

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LEROY G. HAGENBUCH

Appeal No. 1999-0017
Application No. 08/448,764

ON BRIEF

Before HAIRSTON, BARRETT, and LALL, Administrative Patent Judges.
HAIRSTON, Administrative Patent Judge.

ON REQUEST FOR REHEARING

In a decision dated February 15, 2002, the decision of the examiner rejecting claims 12 and 13 under 35 U.S.C. § 103 was affirmed based upon the sole teachings of Weber.

Appellant argues (Request, pages 2 through 8) that the Board ignored the requirements set forth in In re Donaldson¹ for interpreting means-plus-function claimed limitations, and that

¹ 16 F.3d 1189, 29 USPQ2d 1845 (Fed. Cir. 1994).

Appeal No. 1999-0017
Application No. 08/448,764

Weber does not produce a "production rate" based upon a total weight/operating parameter and the "elapsed operating time."

We agree with the appellant's argument (Request, pages 5 and 6) that his disclosure (specification, page 15, lines 29 through 34; Figure 3B) clearly indicates that "time" is a factor in the claimed production "rate." Although Weber discloses a timer 54 (column 4, lines 49 through 52 and column 6, lines 17 through 22), the output of the timer is never used in the calculation of the production goal.

Appeal No. 1999-0017
Application No. 08/448,764

In view of appellant's Donaldson argument, and the fact that Weber does not use "time" as a factor in calculating a production goal, appellant's request that we reconsider our decision has been granted, and our decision is hereby modified to reflect our agreement with the appellant. Accordingly, the affirmance of the rejection of claims 12 and 13 under 35 U.S.C. § 103 is withdrawn.

REHEARING
GRANTED

KENNETH W. HAIRSTON)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
LEE E. BARRETT)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
)	
)	
PARSHOTAM S. LALL)	
Administrative Patent Judge)	

KWH:hh

Appeal No. 1999-0017
Application No. 08/448,764

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