a distinctly different type of conveyor.² Thus, the proposed addition of longitudinal bars and bearings for the conveyors of each of

² The rejection specifies that it would have been obvious to "add" longitudinal bars, while in "Issue 1" in the response to the Remand (Paper No. 27), the examiner discusses an obvious "replacement".

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Goodman, Moser, Dreffein, and Abraham to effect, according to the examiner's incentive, a more rigid support, if desired, would involve the undertaking of a reworking of the aforementioned conveyors clearly impermissibly based upon hindsight, and not from any suggestion derived from the applied reference teachings themselves. It is for these reasons that the rejection cannot be sustained.

The rejection of claim 9 under 35 U.S.C. § 103(a)

We do not sustain this rejection for the reason that follows. Claim 9 depends from independent claim 2, the rejection of claim 2 having not been sustained, as above. In the present rejection, the Klein and Foster '678 documents are added to those references earlier applied in the rejection of claim 2 for reasons which we fully comprehend. Nevertheless, since these two additional references cannot cure the basic deficiency of the earlier applied teachings, we likewise cannot sustain the rejection of dependent claim 9. As a final point, we simply note that what teachings "could be" applied is not the dispositive issue under 35 U.S.C. § 103 (examiner's

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comments as to Issue 5 in the response to the Remand); what would have been obvious based upon the applied prior art is determinative.

The obviousness-type double patenting rejection

We do not sustain this rejection of appellants' claims.

The examiner sets forth respective blanket statements in the final rejection and in "Issue 6" in the response to the Remand (Paper No. 27) to the effect that appellants' claims 1, 2, 5, 6, 11, 13, and 14 on appeal cover the same invention in that they only vary in obvious variations in breadth and scope, with slightly different wording, as patented claims 1 through 20 of U.S. Patent No. 5,588,522.

Appellants offer particular reasons as to why the obviousness-type double patenting rejection is unsound (main brief, pages 24 through 26).

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What we do not have before us for review, however, is an explicit claim by claim analysis by the examiner of each of appellants' claims 1, 2, 5, 6, 11, 13, and 16, specifically ascertaining the differences between those claims and particular claims from among claims 1 through 20 of U.S. Patent No. 5,588,522, with a substantive foundation being provided in support of a conclusion that each particular claim on appeal would have been an obvious variation of a corresponding patented claim. Also absent are specific comments by the examiner about the particular argument advanced by appellants in the main brief. Since the examiner has not provided the referenced essential claim by claim analysis, in particular, the foundation of an obviousness-type double patenting rejection is lacking. Thus, the rejection cannot be sustained.

In summary, this panel of the board has:

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not sustained the rejection of claims 1, 2, 5, 11, 13, and 14 under 35 U.S.C. § 103(a) as being unpatentable over Goodman, Moser, Dreffein, or Abraham in view of Foster '686;

not sustained the rejection of claim 9 under 35 U.S.C. § 103(a) as being unpatentable over Goodman, Moser, Dreffein, or Abraham in view of Foster '686, Klein, and Foster '678; and

not sustained the rejection of claims 1, 2, 5, 6, 11, 13, and 14 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of U.S. Patent No. 5,588,522 (Foster '522).

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The decision of the examiner is reversed.

REVERSED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	
)	BOARD OF PATENT
NEAL E. ABRAMS)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JEFFREY V. NASE)	
Administrative Patent Judge)	

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