

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(2) is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte YASUHIKO HOSOYA,
TOSHIKI KURODA, TATSUHIKO TAKAHASHI
AND MUTSUO SEKIYA

Appeal No. 98-0807
Application 08/385,984¹

ON BRIEF

Before MEISTER, FRANKFORT and PATE, **Administrative Patent Judges.**

MEISTER, **Administrative Patent Judge.**

DECISION ON APPEAL

This is an appeal from the final rejection of claim 5,
the only claim remaining in the application.

¹ Application for patent filed February 9, 1995. According to appellants, this application is a division of Application 08/094,264, filed July 21, 1993.

Appeal No. 98-0807
Application 08/385,984

Laurent. Such termination is implied by the Laurent disclosure that during choked operation, air is heated by the heater 55 (column 7, lines 23-29). [Pages 3 and 4.]

We will not support the examiner's position. A prior art reference anticipates the subject matter of a claim when that reference discloses every feature of the claimed invention, either explicitly or inherently. *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997) and *Hazani v. Int'l Trade Comm'n*, 126 F.3d 1473, 1477, 44 USPQ2d 1358, 1361 (Fed. Cir. 1997). As the examiner appears to recognize, there is no explicit teaching in Laurent that the heating by element 55 is terminated once the choked operation ceases. Nevertheless, the examiner has taken the position that such termination is "clearly implied" by the fact Laurent states that air flow is heated by the element 55 during choked operation. Such a position, however, is based on speculation. Laurent is completely silent as to whether or not the heating element remains on or is terminated subsequent to the choking operation. While, of course, it is possible that it is

Appeal No. 98-0807
Application 08/385,984

inherent in the operation of Laurent's device that heating by the element 55 is terminated subsequent to the choking operation as the examiner theorizes; however, inherency may not be established by probabilities or possibilities. ***In re Oelrich***, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981) and ***In re Rijckaert***, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993).

Since each and every feature set forth in claim 5 cannot be found in Laurent, either explicitly or under the principles of inherency, we will not sustain the rejection of this claim under 35 U.S.C. § 102(b).

REVERSED

Appeal No. 98-0807
Application 08/385,984

	JAMES M. MEISTER)	
	Administrative Patent Judge)	
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)	
	CHARLES E. FRANKFORT)	BOARD OF
PATENT)	
	Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
	WILLIAM F. PATE, III)	
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Appeal No. 98-0807
Application 08/385,984

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