

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALFREDO POLONI

Appeal No. 97-1035
Application 08/217,657¹

HEARD: May 4, 1999

Before FRANKFORT, McQUADE and NASE, Administrative Patent Judges.

McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Alfredo Poloni appeals from the final rejection of claims 2, 3 and 5 through 10, all of the claims pending in the application.² We reverse.

¹ Application for patent filed March 25, 1994.

² Claim 7 has been amended subsequent to final rejection.

Appeal No. 97-1035
Application 08/217,657

The invention relates to high speed flying shears for cutting rolled stock issuing from a rolling mill stand. A copy of the claims on appeal appears in the appendix to the appellant's main brief (Paper No. 15).

The references relied upon by the examiner as evidence of obviousness are:

Willard	3,478,654	Nov. 18, 1969
Elsner et al. (Elsner)	4,176,535	Dec. 4, 1979
Duri	4,644,773	Feb. 24, 1987
Poloni	4,966,060	Oct. 30, 1990

The claims stand rejected under 35 U.S.C. § 103 as follows:³

a) claims 2 and 5 through 8 as being unpatentable over Poloni in view of Elsner;

b) claim 3 as being unpatentable over Poloni in view of Elsner, and further in view of Willard; and

c) claims 9 and 10 as being unpatentable over Poloni in view of Elsner, and further in view of Duri.

Reference is made to the appellant's main and reply

³The examiner has withdrawn the 35 U.S.C. § 112, second paragraph, rejection which was set forth in the final rejection (see the advisory action dated March 28, 1996, Paper No. 12).

Appeal No. 97-1035
Application 08/217,657

briefs (Paper Nos. 15 and 18) and to the examiner's answer (Paper No. 16) for the respective positions of the appellant and the examiner with regard to the merits of these rejections.

Poloni, the examiner's primary reference, discloses a high speed flying shears 10 for cutting the head and tail portions from the central body portion of rolled stock 18. The shears includes two contra-rotatable knives 14 each bearing a respective blade 17. The rolled stock advances to the shears via a laterally movable guide 11 which shifts the stock into and out of alignment with the blades. After passing through the shearing region, the cut stock proceeds to a conveyor channel 13 having an internal wall 27 and extension partition 16 which divide the channel into two laterally disposed sub-channels. One of the sub-channels receives the cropped head and tail portions of the stock and guides them ultimately to a scrap shears 36, while the other sub-channel receives the main body portion of the stock and guides it ultimately to an entraining means 135 leading to, for example, a coiling plant. The conveyor channel 13 can be either immovable or slightly movable in a lateral direction to ensure

that it is properly aligned with the stock.

In applying the Poloni reference to support the § 103 rejections on appeal, the examiner has found (see page 5 in the answer) that Poloni's conveyor channel 13 meets the limitations in independent claim 7 requiring a two-channel switch having a first channel for receiving and directing the leading and trailing end segments of the rolled stock and a second channel for receiving and directing the main body of the rolled stock, with the two channels being superimposed at least at their upstream ends on a plane perpendicular to the axes of rotation of the blade-holder drums. As Figure 1 of the Poloni reference clearly shows, however, the two sub-channels defined by conveyor channel 13 are "superimposed" at their upstream ends on a plane which is parallel, rather than perpendicular, to the rotation axes of Poloni's blade-holder drums (knives 14). The alternative rationales advanced by the examiner as to why such structure nonetheless responds to the claim limitations in question (see pages 9 through 11 in the answer) are manifestly unreasonable. This deficiency in Poloni finds no cure in Elsner, Willard and/or Duri.

Thus, the prior art evidence relied upon by the examiner

Appeal No. 97-1035
Application 08/217,657

does not justify a conclusion that the differences between the subject matter recited in claim 7 and its dependent claims 2, 3, 5, 6 and 8 through 10 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. Therefore, we shall not sustain the standing 35 U.S.C. § 103 rejections of these claims.

Appeal No. 97-1035
Application 08/217,657

The decision of the examiner is reversed.

REVERSED

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CHARLES E. FRANKFORT)	
Administrative Patent Judge)	
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JOHN P. McQUADE)	
Administrative Patent Judge)	APPEALS AND
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)	INTERFERENCES
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JEFFREY V. NASE)	
Administrative Patent Judge)	

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Appeal No. 97-1035
Application 08/217,657

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