

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. 31

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte DANIEL J. GRIMM and MARK S. LEUENBERGER

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Appeal No. 1997-3797  
Application No. 08/121,820

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ON BRIEF<sup>1</sup>

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Before COHEN, NASE, and JENNIFER D. BAHR, Administrative Patent Judges.

NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 25 to 41, which are all of the claims pending in this application.<sup>2</sup>

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<sup>1</sup> On August 28, 2000, the appellants waived the oral hearing (see Paper No. 30) scheduled for October 11, 2000.

<sup>2</sup> The appellants have stated (brief, pp. 5 and 13) that claim 36 is identical to claim 30 and should be cancelled.

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We REVERSE.

BACKGROUND

The appellants' invention relates to a method of irradiating a blood product (claims 25 to 38) and a method of medically treating a blood product (claims 39 to 41). A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Ryan 2, 1954	2,693,189	Nov.
Bujan et al. 1975 (Bujan)	3,915,212	Oct. 28,
Daly et al. 1978 (Daly)	4,121,714	Oct. 24,
Vazquez 1985	4,526,404	July 2,
Brown 1989	4,857,713	Aug. 15,
Miripol et al. 12, 1989 (Miripol)	4,866,282	Sep.
Cooke et al. 1991	5,006,050	Apr. 9,

Claims 25 to 28, 31 to 33, 35 and 37 to 41 stand rejected under 35 U.S.C. § 103 as being unpatentable over Miripol in view of one of Ryan or Bujan, further in view of Vazquez, Cooke and Brown.

Claims 29, 30, 34 and 36 stand rejected under 35 U.S.C. § 103 as being unpatentable over Miripol, Ryan or Bujan, Vazquez, Cooke and Brown as applied to claims 25 to 28, 31 to 33 and 35 above, and further in view of Daly and the appellants' admitted prior art.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer (Paper No. 25, mailed May 13, 1997) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 23, filed February 4, 1997) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the examiner is insufficient to establish a case of obviousness with respect to the claims under appeal. Accordingly, we will not sustain the examiner's rejection of claims 25 to 41 under 35 U.S.C. § 103. Our reasoning for this determination follows.

The appellants argue that the applied prior art does not suggest the claimed subject matter. We agree.

Obviousness is tested by "what the combined teachings of the references would have suggested to those of ordinary skill in the art." In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). But it "cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination." ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732

F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). And "teachings of references can be combined only if there is some suggestion or incentive to do so." Id. Here, the applied prior art does not contain teachings for a person having ordinary skill in the art at the time the invention was made to have arrived at the claimed invention.

All the claims under appeal require automatically reading, via a bar code reader, a bar code of a bag holding a blood product via software which automatically confirms by the bar code if the bag is approved for medical treatment (i.e., irradiation), automatically performing medical treatment (i.e., irradiating the bag with ultraviolet radiation) if the bag is approved but automatically terminating the process without medical treatment (i.e., no ultraviolet radiation) if the bag carries a bar code indicating that the bag is not approved. In our view, these limitations are not suggested by the applied prior art. In that regard, while Brown does teach a hospital error avoidance system and Cooke does teach a bar code label on a drug vial that interacts with bar code reader and computer on a pump housing, these teachings do not teach

or suggest automatically reading, via a bar code reader, a bar code of a bag holding a blood product via software which automatically confirms by the bar code if the bag is approved for medical treatment (i.e., irradiation), automatically performing medical treatment (i.e., irradiating the bag with ultraviolet radiation) if the bag is approved but automatically terminating the process without medical treatment (i.e., no ultraviolet radiation) if the bag carries a bar code indicating that the bag is not approved.

In our opinion, the only suggestion for modifying the applied prior art in the manner proposed by the examiner to meet the above-noted limitations stems from hindsight knowledge derived from the appellants' own disclosure. The use of such hindsight knowledge to support an obviousness rejection under 35 U.S.C. § 103 is, of course, impermissible. See, for example, W. L. Gore and Assocs., Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), cert.

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denied, 469 U.S. 851 (1984). It follows that we cannot sustain the examiner's rejections of claims 25 to 41.

CONCLUSION

To summarize, the decision of the examiner to reject claims 25 to 41 under 35 U.S.C. § 103 is reversed.

REVERSED

IRWIN CHARLES COHEN	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
JEFFREY V. NASE	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
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	)	
JENNIFER D. BAHR	)	
Administrative Patent Judge	)	

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BAXTER INTERNATIONAL INC.  
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ROUND LAKE, IL 60073

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