

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARCEL NORAIS

Appeal No. 98-0608
Application No. 08/413,284¹

HEARD: May 5, 1999

Before CALVERT, *Administrative Patent Judge*, McCANDLISH, *Senior Administrative Patent Judge* and ABRAMS, *Administrative Patent Judge*.

ABRAMS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the decision of the examiner finally rejecting claims 1-6, 8, 11-13, 16 and 17. Claims 7,

¹ Application for patent filed March 30, 1995.

9, 10, 14, 15 and 18-20 have been indicated as containing allowable subject matter.

The appellant's invention is directed to a method and apparatus for the separation by filtration of a solid phase and a liquid phase from sludge. The subject matter before us is illustrated by reference to claim 1 which, along with the other claims on appeal, has been reproduced in an appendix to the Appeal Brief.

THE REFERENCES

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

Alvord 1914	1,097,157	May 19,
Wiederkehr 1988	4,718,337	Jan. 12,

THE REJECTIONS

Claims 1-6, 8, 11-13 and 16 stand rejected under 35 U.S.C.

§ 102(b) as being anticipated by Alvord.

Claim 17 stands rejected under 35 U.S.C. § 103 as being unpatentable over Alvord in view of Wiederkehr.

The rejections are explained in the Examiner's Answer.

The arguments of the appellant in opposition to the positions taken by the examiner are set forth in the Brief and the Reply Brief.

OPINION

In reaching our decision on the issues raised in this appeal, we have carefully assessed the claims, the prior art applied against the claims, and the respective views of the examiner and the appellant as set forth in the Answer and the Briefs. The determinations we have made and the reasoning behind them are set forth below.

The Rejection Under 35 U.S.C. § 102(b)

It is axiomatic that 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. See, for example, *In re Paulsen*, 30 F.3d 1475, 1480-1481, 31 USPQ2d 1671, 1675 (Fed. Cir. 1994).

Independent claim 1 recites an apparatus comprising a filtration chamber and a filter having at least one planar

surface "for exerting pressure on the sludge during filtration," and being movable "between a filtration position in which said filter forms a wall of said filtration chamber and a scraping position." Alvord discloses a press in which both of the press elements are movable between a position in which they form the walls of the press chamber and positions in which the pressed cake is ejected from the machine. However, contrary to the examiner's position, we cannot agree that either press plate also functions as a filter to separate liquid from the solid phase cake. While the specification contains the statement that the Alvord press is "of the filter type" (page 1, line 35), there is no clue as to what this means, and there is no explicit statement that a filter is incorporated into either press element or that they perform a filtering function. Nor, in our view, can it be discerned from the drawings that either press element inherently functions as a filter. From our perspective, there thus exists no evidence upon which to base a conclusion that the Alvord press teaches using a movable press element as a filter.

Another deficiency in Alvord from the standpoint of anticipation is that it fails to establish that the piston/chamber movement is carried out in "substantially liquid-tight manner." There is no such explanation in the disclosure, nor is there a listing of the materials that are intended to be put through the device from which it can be determined that they contain liquid which will be removed during the pressing operation. Absent reason for such construction, it cannot be concluded that the piston/chamber movement is substantially liquid-tight. Finally, Alvord fails to disclose or teach a scraper device that "is capable of sweeping the surface of the filter . . . in order to detach the solid phase cake." In view of the description in the appellant's specification and the arguments advanced in the Briefs, we interpret "sweeping" to mean that the scraper traverses the full extent of the movable element. This is not the case in the Alvord machine, where it is clear from the drawings that the cake ejector traverses only a very small portion of the extent of the press elements; there is no requirement that it do so, for the press elements are vertical and a slight movement of the ejector

will cause the cake to be detached from them and fall from the machine.

For the reasons set forth above, the Section 102 rejection cannot be sustained against independent claim 1 or, it follows, against claims 2-6, 8, 11 or 12, which depend therefrom.

Independent claims 13 and 16 are directed to a method of separation by filtration. Both of these claims include the steps of introducing a quantity of sludge to be filtered into a filtration chamber "one wall of which is comprised of a substantially planar surface of a filter in a filtration position," and scraping this surface to "sweep" said cake off of the surface. We find Alvord to be deficient here as an anticipatory reference for reasons that were explained above with regard to claim 1. This being the case, the Section 102 rejection of claims 13 and 16 also is not sustained.

The Rejection Under 35 U.S.C. § 103

Claim 17, which depends from claim 16, has been rejected as being unpatentable over Alvord in view of Wiederkehr, which was cited for its teaching of utilizing two presses in series. The deficiencies cited above in the discussion of the Section

102 rejection with regard to claim 16 are not alleviated by evaluating Alvord in the light of the test for obviousness,² or by considering the additional teachings of Wiederkehr. We therefore will not sustain this rejection.

SUMMARY

None of the rejections are sustained.

The decision of the examiner is reversed.

² The test for obviousness is what the combined teachings of the prior art 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).

REVERSED

IAN A. CALVERT)
Administrative Patent Judge)
)
)
)
)
) BOARD OF PATENT
HARRISON E. McCANDLISH) APPEALS
Senior Administrative Patent Judge)
) AND)
) INTERFERENCES
)
)
)
)
NEAL E. ABRAMS)
Administrative Patent Judge)

NEA/jlb

Appeal No. 98-0608
Application No. 08/413,284

Page 9

PENNIE & EDMONDS
1155 AVENUE OF THE AMERICAS
NEW YORK, NY 10036-2711