

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte JAMES C. ANDERSON
and
DARREL R. BLOOMQUIST

Appeal No. 2002-1233
Application No. 09/187,138

ON BRIEF

Before STAAB, 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 2 to 5, 7 to 18 and 20, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellants' invention relates to a tape drive head cleaner that uses a cleaning pad mounted in the tape drive (specification, p. 1). 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:

Saito et al. (Saito)	5,383,076	Jan. 17, 1995
Inoue et al. (Inoue)	5,469,318	Nov. 21, 1995
Fritsch et al. (Fritsch)	6,028,751	Feb. 22, 2000

Claims 2, 4, 5 and 7 to 13 stand rejected under 35 U.S.C. § 103 as being unpatentable over Inoue in view of Fritsch.

Claims 3, 14 to 18 and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Saito in view of Fritsch.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer (Paper No. 14, mailed July 31, 2001) for the examiner's complete reasoning in support

of the rejections, and to the brief (Paper No. 13, filed February 14, 2001) and reply brief (Paper No. 15, filed October 9, 2001) for the appellants' arguments thereagainst.

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. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the examiner is insufficient to establish a prima facie case of obviousness with respect to the claims under appeal. Accordingly, we will not sustain the examiner's rejection of claims 2 to 5, 7 to 18 and 20 under 35 U.S.C. § 103. Our reasoning for this determination follows.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of obviousness is established by presenting evidence that would have led one of ordinary skill in the art to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988) and In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).

With this as background, we analyze the prior art applied by the examiner in the rejection of the claims on appeal.

Inoue's invention relates to a magnetic head device which is built, for instance, in a tape recorder and has an automatic cleaning mechanism. As best shown in Figure 4, the cleaning mechanism includes (1) a movable inverted-L-shaped lever 4 comprising a horizontal arm 4h and a vertical arm 4v, and (2) a brush 4e attached to the vertical arm 4v. The brush 4e is formed as follows: A bar, around which fibers such as Nylon fibers and carbon fibers are wound, is fixedly held on the vertical arm 4v, for instance, by caulking. The use of the brush 4e of carbon fibers contributes to prevention of the occurrence of static electricity.

Saito's invention relates to a magnetic head device and more particularly to a magnetic head device applied to a magnetic tape recording and/or reproducing apparatus and other magnetic recording medium apparatus, and a means for cleaning a sliding surface of a magnetic head which is provided in the magnetic head device. As best shown in Figure 4, the means for cleaning the sliding surface of the magnetic head includes (1) a reverse "L" shape lever 40 comprised of a horizontal

portion 40h and a brush base 40v, and (2) a brush 47 attached on the brush base 40v. The brush 47 can be made as a result of folding a brush member in the brush base 40v. The brush member is made from bristles such as nylon fibers or carbon fibers or other fibers wound on a core material. A problem caused by an electrostatic phenomena because of a friction of the brush 47 can be prevented if materials comprising the carbon fibers are used for the bristles of the brush 47.

Fritsch's invention relates to a cleaning device for cleaning a component in a tape path in a machine unit in which a tape passes along and engages the component, and defines the tape path. The cleaning device comprises a cleaning tape for placing in the tape path for engaging the at least one component in an area coinciding with the tape path for cleaning the tape path area of the component. Figures 19 to 25 illustrate a cleaning device 90 according to one embodiment of Fritsch's invention. The cleaning device 90 includes (1) a capstan and pinch roller cleaning brush 91 which is mounted in a housing 15 for engaging and cleaning the capstan and pinch rollers 10 and 11, and (2) a tape cleaning brush 92 provided in the housing 15 for cleaning the cleaning tape 30 as it enters or exits the housing 15, depending on the direction of rotation of the spools 24. The cleaning brush 91 comprises a main carrier housing 95 of plastics material which carries a brush member 96. The brush member 96 comprises a relatively rigid woven base 97 from which a plurality of bristles 98 extend and are woven

into the base 97. The woven base 97 is of a semi-rigid type material and is slidably engaged in the main carrier housing 95 between a pair of side tracks 99, for facilitating ease of replacement of the brush member 96. The brush member 96 comprises two portions, namely, 96a and 96b. The portion 96a cleans the capstan 10 and the portion 96b cleans the pinch roller 11. The tape cleaning brush 92 is carried on the main carrier housing 95 of the capstan and pinch roller cleaning brush 91, and cleans the cleaning surface 55 of the cleaning tape 30. The cleaning brush 92 comprises a secondary carrier housing 100 which is carried on the main carrier housing 95 by a carrier member 102 which extends from the main carrier housing 95. The main carrier housing 95, the secondary carrier housing 100 and the carrier member 102 are integrally injection molded. Side tracks 103 on the secondary carrier housing 100 slidably engage a relatively rigid woven base 104 of a brush member 105 of the tape cleaning brush 92 for carrying the brush member 105 in the secondary carrier housing 100. Bristles 106 of the brush member 105 extend from, and are woven into the woven base 104.

In the two rejections under 35 U.S.C. § 103 before us in this appeal, the examiner concluded that it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide either the head cleaning device of Inoue or the head cleaning device of Saito with the cleaning pad having cleaning fibers woven

into and projecting from the backing as taught by Fritsch. We do not agree. In that regard, we fail to find any teaching, suggestion or motivation in the teachings of the applied prior art for an artisan to have modified either the cleaning brush 4e of Inoue or the cleaning brush 47 of Saito to be a cleaning pad as recited in the claims under appeal. While Fritsch's brushes 91 and 92 are clearly cleaning pads, Fritsch does not teach or suggest using the brushes 91 and 92 (i.e., cleaning pads) to clean a transducer head. Thus, it is our view that the applied prior art would not have made it obvious at the time the invention was made to a person of ordinary skill in the art to have modified either the cleaning brush 4e of Inoue or the cleaning brush 47 of Saito to be a cleaning pad as recited in the claims under appeal. In our view, the only suggestion for modifying either Inoue or Saito in the manner proposed by the examiner to arrive at the claimed invention stems from hindsight knowledge derived from the appellants' own disclosure. The use of such hindsight knowledge to support an obviousness rejection under 35 U.S.C. § 103 is, of course, impermissible. See, for example, W. L. Gore and Assocs., Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

For the reasons set forth above, the decision of the examiner to reject claims 2, 4, 5 and 7 to 13 under 35 U.S.C. § 103 as being unpatentable over Inoue in view of

Fritsch is reversed and the decision of the examiner to reject claims 3, 14 to 18 and 20 under 35 U.S.C. § 103 as being unpatentable over Saito in view of Fritsch is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 2 to 5, 7 to 18 and 20 under 35 U.S.C. § 103 is reversed.

REVERSED

LAWRENCE J. STAAB)	
Administrative Patent Judge)	
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JOHN P. McQUADE)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS
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JEFFREY V. NASE)	
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