

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 GARY A. BENNER

Appeal No. 2000-1856
Application No. 08/527,671

ON BRIEF

Before McQUADE, NASE and BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 38-45, which are all of the claims pending in this application.

BACKGROUND

The appellant's invention relates to a method for assembling a cutter bar and an insert into a subassembly for use in a dispenser for thread products, such as a dental floss

dispenser. A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

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

Acton et al. (Acton)	3,466,731	Sep. 16, 1969
Reid et al. (Reid)	3,840,966	Oct. 15, 1974
Suzuki et al. (Suzuki)	5,038,464	Aug. 13, 1991

Appellant's admitted prior art (AAPA) on pages 2-4 of the specification.

The following rejection is before us for review.

Claims 38-45 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over AAPA in view of Suzuki and either Acton or Reid.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejection, we make reference to the answer (Paper No. 23) for the examiner's complete reasoning in support of the rejection and to the brief and reply brief (Paper Nos. 22 and 24) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and

claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

The examiner notes that, as admitted on pages 2-4 of appellant's specification (AAPA), methods for assembling a cutter bar and insert having the structural features recited in lines 2-6 of claim 38 into a subassembly for use in a dispenser for thread products were known in the art at the time of appellant's invention. The examiner acknowledges that these known methods differ significantly from the method recited in claim 38. According to the examiner,

[i]n view of [Suzuki] and either of [Acton] and [Reid], one having ordinary skill in the art would have found it obvious to modify [AAPA] by attaching the cutter bar to the insert by using a turret and attaching a device in a manner analogous to that disclosed by [Suzuki], and using a guide rail in a manner analogous to the [guide rail] taught by each of [Acton] and [Reid] in order to realize the benefits that a method incorporating a turret, attaching device and guide rail exhibits relative to the [AAPA] processes. For example make more efficient use of floor space could be obtained [answer, pages 5-6].

Suzuki discloses a film magazine assembling system wherein an indexing member 10 in the form of a rotary plate is provided with a plurality of assembly chucks 20 each

comprising a movable chuck half 22 and a fixed chuck half 21. The movable half 22 is connected to one end of a chuck driving lever 23 such that, when the indexing member 10 is rotated, the chuck driving lever 23 is swung under the guidance of a cam groove 14 to move the movable

chuck half 22 toward and away from the fixed half 21 to open and close the chuck. The rotation of the indexing member moves each of the chucks 20 through a plurality of assembly stations. In the first station A, the chuck 20 is stopped in the open position and a barrel plate 30 is loaded thereinto from a barrel plate guide 31. On the way to the second station, the chuck is partly closed by the chuck driving lever 23 and subsequently opened before it reaches the second station B, where a film is released from a pallet 37 into the barrel plate 30. At subsequent stations, the film magazine assembly is capped and calked and finally discharged at station H.

Acton discloses a method and apparatus for inserting liners 20 in closures 22. The closures 22 are guided from a conveyor 30 by straight guides 58, 59 into slots of a rotating star wheel 25 and prevented from coming out of the ends of the

slots 27 by a guide ring 60 (see Figure 1) which encompasses the star wheel 25 from the receiving station A around to the ejection station E. As indicated in column 3, lines 66-68, the ring guide closes the ends of the slots 27.

Reid discloses an apparatus for inserting cups C into tubes T. The tubes are conveyed from a chute 70 into recesses 42a of a turret 40. Similarly, cups C are choke fed through a chute 72 to enable the cups to become engaged with the recesses 42a. A guide 58 is rigidly mounted upon a framework 10 supporting the turret 40 and "consists of a metal block having a cylindrically curved concave surface on the side facing the turret 40 so as to engage and guide the cups C as they travel in counterclockwise direction with rotating turret as best seen in FIG. 1" (column 2, lines 46-52).

As Suzuki's chucks 20 are provided with means for opening and closing the chucks to contain the contents, it is not apparent to us why one skilled in the art would have been motivated to provide a guide rail thereon as proposed by the examiner. Nevertheless, even if the references were combined as proposed by the examiner, we agree with appellant that the applied references do not teach or suggest a step of "maintaining and positioning said insert in said pocket with a

guide rail adapted to substantially mate with said insert and urge said insert into said pocket" as required in claim 38.

In particular, as explained on page 12 of appellant's specification,

the guide means 78 includes an elongated, generally semi-circular rail 78a which, as shown in Figure 2, projects downwardly into and substantially mates with the space in the insert superstructure defined between the first web 28, the second web 32 and the upper surface of the platform 24. Rail 78a functions to positively urge the insert into seated and stable contact with its associated wheel pocket 84 as the wheel travels from the first to the third assembly stations described below. More particularly, the guide rail 78a is adapted to lightly contact the superstructure of insert 14 as the insert traverses the guide means 78 such that the undersurface of the platform remains in abutting relation with the ledge 88 while the first insert web 28 and first insert flange 26 maintain abutment with the abutment surface 92 and support surface 94, respectively, of the wheel backing plate 90. The stability thus afforded by the guide means 78 assures that the insert is processed and inspected with a high degree of precision as it progresses through the assembly stations of apparatus 10. Such precision, in turn, translates into fewer misassembled cutter bar/insert subassemblies, thereby further enhancing the efficiency of the assembly apparatus.

Neither Acton nor Reid contains any teaching of a guide rail which mates, in the sense of fitting together, with either of the parts to be assembled. There is no indication in either of these references that the guide rail (ring guide 60 of

Acton or guide 58 of Reid) does anything more than about the part or parts to be retained in the assembly member (star wheel 25 of Acton or turret 40 of Reid).

The examiner makes much of the fact that Reid uses the term "engage" to describe the interaction of the guide 58 with the cups C (answer, page 7). However, we see nothing in Reid's discussion of the guide 58 ("a metal block having a cylindrically curved concave surface on the side facing the turret 40") which would indicate that Reid uses the term "engage" in the sense of an interfitting, as distinguished from mere contact¹ so as to retain the cups in the turret.

In light of the above, we conclude that the applied references are not sufficient to establish a prima facie case of obviousness of the subject matter of claim 38, or, it follows, claims 39-45 which depend from claim 38. Thus, it is not necessary for us to discuss appellant's declaration submitted under 37 CFR § 1.132 (Paper No. 18).

For the foregoing reasons, we shall not sustain the examiner's rejection of claim 38, or claims 39-45 which depend from claim 38.

¹ Webster's Third International International Dictionary (Merriam-Webster 1971) defines "engage" as to come into contact or interlock with.

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CONCLUSION

To summarize, the decision of the examiner to reject claims 38-45 under 35 U.S.C. § 103 is reversed.

REVERSED

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