

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte MARKKU MUSTONEN  
and TED Q. COBB, JR.

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Appeal No. 1998-2395  
Application No. 08/657,979

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ON BRIEF

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Before HAIRSTON, JERRY SMITH, and GROSS, Administrative Patent Judges.

GROSS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 8 and 10 through 12, which are all of the claims pending in this application.

Appellants' invention relates to a sampling apparatus which collects process by filling a sample container with a known volume. The result is that the sample is consistent from one time to the next. Claim 1 is illustrative of the claimed invention, and it reads as follows:

1. Sampling apparatus, for use in taking a sample of process from a process line, said sampling apparatus comprising a

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chamber extending into said process line and in communication with said process line, piston means reciprocable within said chamber, a sample container contiguous with and in communication with said chamber, said sample container having a fixed volume, said piston means having a first position within said chamber and in said process line whereby said piston means blocks communication with said sample container and isolates said sample container from said process line, and a second position wherein said piston means is retracted to allow communication between said process line and said sample container through said chamber.

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

Green	2,598,535	May 27, 1952
Skállen et al. (Skállen)	4,635,470	Jan. 13, 1987

Claims 1 through 8 and 10 through 12 stand rejected under 35 U.S.C. § 103 as being unpatentable over Green in view of Skállen.

Reference is made to the Examiner's Answer (Paper No. 11, mailed January 16, 1998) for the examiner's complete reasoning in support of the rejection, and to appellants' Brief (Paper No. 10, filed October 17, 1997) for appellants' arguments thereagainst.

#### OPINION

We have carefully considered the claims, the applied prior art references, and the respective positions articulated by appellants and the examiner. As a consequence of our review, we will reverse the obviousness rejection of claims 1 through 8 and 10 through 12.

Appellants' main argument (Brief, pages 7-10) is directed to the meaning of the word contiguous. All of the claims recite that the sample container is "contiguous with" the chamber. Appellants assert that "contiguous" means touching, not merely nearby. Accordingly, appellants assert that Green's sample container is not contiguous with the chamber, since the two are separated by a length of pipe. The examiner (Answer, page 6), on the other hand, relies on the dictionary definition of "nearby: adjacent" for the position that the claimed contiguous relationship covers the structure shown in Green.

We agree with appellants. Although the definition used by the examiner does not require actual contact between the two elements, any separation between them must still be minimal. The dictionary does not merely say "nearby," it reads, "nearby: adjacent." The word adjacent implies a much closer relationship than just "nearby." The elbow pipe of Green that connects cylinder 15 with the sample container 16 is more than a nominal separation. Accordingly, Green's elements cannot be considered contiguous.<sup>1</sup>

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<sup>1</sup> We note that Skållen forms measure chamber 35 contiguous with hole 11 and states that sample chamber 9 and hole 11 are formed as a continuous chamber because "dead spaces ... can give rise to collections of fibers from different samplings" (see column 2, lines 41-44). Thus, Skållen implies that connections (such as the elbow pipe of Green) are unwanted collection points.

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In addition, the examiner reasons that it would have been obvious to extend the housing into the flow "to collect only a **true** sample by **avoiding** the sampling difficulty of collecting material at 'zero velocity' near the conduit wall." Yet, Skállen's figure shows the piston housing ending just inside the pipe wall. Therefore, Skállen does not illustrate the examiner's motivation for modifying Green. Consequently, the examiner has failed to establish a prima facie case of obviousness, and we cannot sustain the obviousness rejection of claims 1 through 8 and 10 through 12.

#### CONCLUSION

The decision of the examiner rejecting claims 1 through 8 and 10 through 12 under 35 U.S.C. § 103 is reversed.

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REVERSED

KENNETH W. HAIRSTON	)	
Administrative Patent Judge	)	
	)	
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	)	
	)	BOARD OF PATENT
JERRY SMITH	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
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	)	
ANITA PELLMAN GROSS	)	
Administrative Patent Judge	)	

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JAMES B MIDDLETON  
315 W PONCE DE LEON AVENUE SUITE 550  
DECATUR, GA 30030

APG/dal