

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 30

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KURT STIPPLER,
KLAUS WASMUHT,
and REINHARD PRITSCHER

Appeal No. 2003-0729
Application 08/914,346

ON BRIEF

Before MCQUADE, NASE, and BAHR, Administrative Patent Judges.

MCQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Kurt Stippler et al. appeal from the final rejection (Paper No. 16) of claims 12 through 24, all of the claims pending in the application.

THE INVENTION

The invention relates to "a method for controlling the wort flow from a lauter tun and a device for performing such a method" (specification, page 1). Representative claims 12 and 20 read as follows:

12. A method for controlling a wort outflow from a lauter tun during a brewing process, the lauter tun having wort therein, the lauter tun having an outflow pipe connected thereto for

conveying the wort from the lauter tun at an outflow rate, and the lauter tun having an outflow regulator adapted to control the wort outflow, comprising the steps of:

- measuring a first wort outflow rate;
- selecting a predetermined second and increased outflow rate different from the first;
- selecting a predetermined time interval for reaching the second outflow rate;
- determining the incremental outflow rate increase per unit time corresponding to such change in outflow rate in such time interval; and
- using a value corresponding to the incremental outflow rate increase per unit of time as a set point for the control means for controlling the wort outflow.

20. A device for brewing and controlling a wort outflow from the brewing device, comprising:

- a lauter tun;
- a discharge pipe connected to said lauter tun for carrying said wort away from the lauter tun;
- a flow meter connected thereto, the flow meter being positioned to measure wort outflow;
- an outflow regulator coupled thereto for controlling the flow of wort from the lauter tun through the discharge pipe; and
- a discharge control connected to the outflow regulator and to receive the outflow values from the flow meter, the discharge control being configured to provide control signals for controlling the outflow using a value corresponding to an incremental outflow rate per unit of time as a set point, such incremental outflow rate [sic, rate] based on a first wort outflow rate measured by the flow meter, a selected predetermined second and increased outflow rate different from the first, and a selected predetermined interval for reaching the second outflow rate.

THE PRIOR ART

The references relied on by the examiner to support the final rejection are:

Zhekov et al., (Zhekov)
Soviet Patent Document

879568

Nov. 7, 1981

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Seborg, Dale E. et al., Process Dynamics and Control, pp. 183-194
(John Wiley & Sons, Inc. 1989) (Seborg)

THE REJECTION

Claims 12 through 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Zhekov in view of Seborg.

Attention is directed to the appellants' main and reply briefs (Paper Nos. 24 and 26) and to the examiner's answer (Paper No. 29) for the respective positions of the appellants and the examiner regarding the merits of this rejection.¹

DISCUSSION

Zhekov, the examiner's primary reference, discloses a beer brewing apparatus and method involving automatic control of a ripper to dislodge the mash layer in a filter vat, whereby "the flow-rate of the filtered wort is stabilized, and its magnitude is corrected" (translation, page 2). In Zhekov's words:

[t]he filter vat 1 is equipped with a ripper 2, which has a drive and a lifting mechanism 3, a bank of filtration valves 4, a filtration pressure regulator comprising the feed tank 5, which is connected through the filtration valves to the subsieve space of the filtering vat by means of a collector pipe 6 of the centralized drain, [and] of the tubes 7 for the measuring of the level in the filtering vat and the feed tank.

¹ The record contains an English language translation of the Zhekov reference prepared by the USPTO. The arguments advanced in the briefs indicate that the appellants possess a copy of the translation.

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The system for the automatic control comprises a differential manometer 8, a secondary device 9 with a signaling device, a panel 10, a level indicator 11, a function unit 12, a setter [set-point adjuster] 13, a regulator 14, a control valve 15, a flow-rate meter 16, a measuring device 17 of the position of the ripper, an indicator 18 of the position of the ripper, a programming device [software] 19.

The initial flow rate from the feed tank 5, which ensures a difference of 100 mm between the level of the wort in the filtering vat 1 and that in the feed tank, is preset by means of the setter 13. Over the course of the filtration, the controlling effect is imparted onto the valve 15, which controlling effect is determined by the relationship established in the regulating device 14 between the set-point and the flow-rate of the wort as well as by the correcting effect brought about by the level indicator 11 via the function unit 12 based on the level in the feed tank.

When the friction of the mash increases, the difference between the levels in the filtration vat and the feed tank also increases whereby the level drop is measured by the differential manometer 8. The ultimate value of this differential is indicated by means of a signal on the panel 10. Besides this, the said signal is transmitted to the programming unit 19 which automatically controls the ripper. The feedback according to the position of the ripper and the remote control over this position is carried out by the measuring device 17 and the indicator 18 of the position of the ripper [translation, pages 2 and 3].

Conceding that Zhekov does not meet the limitations in independent claim 1 relating to the last four method steps or the limitations in independent claim 20 relating to the discharge control (see page 4 in the answer), the examiner takes two approaches to cure these deficiencies.

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In the first approach, the examiner submits that the claim limitations at issue are

considered obvious in view of the common knowledge of those in the brewing art. It is notoriously well known that the filtration step of the mash goes through several stages whereby the mash bed is created and then the wort's flow rate is increased once the desired clarity is obtained. It would have been obvious to those of ordinary skill in the art to input various flow rates into an automated lautering system so as to use the automation inherent capability of reducing the necessary manpower required to filter a mash [answer, page 4].

This position is fatally flawed due to the examiner's failure to advance any evidence substantiating the purported notoriously well known and common knowledge in the art used to justify the foregoing rationalization of obviousness. Rejections based on 35 U.S.C. § 103(a) must rest on a factual basis. In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 177-78 (CCPA 1967). In making such a rejection, the examiner has the initial duty of supplying the requisite factual basis and may not, because of doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. Id.

In the second approach, the examiner looks to Seborg and states that "[w]hile it is considered that the use of automatic controllers that operate as claimed are notoriously well known,

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Seborg et al is cited to demonstrate the old and well known use of said controllers. Seborg teaches that which is notoriously well known concerning feedback controllers" (answer, page 5). The examiner goes on to conclude that "[i]t would have been obvious to those of ordinary skill in the art to use the controllers of Seborg et al as the control means in the apparatus of Zhekov et al because said means are old and well known and provide the necessary control for flow processes" (answer, page 6).

Seborg provides a general discussion of feedback controllers. None of the illustrative examples used therein pertains to a brewing process. Contrary to the position taken by the examiner, Seborg, whether considered alone or in combination with Zhekov, does not disclose, and would not have suggested, controllers responsive to the particular limitations at issue in independent claims 12 and 20. Hence, the combined teachings of Zhekov and Seborg do not justify a conclusion that the differences between the subject matter recited in claims 12 and 20 and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art.

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For the above reasons, the applied references fail to establish a prima facie case of obviousness with respect to the subject matter recited in independent claims 12 and 20 and dependent claims 13 through 19 and 21 through 24.² Accordingly, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of claims 12 through 24 as being unpatentable over Zhekov in view of Seborg.

SUMMARY

The decision of the examiner to reject claims 12 through 24 is reversed.

² This being so, we find it unnecessary to address the materials of record (Paper No. 20) which are advanced in this appeal by the appellants as evidence of non-obviousness (see, for example, pages 13 and 14 in the main brief).

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REVERSED

JOHN P. MCQUADE)	
Administrative Patent Judge)	
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)	APPEALS AND
JEFFREY V. NASE)	
Administrative Patent Judge)	INTERFERENCES
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JENNIFER D. BAHR)	
Administrative Patent Judge)	

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