

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 39

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JURG FAAS and PETER BRUTSCH

Appeal No. 96-3149
Application 08/305,428¹

HEARD: November 13, 1997

Before ABRAMS, FRANKFORT and NASE, *Administrative Patent Judges*.
ABRAMS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the decision of the examiner finally rejecting claims 13, 14, 17 and 18. Claims 1 through 7, 10 through 12, 15, 16, 19 and 20 have been allowed, and claims 8 and 9 have been canceled.

¹ Application for patent filed September 13, 1994. According to appellants, this application is a continuation of Application 08/041,679 filed April 1, 1993, now abandoned.

Appeal No. 96-3149
Application 08/305,428

The appellants' invention is directed to an apparatus for controlling air flow in an air duct. The subject matter before us on appeal is illustrated by reference to claim 13, which reads as follows:

13. In combination,

a fiber duct for receiving a fiber laden pressurized air stream, said duct having an air permeable wall for exhausting air therethrough while retaining fiber within said duct;

delivery means at a lower end of said fiber duct for feeding a fiber wadding from said duct;

a first air duct communicating with said wall to receive the air exhausted from said fiber duct;

a second air duct communicating with said first air duct to receive an upward flow of the air therefrom;

a stop in said second air duct;

a throttle valve for throttling the flow of air in said second air duct, said valve being pivotally mounted on a pivot axis for pivoting within said second air duct between a lowered position resting on said stop and a raised position spaced from said stop; and

at least one of said stop and said valve having means to allow a minimum air flow therethrough with said valve in said lowered position.

THE REFERENCES

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

Ballard

3,580,644

May 25, 1971

Appeal No. 96-3149
Application 08/305,428

Binder et al. (Binder)

4,878,784

Nov. 7, 1989

THE REJECTIONS

The rejections are explained in the Examiner's Answer.

The opposing viewpoints of the appellants are set forth in the Brief.

OPINION

Independent claims 13 and 14 stand rejected as being anticipated by Binder. The guidance provided by our reviewing court with regard to the matter of anticipation is as follows: Anticipation under 35 U.S.C. § 102(b) is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of the claimed invention. See *In re Paulsen*, 30 F.3d 1475, 1480-1481, 31 USPQ2d 1671, 1675 (Fed. Cir. 1994) and *In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990). Both of these claims require that the valve allow a "minimum" air flow when it is in the lowered position. In the Binder system, the valve closes the air duct completely when it is in the lowered position. The examiner acknowledges this, but takes the position that the terms of the claim are met on the theory of "the minimum air flow being zero air flow" (Answer, page 3).

Appeal No. 96-3149
Application 08/305,428

We do not agree with this conclusion. We understand the phrase "minimum air flow" to require that some air flow be permitted when the valve is in its lowered position. Since claims 13 and 14 recite means to allow a minimum air flow when the valve is in the lowered position, and Binder does not allow any air flow when its valve is in the lowered position, a *prima facie* case of obviousness is lacking and we will not sustain this rejection.

Dependent claims 17 and 18 stand rejected under 35 U.S.C. § 103 on the basis of Binder and Ballard. The latter reference is cited by the examiner for its teaching of "means 29 outside of the duct for moving the valve between open and closed positions" (Answer, page 4). Be that as it may, Ballard does not alleviate the shortcoming in Binder which was discussed above with regard to the rejection under Section 102. That being the case, the combined teachings of the two references fail to establish a *prima facie* case of obviousness with respect to claims 17 and 18, and we will not sustain the Section 103 rejection.

Appeal No. 96-3149
Application 08/305,428

Neither of the rejections having been sustained, the
decision of the examiner is reversed.

REVERSED

NEAL E. ABRAMS)	
Administrative Patent Judge))	
)	
)	
CHARLES E. FRANKFORT)	BOARD OF PATENT
Administrative Patent Judge))	APPEALS AND
)	INTERFERENCES
)	
JEFFREY V. NASE)	
Administrative Patent Judge))	

Appeal No. 96-3149
Application 08/305,428

Francis C. Hand
McAulay, Fisher, Nissen, Goldberg & Kiel
261 Madison Avenue
New York, NY 10016