

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES B. VROTACOE

Appeal No. 1999-0291
Application No. 08/646,077

HEARD: APRIL 24, 2001

Before THOMAS, KRASS, and BLANKENSHIP, Administrative Patent Judges.

BLANKENSHIP, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1-19, which are all the claims in the application.

We reverse.

BACKGROUND

The invention is directed to a method and apparatus for adjusting circumferential register in a web-fed rotary printing press. Claim 1 is reproduced below.

1. Method for adjusting the circumferential register in a web-fed rotary printing press having a plate cylinder with a sleeve-shaped printing plate, comprising the steps of:

determining a speed difference between a speed of the sleeve-shaped printing plate and a speed of the press; and

controlling a speed of a plate cylinder body which supports the sleeve-shaped printing plate to reduce said speed difference.

The examiner relies on the following references:

Horst et al. (Horst)	3,915,090	Oct. 28, 1975
Schaffer	4,072,104	Feb. 7, 1978
Morgan	4,473,009	Sep. 25, 1984
Takeuchi et al. (Takeuchi)	4,694,749	Sep. 22, 1987
Palmatier et al. (Palmatier)	5,127,324	Jul. 7, 1992
Reichel	5,492,059	Feb. 20, 1996

Claims 1, 5, 6, 10, 11, and 14 stand rejected under 35 U.S.C. § 103 as being unpatentable over Palmatier and Reichel.

Claims 2-4, 12, and 13 stand rejected under 35 U.S.C. § 103 as being unpatentable over Palmatier, Reichel, Takeuchi, and Horst.

Claims 7-9 and 15-17 stand rejected under 35 U.S.C. § 103 as being unpatentable over Palmatier, Reichel, Schaffer, and Takeuchi.

Claim 18 stands rejected under 35 U.S.C. § 103 as being unpatentable over Palmatier, Reichel, and Schaffer.

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Claim 19 stands rejected under 35 U.S.C. § 103 as being unpatentable over Palmatier, Reichel, and Morgan.

We refer to the Final Rejection (Paper No. 5) and the Examiner's Answer (Paper No. 15) for a statement of the examiner's position and to the Brief (Paper No. 13) and the Reply Brief (Paper No. 17) for appellant's position with respect to the claims which stand rejected.

OPINION

We turn first to the section 103 rejection of claims 1, 5, 6, 10, 11, and 14 as being unpatentable over Palmatier and Reichel. Appellant acknowledges that the tachometer as disclosed by Palmatier (Fig. 1, element 24) is a sensor "to indicate the operating speed of the printing press 10." (Brief, page 8.) Appellant contends, however, that Palmatier does not disclose or suggest that register mark sensors 35, 45, 55 (Fig. 1) are used, in combination with tachometer 24, to determine a speed difference between a printing plate (on plate cylinder 21) and a speed of the press, and thus control a speed of the plate cylinder body to reduce the speed difference.

Palmatier discloses, inter alia, "a sensor for sensing circumferential misregister." See Palmatier at the sentence bridging columns 3 and 4. "[T]he printing units 30, 40, 50, have respective register mark sensors 35, 45, 55 for sensing register marks printed onto the web 12 of sheet material, as is known. Each of the register mark sensors 35, 45, 55

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provides a respective register mark error signal on a respective signal line.” Id. at column 4, lines 1-6.

Palmatier refers, in column 3, to U.S. patent 4,072,104 (Schaffer, of record) for details of the mechanism for enabling angular adjustment of a plate cylinder relative to a blanket cylinder, which corrects the “circumferential misregister” between the plate cylinder and the blanket cylinder.

Each of the DC motors 34, 44, 54 may be actuated in either direction for a predetermined time to adjust the angular position of the corresponding one of the plate cylinders 31, 41, 51 relative to the angular position of the corresponding one of the blanket cylinders 32, 42, 52. Thus, the plate cylinders 31, 41, 51 are circumferentially adjusted relative to their respective blanket cylinders 32, 42, 52 when the respective DC motors 34, 44, 54 are operated.

Palmatier, column 3, lines 57-65.

According to the examiner, the detectors which sense the circumferential misregister operate by “sens[ing] the time difference between two subsequent detections of a registration mark on the web...[which is]...laid down on the web in Palmatier...by the printing plate....” (See Answer, page 6.) “The control system 70 determines a speed difference between the speed of the printing plate and a speed of the press in response to the signals from the first detector and the second detector for subsequently controlling the speed of the plate cylinder body which supports the printing plate so as to reduce the speed difference.” (Id.)

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As set forth in the Answer at page 7, Reichel, the second reference in the rejection, is submitted to show the obviousness of Palmatier including a “sleeve-shaped printing plate” on a plate cylinder. The rejection thus does not provide any rationale for why the artisan may have been motivated to modify Palmatier’s system such that a speed difference between the speed of the printing press and the speed of the printing plate is determined. The rejection instead is based on the position that Palmatier’s system determines the relevant speed difference and reduces the difference in the manner recited in the claims.

The rejection does not point out in Palmatier where this critical disclosure resides. The reference consistently refers to a “speed” signal from tachometer 24, but does not refer to the “register mark error signal” as a “speed” signal. Nor does Palmatier explicitly disclose determining any speed difference between the relevant signals. As described in column 4, lines 54 through 63, the control signals to the DC motors for correcting misregister “are generated in accordance with a preprogrammed procedure stored in the internal memory of the computer 70 in response to the signal...from tachometer 24 and the signals...from the register mark sensors....”

Since Palmatier fails to expressly disclose the speed detection and the control algorithm attributed to the reference by the examiner, the rejection stands (or falls) on the principle that the Palmatier system inherently does the things attributed. That is, the

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rejection presupposes that the artisan would have recognized that the Palmatier apparatus operates as alleged, even though the reference does not say so.

We cannot dismiss the examiner's position as insubstantial. For proper operation of the Palmatier apparatus, the speed of advance of web 12 itself is, of necessity, directly proportional (i.e., linear speed versus rotational speed) to the speed of the printing press as measured by tachometer 24 at blanket cylinder 22. Assuming, as does the examiner, that the register marks are laid out on the web by printing plates on the plate cylinders, the time difference between occurrences of register marks on the advancing web would be, similarly, directly proportional to the speed of rotation of the printing plates carried by the plate cylinders in the Palmatier apparatus. In much the same way that the speed of advance of a thread indicates the rotational speed of the spool from which it is drawn, the speed of advance of register marks would indicate the rotational speed of the printing plates which are responsible for placement of the registration marks.

In this regard we note that appellant discloses a detector 44 (instant Figure 1) for measuring the speed of the printing press. One embodiment of the detector for measuring the speed of the "sleeve-shaped printing plate" 12 consists of an optical sensor 42 which senses "marks (for example, the register marks generally represented as element 50 in

Fig. 2, which are provided on the side of a printing plate for the usual static circumferential and/or lateral register adjustment)." (Specification, page 6, lines 14-17.)

The register marks in Palmatier would be transferred to the web from the printing plates by means of the intervening blanket cylinders, and the transfer would occur at the known speed of the printing press, as measured by tachometer 24. Precise circumferential registration would result in the time between subsequent register marks reflecting the speed of the printing press; misregistration would result in register marks being sensed at times other than those expected.

We thus might be inclined to agree with the examiner that an operational system could be effected using the sensors disclosed by Palmatier, such that operation of the system falls within the ambit of the instant claims. However, we do not find any disclosure or suggestion along those lines in the reference.

Palmatier takes the speed of the press into account in correcting the circumferential misregister between the plate cylinders and blanket cylinders. See, e.g., id. at column 6, lines 17-46. Process control computer 70 determines a control signal output based on both circumferential misregister and the speed of the respective plate cylinder, since the misregister is corrected taking the rotational speed of the plate cylinder into account. However, Palmatier's disclosure is entirely consistent with measuring misregister in distance -- how far the plate cylinder must travel in one direction or another to correct

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misregister -- and in our view does not disclose or suggest any requirement that the difference in speed of the printing plate and the speed of the press be determined.

The rejection does not offer any extrinsic evidence (e.g., additional references) in support of the interpretation of *Palmatier* that is in controversy. Our reviewing court, however, has set out clear standards for establishing inherency.

To establish inherency, the extrinsic evidence "must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." "Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient."

In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999)

(citations omitted). The allocation of burdens requires that the USPTO produce the factual basis for its rejection of an application under 35 U.S.C. §§ 102 and 103. In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984) (citing In re Warner, 379 F.2d 1011, 1016, 154 USPQ 173, 177 (CCPA 1967)). The one who bears the initial burden of presenting a prima facie case of unpatentability is the examiner. In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). Since the factual basis for the rejection of independent claims 1 and 11 is lacking, we conclude that the initial burden has not been met, and cannot sustain the rejection.

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Since the remainder of the rejections depend on Palmatier and Reichel as applied against the independent claims (1 and 11), and the additional references fail to remedy the deficiencies we have noted, we cannot sustain the section 103 rejections of claims 1-19.

CONCLUSION

The rejections of claims 1-19 are reversed.

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REVERSED

JAMES D. THOMAS
Administrative Patent Judge

ERROL A. KRASS
Administrative Patent Judge

HOWARD B. BLANKENSHIP
Administrative Patent Judge

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BURNS, DOANE, SWECKER & MATHIS
P.O. BOX 1404
ALEXANDRIA , VA 22313-1404