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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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte YVES PONTAILLIER,
and RODOLPHE LAUZIER

Appeal No. 97-2621
Application 08/432,442¹

ON BRIEF

Before THOMAS, LEE and DIXON, Administrative Patent Judges.

LEE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1 and 2. No claim has been allowed.

References relied on by the Examiner

Chen
1982

4,319,163

March 9,

The Rejections on Appeal

¹ Application for patent filed May 1, 1995.

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Claim 1 stands finally rejected under 35 U.S.C. § 102(b) as being anticipated by Chen.

Claim 2 stands finally rejected under 35 U.S.C. § 103 as being unpatentable over Chen.

The Invention

The invention is directed to an inline electron gun including three cathodes and three consecutive electrodes G1, G2, and G3. The G2 electrode has two linear projections protruding in the inline direction of apertures located on the electrode and the projections extend past an apertured portion of the G3 electrode in an overlapping relationship therewith. Independent claim 1 reads as follows:

1. In an inline electron gun, including a plurality of electrodes spaced from three cathodes in a direction of a longitudinal axis of said gun, said electrodes forming at least a beam forming region and a main focus lens in the paths of three electron beams, a center beam and two side beams, each of said electrodes including three inline apertures therein for passage of said three electron beams, and said beam forming region including said cathodes and three consecutive electrodes, a G1 electrode, a G2 electrode and a G3 electrode, the improvement comprising

said G2 electrode having two linear projections therein on either side of the inline apertures therein, said projections paralleling the inline direction of said apertures and protruding in a direction parallel to said longitudinal

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axis past an apertured portion of said G3 electrode in overlapping relationship therewith, and

on the side of G3 electrode facing said G2 electrode, said G3 electrode having two linear channels therein on either side of the inline apertures therein, said channels being immediately adjacent said projections on said G2 electrode and in a spaced nested relationship therewith.

DISCUSSION

We affirm.

Our opinion is based only on the arguments presented by the appellant in his brief and reply brief. Arguments not raised in the briefs are not before us, are not at issue, and are not considered.

The Anticipation Rejection

Anticipation 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. In re Spada, 911 F.2d 705, 707, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990); RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). See also In re King, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986); Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984).

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The prior art reference must either expressly or inherently describe each and every limitation in a claim. Verdegaal Bros. v. Union Oil Co., 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir.), cert. denied, 484 U.S. 827 (1987).

Claim 1 was rejected by the examiner as being anticipated by Chen.

The only feature argued by the appellants as not having been adequately disclosed by Chen for purposes of an anticipation rejection is that the linear protrusions from G2 must extend past the apertured portion of G3. According to appellants, even though Chen's Figure 2 appears to show such an extension and overlap (projections on electrode G2b extending beyond the apertured portion or bottom plane of electrode G3), the disclosure is merely accidental and thus is insufficient to support an anticipation rejection. The appellants cite In re Bager, 47 F.2d 951, 952, 8 USPQ 484, 486 (CCPA 1931) to support their assertion of the ineffectiveness of a rejection based on "accidental" anticipation. On page 5 of the appellants' brief, it is stated:

As to whether an accidental showing in a drawing is or is not an anticipation of a later invention depends generally upon the facts in each particular

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case. Without reviewing the authorities cited by the respective parties hereto, it is sufficient to say that they appear to establish the rule that an accidental showing in a prior patent does not anticipate a later invention where the thing so shown is not essential to the first invention, and was not designed, adapted or used to perform the function which it performs in the second invention, and was neither intended nor appreciated by the patentee, and when the first patent contains no suggestion of the way in which the result sought is accomplished by the second inventor. In Re Application of William M. Bager et al., CCPA 1931, 8 USPQ 484, at page 486.

In In re Meng, 492 F.2d 843, 847, 181 USPQ 94, 97 (CCPA 1974), the Court of Customs and Patent Appeals stated:

We are aware, of course, that a claimed invention may be anticipated or rendered obvious by a drawing in a reference, whether the drawing disclosure be accidental or intentional. In re Seid, 34 CCPA 1039, 161 F.2d 229, 73 USPQ 431 (1947).

The In re Meng decision cited to In re Seid, 161 F.2d 229, 231, 73 USPQ 431, 433 (1947), which in turn stated (citing back to In re Bager, the case cited by the appellants):

[A]n accidental disclosure, **if clearly made in a drawing**, is available as a reference. In re William M. Bager et al., 18 C.C.P.A. (Patents) 1094, 47 F.2d 951, 8 USPQ 484; In re Wagner, 20 C.C.P.A. (Patents) 985, 63 F.2d 987, 17 USPQ 243. (Emphasis added.)

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The considerations set out in In re Bager appear to control the issue in this case concerning the assertion of accidental anticipation. The problem, however, is that the appellants have failed to apply all of the considerations to the facts of this case. In our view, In re Bager, 8 USPQ at 486, sets forth four separate requirements for regarding a teaching as ineffective on the basis of accidental disclosure:

1. The thing so shown is not essential to the first invention.
2. The thing so shown was not designed, adapted, or used to perform the function which it performs in the second invention.
3. The thing so shown was neither intended nor appreciated by the patentee.
4. The first patent contains no suggestion of the way in which the result sought is accomplished by the second inventor.

At least requirements 2 and 3 above have not been satisfied by the appellants. For instance, it cannot be reasonably said that the appellants have shown that the linear projections from electrode G2b in Chen was not in fact "used"

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in the prior art for the function which it performs in the appellants' invention, i.e., to keep out interference from stray magnetic fields. The mere fact that the reference makes no mention of extending the linear projections of G2b beyond the apertured portion of the G3 electrode does not help the appellants, since under In re Bager, 47 F.2d at 952, 8 USPQ at 486, it is a separate requirement that "the first patent contains no suggestion of the way in which the result sought is accomplished by the second inventor." The appellants also have failed to demonstrate that the illustration at issue as shown in Chen's Figure 2 was unintended and not appreciated by Chen. Again, the mere fact that the reference makes no mention of the usefulness of the feature does not establish that Chen did not appreciate its effects. It has not been adequately explained by the appellants why Chen could not have appreciated that the linear extensions from the G2b electrode as shown in Figure 2 would have the effect of minimizing interference from stray magnetic fields.

What the appellants do argue in their brief is both erroneous and misplaced. First, the appellants believe, erroneously, that Chen's Figure 2 should illustrate the

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specific dimensions given in columns 6-7 of Chen's disclosure. But there is no basis for that assumption and the more reasonable view is that Figure 2 is a generic diagram and the exact dimensions and spacings between electrodes can be whatever the specification permits, including the one embodiment described from the bottom of column 6 to the top of column 7. Consistent with our finding that Chen's Figure 2 should not be read as specifically illustrating the particular numbers set out in the disclosure from the bottom of column 7 to the top of column 8, is the fact that according to the dimensions given in the disclosure the distance from G2b to G3 is at least 10 times the distance from G2a to G2b. As shown in Figure 2, however, the distance from G2b to G3 is less than the distance from G2a to G2b.

Having first erroneously assumed that the drawing in Figure 2 must illustrate the dimensions given at the bottom of column 6 to the top of column 7, the appellants then noticed that the ratio of the various actual dimensions shown in Figure 2 to the dimensions described from the bottom of column 6 to the top of column 7 are not always consistent. From that, the appellants conclude that it must be Figure 2's shown

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distance between G2b and G3 that is a mistake and that the two elements should be much farther apart and therefore the linear projections from G2b actually would not overlap the apertured portion of G3. The appellants' conclusion is entirely arbitrary, since it may well be that the shown distance between G2b and G3 is correct and it is the other shown dimensions in Figure 2 that are mistaken.

In any event, as we have already discussed above, it is already erroneous to assume that the illustrated dimensions in Figure 2 must match or correspond to the specific numbers given from the bottom of Chen's column 6 to the top of column 7. The specific numbers are only that of a single embodiment, while other embodiments are described elsewhere in the specification. For instance, from the bottom of column 7 to the top of column 8, it is stated:

Conversely, the thickness of the G2a should not be so small as to require a slot width significantly less than the diameter of the G2b aperture **56**. Although the width of the slot aperture **55** can be less than the diameter of the beam forming aperture **56**, when it is made excessively less, the mechanical tolerance of the alignment between the slot aperture **55** and the beam forming aperture **56** becomes critical. Experience has shown that with a beam

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forming aperture **56** of 0.635 mm diameter, the G2a can be made as little as 0.076 mm thick. However, if the thickness is made much less than about 0.152 mm, the width of the slot aperture **55** must be sufficiently toward the high end of the slot width/thickness ratio range of 2-5 that an optimum slot width cannot be utilized. It is, therefore, preferred that the thickness of the G2a be 0.24-0.8 times the diameter of the electron beam aperture **56**.

We note further that a reference must be considered for everything it teaches by way of technology and is not limited to the particular invention it is describing and attempting to protect. EWP Corp. v. Reliance Universal, Inc., 755 F.2d 898, 907, 225 USPQ 20, 25 (Fed. Cir.), cert. denied, 474 U.S. 843 (1985). It is also unrealistic to expect that in every patent specification there is written discussion for every component that is shown in a drawing. Some items are simply not discussed, but that alone would not establish lack of recognition or appreciation.

In this case, the examiner has set forth a prima facie case of anticipation and the appellants have failed to rebut that prima facie case by establishing an appropriate circumstance to render ineffective the applied teachings on the basis of accidental disclosure. Accordingly, the

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rejection of claim 1 as being anticipated by Chen is sustained.

The Obviousness Rejection

Claim 2 was rejected under 35 U.S.C. § 103 by the examiner as being obvious over Chen. Claim 2 specifically requires that the distance between each of the linear projections on the G2 electrode to the corresponding channel on the G3 electrode to be approximately 30% to 50% greater than the distance between the G2 and the G3 electrode at the respective apertured portions thereof. Chen's specification contains no discussion in that regard and Chen's Figure 2 does not illustrate the appellants' claimed 30% to 50% greater range. Nonetheless, the examiner concluded that whatever Chen discloses would have been a functional equivalent to the appellants' claimed 30% to 50% greater range. We find the examiner's conclusion to lack a sufficient supporting basis in the disclosure of Chen.

That Chen's putting some distance between G2 and G3 would reduce arcing between the G2 and the G3 electrodes does not make all range features equivalent. Moreover, the appellants' range is limited to the 30% to 50% greater range. A distance

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of 60% greater would be outside of the appellants' claimed range and yet still function to reduce arcing. The examiner has shown no motivation, stemming from the Chen disclosure, or other evidence for one with ordinary skill in the art, to arrive at the specific "30% to 50% greater" distance limitation. Accordingly, the obviousness rejection of claim 2 cannot be sustained.

CONCLUSION

The rejection of claim 1 under 35 U.S.C. § 102(b) as being anticipated by Chen is affirmed.

The rejection of claim 2 under 35 U.S.C. § 103 as would have been obvious over Chen is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

JAMES D. THOMAS)
Administrative Patent Judge)
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