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THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

MAILED

JUN 24 1996

*Ex parte* ERWIN BOSSART

PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

Appeal No. 95-0894  
Application 07/948,439<sup>1</sup>

ON BRIEF

Before McCANDLISH, *Senior Administrative Patent Judge*, and COHEN and MEISTER,  
*Administrative Patent Judges*.

McCANDLISH, *Senior Administrative Patent Judge*.

*DECISION ON APPEAL*

This is a decision on an appeal from the examiner's rejection of claims 13 through 23 and 25 under 35 U.S.C. § 103. No other claims are pending in the application.

<sup>1</sup> Application for patent filed September 22, 1992.

Appeal No. 95-0894  
Application 07/948,439

Appellant's invention relates to a height adjustable stand for a laboratory flask (claims 13 through 23) and to a method for adjusting the height of a flask holder (claim 25). According to claim 13, the stand comprises a motorized elevator drive and a normally engaged clutch connecting the elevator drive to a flask holder. The clutch is manually releasable from the elevator drive to permit the flask holder to be moved manually independently of the elevator drive.

A copy of the appealed claims, as these claims appear in the appendix to appellant's brief, is appended to this decision.

In rejecting the appealed claims, the examiner relies upon the following references

Walter	312,938	Feb. 24, 1885
Campbell	576,547	Feb. 09, 1897
Flarsheim	3,546,930	Dec. 15, 1970
Muller	3,762,232	Oct. 02, 1973
Saito	4,522,684	June 11, 1985
Zellweger	5,152,375	Oct. 06, 1992

(filed Feb. 19, 1988)

The grounds of rejection are as follows:<sup>2</sup>

1. Claims 13 through 23 and 25 stand finally rejected under 35 U.S.C. § 103 as being unpatentable over Saito in view of Campbell, Zellweger and Walter.<sup>3</sup>

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<sup>2</sup> The rejection of claims 14 through 23 under 35 U.S.C. § 112 ¶ 2 has been withdrawn. See page 9 of the answer.

<sup>3</sup> In the final office action (paper No. 6), claims 13 through 25 were rejected on this combination of reference teachings, but claim 24 was canceled in an amendment filed with appellant's main brief.

Appeal No. 95-0894  
Application 07/948,439

2. Claims 13 through 17, 22, 23 and 25 additionally stand rejected under 35 U.S.C. § 103 as being unpatentable over Saito in view of Flarsheim.<sup>4</sup>

3. Claims 18 through 21 additionally stand rejected under 35 U.S.C. § 103 as being unpatentable over Saito in view of Muller.<sup>5</sup>

Reference is made to the examiner's answer for details of these rejections.

Considering first the rejection based on Saito in view of Campbell, Zellweger and Walter, the examiner concedes that Saito lacks a teaching of connecting the elevator drive to the flask holder by a clutch. He nevertheless takes the following position:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided Saito with the pivotally mounted, manually operable lever a clutch comprising toothed means in order to manually engage and disengage the elevator drive from the flask holder in the shortest time possible and with the least expense of physical and mechanical force. (Final Rejection, pages 3 and 4).

With regard to the Zellweger patent the examiner takes the following position:

It would have been obvious to one of ordinary skill in the art to have provided Saito with the toothed belt of Zellweger as the toothed belt would be used to transmit force produced from a motor since toothed belts are insensitive to tolerances, and operate in an absolute slip-free manner. (Final Rejection, page 4).

With regard to the Walter patent, the examiner takes the following position:

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<sup>4</sup> This is a new ground of rejection raised in the examiner's answer.

<sup>5</sup> *Id.*

Appeal No. 95-0894  
Application 07/948,439

It would have been obvious to one of ordinary skill in the art to have provided Saito with the spring of Walter in order to maintain the pivotally lever with a clutch of Campbell in an engagement position with respect to the elevator drive of Saito. (Final Rejection, page 5).

The examiner's rejection of the appealed claims on Saito in view of Campbell, Zellweger and Walter is untenable. Contrary to the examiner's position as quoted *supra*, the Campbell reference does not suggest the use of a clutch for connecting an elevator drive or other drive mechanism to a driven member. In Campbell's can opener device, the manually pivotable lever J, which carries the rotary cutter O, is releasably engagable with a stationary rack member G to lock the cutter at a selected elevation relative to a can on the rotary table R. Campbell's rack member is not part of a drive mechanism.

Thus, Campbell's lever does not define a clutch between a drive member and a driven member. The Zellweger and Walter references also lack a teaching of this feature and, instead, appear to be applicable only to some of the dependent claims.

In contrast, appellant's claims 13 and 25 require a clutch for connecting the elevator drive to the flask holder for moving the holder. Lacking a suggestion of this feature in the applied references, we cannot agree that, absent appellant's disclosure, the subject matter of claim 1 would have been obvious within the meaning of § 103. We therefore must reverse the rejection of claims 13 through 23 and 25 based on the Saito, Campbell, Zellweger and Walter references.

Appeal No. 95-0894  
Application 07/948,439

Turning now to the rejection predicated on Saito and Flarsheim, the examiner concludes in substance that the teachings of Flarsheim would have made it obvious to connect Saito's elevator drive 27 to the patentee's holder 5 by way of a normally engaged clutch. Appellant advances only four arguments in support of patentability over this combination of reference teachings:

First, the characterization of item 14 as a "holder" is optimistic, and wrongly tends to place Flarsheim in the field of Saito. Flarsheim never described that item as anything other than a "member" having an "arm" 36.

Second, there is no "lever" (ordinarily, something which can pivot or oscillate) in Flarsheim, only a cam bar 56 whose motion is purely linear. Guides 58 prevent item 56 from being either a "lever" or "pivotably" mounted on the holder.

Third, while the springs 68 do press the ball into the helical groove, they do not bias the cam bar toward the engaged position, since their force is perpendicular to the direction the cam bar moves toward its engaged position.

Fourth, we submit that Flarsheim does not disclose "means for manually releasing said clutch", as in applicant's claim 13. There is **nothing** in Flarsheim adapted for manipulation. (Reply Brief, page 2).

We have carefully considered the record before us in light of appellant's arguments as quoted *supra* together with the examiner's remarks regarding the rejection predicated on the combined teachings of Saito and Flarsheim. Based on appellant's arguments we conclude that claim 13 is unpatentable over this combination of reference teachings.

With regard to appellant's first argument as quoted *supra*, claim 13 is not limited to any specific structure for the holder. Thus, when the claim language is given its broadest reasonable interpretation (*See In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989))

Appeal No. 95-0894  
Application 07/948,439

without reading limitations from the specification into the claim (*See Sjolund v. Musland*, 847 F.2d 1573, 1582, 6 USPQ2d 2020, 2027 (Fed. Cir. 1988)), the recitation of the flask holder is sufficiently broad to read on Flarsheim's member 36 because this member is structurally capable of supporting a flask of some type.

In any event, Flarsheim is not relied upon for a teaching of the holder. Instead, it is sufficient that Saito teaches this feature because the test for obviousness under § 103 is what the combined teachings of the applied references would have suggested to one of ordinary skill in the art. *See In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

Furthermore, Flarsheim constitutes analogous art because it is reasonably pertinent to the particular problem with which appellant was involved, namely the problem of disconnecting or releasing a support member from its elevator mechanism. *See In re Deminski*, 796 F.2d 436, 441, 230 USPQ 313, 315 (Fed. Cir. 1986).

In the present case, the Flarsheim reference suggests the concept of interposing a normally closed, motion transmitting clutch 54 between a threaded rotary elevator shaft 12 and a member 14 to be elevated to enable the member to be selectively disengaged from the elevator drive.

Appellant's second and third arguments quoted *supra* are unpersuasive with respect to claim 13 because claim 13 is not limited to a lever or a spring. This structure, therefore, may not be relied on to support the patentability of claim 13 over the applied references. *See In re Self*, 671 F.2d 1344, 1348-1349, 213 USPQ 1, 5 (CCPA 1982) and *In re Richards*, 187 F.2d 643, 645, 89 USPQ 64, 66 (CCPA 1951).

Appeal No. 95-0894  
Application 07/948,439

Contrary to appellant's fourth argument quoted *supra*, Flarsheim does disclose a means for manually releasing the clutch in the form of a handle portion at either end of the cam bar. These end portions of Flarsheim's cam bar are clearly capable of being manipulated or grasped for releasing the clutch. Thus, we are satisfied that, in light of appellant's arguments, the subject matter of claim 13 is unpatentable over the combined teachings of Saito and Flarsheim. We will therefore sustain the rejection of claim 13 based on Saito and Flarsheim.

Claim 25 does not recite a means for manually releasing the clutch, a releasable lever or a lever biasing means or spring. Therefore, appellant's second, third and fourth arguments quoted *supra* challenging the rejection predicated on Saito and Flarsheim are not applicable to claim 25. *See In re Self*, 671 F.2d at 1348-1349, 213 USPQ at 5 and *In re Richards*, 187 F.2d at 645, 89 USPQ at 66. At best, therefore, only the first argument quoted *supra* regarding the rejection based on Saito and Flarsheim is applicable to claim 25. This argument, however, is unpersuasive for the reasons stated *supra* with respect to the rejection of claim 13 on Saito and Flarsheim. We will therefore sustain the rejection of claim 25 based on Saito and Flarsheim.

We will also sustain the § 103 rejection of dependent claims 14, 15 and 22 based on Saito and Flarsheim because this rejection of these claims has not been argued separately of claim 13. *See In re Nielson*, 816 F.2d 1567, 1572, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987) and *In re Burckel*, 592 F.2d 1175, 1178-1179, 201 USPQ 67, 70 (CCPA 1979).

Appeal No. 95-0894  
Application 07/948,439

Dependent claims 16 and 23 both call for a clutch release lever.<sup>6</sup> Claim 16 additionally recites that the release lever is pivotally mounted on the flask holder. The examiner dismisses these limitations on the ground that it is "irrelevant" (supplemental answer, page 2) that Flarsheim's release mechanism "is not a lever or [is not] pivotably mounted on the holder..." (supplemental answer, page 2). Contrary to the examiner's position, however, "[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

In the present case, the examiner has failed to indicate where there is a suggestion for the release lever in the applied prior art. Lacking such a suggestion, we cannot agree that the combined teachings of the Saito and Flarsheim references support a conclusion of obviousness. *See, for example, Uniroyal, Inc. v. Ridkin-Wiley Corp.*, 837 F.2d 1044, 1051-1052, 5 USPQ2d 1434, 1438-1439 (Fed. Cir. 1988). We therefore must reverse the rejection of claims 16, 17 (which depends from claim 16) and 23 based on Saito and Flarsheim.

We also must reverse the examiner's rejection of dependent claims 18 through 21 on the combined teachings of Saito and Muller. Neither of these references contains any teaching or suggestion of a manually releasable clutch as called for in parent claim 13. What the examiner

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<sup>6</sup> Claim 16, if read literally, recites the release lever as if it were separate from the manual release means of claim 13. Consistent with appellant's specification, however, we have interpreted the release lever recited in claim 16 to be part of the manual release means of claim 13 because the release lever is part of the structure for performing the claimed function of releasing the clutch.



Appeal No. 95-0894  
Application 07/948,439

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APPENDIX

13. A height adjustable stand for a laboratory flask, comprising

a vertical stand post,

a flask holder supported on said post for movement therealong,

a motorized continuous elevator drive for moving the flask holder at a predetermined speed,

a normally engaged clutch connecting the elevator drive to the flask holder, and

means for manually releasing said clutch from the elevator drive so that the flask holder can be moved manually independent from said elevator drive.

14. The invention of claim 13, wherein said elevator drive is a helically threaded, vertical, rotary spindle.

15. The invention of claim 14, wherein said clutch comprises toothed means for engaging said spindle thread.

16. The invention of claim 15, further comprising a manually operable release lever pivotally mounted on said flask holder and connected to said toothed means, for moving said means between engaged and disengaged positions with respect to said spindle.

17. The invention of claim 16, further comprising means for biasing said lever and said toothed means toward said engaged position.

18. The invention of claim 13, wherein the elevator drive comprises an endless flexible member following a substantially vertical path.
19. The invention of claim 18, wherein said flexible member is a belt.
20. The invention of claim 19, wherein said belt is a toothed belt.
21. The invention of claim 18, wherein said flexible member is a chain.
22. The invention of claim 13, further comprising a handle fixed to said flask holder, whereby the holder can be moved manually.
23. The invention of claim 22, further comprising a clutch release lever on said handle.
25. A method of adjusting the height of a flask holder is a motorized apparatus having a vertical stand post upon which the flask support is mounted, comprising steps of  
providing a motorized continuous elevator drive operating at a predetermined speed, and a normally engaged clutch connecting the elevator drive to the flask holder, and  
manually releasing said clutch so that the flask holder can be moved independent from said elevator drive.