

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

Paper No. 43

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEAN-PIERRE GREGOIRE and MICHEL BONNION

Appeal No. 1998-2927
Application No. 07/584,667

ON BRIEF

Before FRANKFORT, McQUADE, and NASE, Administrative Patent Judges.

NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 4. Claims 5 to 22 have been allowed. No claim has been canceled.¹

¹ We find the appellants' indication on page 1 of the brief (Paper No. 38, filed August 11, 1997) that, to the best of their knowledge and belief, there are no related appeals which would have a bearing on this appeal to be clearly in error since the rejection before us in this appeal was first made as a new ground of rejection under 37 CFR § 1.196(b) by another panel of the Board of Patent Appeals and Interferences in their February 23, 1996 DECISION ON APPEAL (Paper No. 29).

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We AFFIRM.

BACKGROUND

The appellants' invention relates to a moistening system. A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Prentis 1877	188,185	March 6,
Krueger 1941	2,232,708	Feb. 25,

Claims 1 to 4 stand rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Prentis or Prentis in view of Krueger.²

² In our view, this rejection sets forth the following three rejections: (1) Claims 1 to 4 under 35 U.S.C. § 102(b) as anticipated by Prentis; (2) Claims 1 to 4 under 35 U.S.C. § 103(a) as obvious over Prentis; and (3) Claims 1 to 4 under 35 U.S.C. § 103(a) as obvious over Prentis in view of Krueger.

The examiner's rationale for the above-noted rejection is set forth on pages 3-4 of the answer (Paper No. 39, mailed December 10, 1997) which we reproduce below:

Prentis teaches an apparatus comprised of a water reservoir divided into 2 or more independent compartments using one or more partitions with the moistening member located in each of the components [sic, compartments] to individually supply water to the moistening member. Prentis teaches the moistening member has a projecting part which is used to moisten objects with water from the reservoir and is supported in the reservoir on shaft B (see column 2 sixth paragraph [sic, column 1 fifth paragraph]). The recitations of the end use of the apparatus for moistening enveloped slaps [sic, flaps] does not structurally further limit the apparatus claim since Prentis teaches each of the elements of the moistening system as set forth in claims 1-2. With respect to claim 3, Prentis has a [sic, an] upper surface closed by a lid. Prentis fails to teach the moistening member passes through the cover [lid]. However, it would have been an obvious expedient to the skilled artisan to make the Prentis moistening member protrude through the apertures in [the] lid in order to make the moistening member more accessible for wetting objects especially in view of Krueger which discloses an apparatus for moistening objects comprising a reservoir an [sic, and] a moistening member which passes through an opening in the cover of the reservoir. With respect to claim 4, the sponge shaft shown in Figure 4 of Prentis constitute [sic, constitutes] a "flat holder" which fixes the moistening member to the reservoir.

The complete statement of the appellants' argument against the rejection can be found on pages 3-9 of the brief

and on pages 1-3 of the reply brief (Paper No. 40, filed February 9, 1998).

The examiner's response to the argument in the brief appears on pages 4-5 of the answer.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

In the brief (page 3), the appellants stated that claims 1-3 stand and fall together and that claim 4 stands and falls separately from claims 1-3. In accordance with 37 CFR § 1.192(c)(7), we have selected claim 1 as the representative claim from the appellants' grouping of claims 1-3.

Claim 1

We sustain the rejection of claim 1.

Claim 1 reads as follows:

Moistening system comprising: a moistening member and a water reservoir, said moistening member being mounted on said reservoir and having a projecting part for moistening envelope flaps of postal articles as said articles move along a path and said flaps are applied

against said projecting part, said reservoir being mounted with said moistening member carried thereby transversely below the path and extending over substantially the entire width of the path and said reservoir including a series of partitions dividing said reservoir across the width of the path into independent compartments, with said compartments individually supplying water to said moistening member.

The appellants explain that the embodiment shown in Figures 1-4 of Prentis has two compartments which are in communication with each other via a slot b in the central partition. The appellants then argue that the limitation of "independent compartments" recited in claim 1 is not met by the embodiment shown in Figures 1-4 of Prentis.³ We do not agree for the reasons that follow.

Prentis teaches (column 1, fifth paragraph) that cup A (i.e., reservoir) is divided into two "distinct" compartments by a central partition a which is provided with a slot b to accommodate a sponge-shaft B. Prentis further teaches (column

³ The argument presented by the appellants concerning the unshown embodiment of Prentis (referred to in column 2, sixth paragraph) is of no moment in this appeal since we will rely solely on the embodiment shown in Figures 1-4 of Prentis in deciding the issues raised in this appeal.

2, second paragraph) that sponges g are mounted upon the sponge-shaft B with forks f properly entered to secure rotation of the sponges with the sponge-shaft B. Prentis then teaches (column 2, third and fourth paragraphs) that a small quantity of water is supplied to the cup and one compartment may be used as a pen-cleaner and the other compartment may be used when counting bills.

In view of the above-noted teachings of Prentis, we reach the conclusion that the phrase "independent compartments" as recited in claim 1 is readable on Prentis' "distinct" compartments since the compartments are designed to be used with a small quantity of water therein and the compartments are to be used for two different (i.e., independent) purposes (i.e., pen-cleaner and counting bills).

For the reasons set forth above, the decision of the examiner to reject claim 1 under 35 U.S.C. §§ 102(b) and 103(a) is affirmed.⁴

⁴ We note that a disclosure that anticipates under 35
(continued...)

Claims 2 and 3

In accordance with the appellants' above-noted grouping of claims, claims 2 and 3 fall with claim 1. Thus, it follows that the decision of the examiner to reject claims 2 and 3 under 35 U.S.C. §§ 102(b) and 103(a) is also affirmed.

Claim 4

We sustain the rejection of claim 4.⁵

The appellants argue (brief, page 8) that the prior art clearly lacks the recited mounting of a moistening member on a flat holder, with the moistening member being divided into as

⁴(...continued)
U.S.C. § 102 also renders the claim unpatentable under 35 U.S.C. § 103, for "anticipation is the epitome of obviousness." Jones v. Hardy, 727 F.2d 1524, 1529, 220 USPQ 1021, 1025 (Fed. Cir. 1984). See also In re Fracalossi, 681 F.2d 792, 794, 215 USPQ 569, 571 (CCPA 1982); In re Pearson, 494 F.2d 1399, 1402, 181 USPQ 641, 644 (CCPA 1974).

⁵ Claim 4 reads as follows: Moistening member according to claim 3 wherein said moistening member is segmented into as many segments as there are compartments, at least in said part thereof dipping into said compartments, and is mounted on a flat holder which fixes said moistening member to the reservoir.

many segments as there are compartments. We find this argument to be unpersuasive for the following reasons. First, we agree with the examiner's finding that the claimed "flat holder" is readable on the sponge-shaft B of Prentis because the sponge-shaft B holds the two sponges and includes a relatively broad surface in relation to its thickness (i.e., flat). Second, the moistening member of Prentis is divided into two sponges (i.e., segments), one for each compartment. Thus, we reach the conclusion that the limitations of claim 4 regarding the mounting of a moistening member on a flat holder, with the moistening member being divided into as many segments as there are compartments, is met by Prentis.

For the reasons set forth above, the decision of the examiner to reject claim 4 under 35 U.S.C. §§ 102(b) and 103(a) is affirmed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 4 under 35 U.S.C. §§ 102(b) and 103(a) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

CHARLES E. FRANKFORT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JOHN P. McQUADE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JEFFREY V. NASE)	
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