

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte R. LEE ROBERTS,
MARK KEVIN ADDISON
and ANDREW SCOTT TAYLOR

Appeal No. 2002-1430
Application 09/935,365

ON BRIEF

Before COHEN, STAAB, and MCQUADE, Administrative Patent Judges.
MCQUADE, Administrative Patent Judge.

ON REQUEST FOR REHEARING

Pursuant to 37 CFR § 1.197(b), R. Lee Roberts et al. request rehearing of our decision on appeal rendered January 27, 2003 (Paper No. 27). The appellants have limited the request to that part of the decision under the heading "IV. Additional matter for consideration" wherein we stated:

[u]pon return of the application to the technology center, the examiner should consider whether the extruded multi-block sections or lengths disclosed by Roberts and Berkebile, considered in conjunction with the conventional 4 foot individual block length taught by Brown '388 and admitted to be prior art [by]

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the appellants (see pages 3 and 8 in the appellants' specification) would have suggested a multi-block section or length meeting the limitations in claims 6, 7 and 18, thereby warranting an appropriate § 103(a) rejection of these claims [page 13].

On rehearing, the appellants raise two matters for reconsideration. First, the appellants believe that the reference to claim 18 instead of claim 28 was a typographical error and seek correction thereof. Second, the appellants "request that section IV of the Decision on Appeal be stricken in its entirety" (request, page 3) as being unwarranted and inconsistent with principles of res judicata because it instructs the examiner to entertain "*the precise issue considered by this Board in section III of the Decision on Appeal*" (request, page 2).

The appellants' first point is well taken, but their second is not.

Read in context, the reference in section IV of the decision to claims 6, 7 and 18 clearly should have been to claims 6, 7 and 28. As surmised by the appellants, this mistake stemmed from a typographical error.

As for its substantive content, section IV of the decision merely proposed that the examiner consider whether the combined teachings of Roberts, Berkebile and Brown '388 would have

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suggested a multi-block section or length meeting the limitations in claims 6, 7 and 18 [sic, 28], thereby leading to an appropriate § 103(a) rejection of these claims. Although the same references were employed by the examiner to reject claims 6, 7 and 28 under § 103(a), they were applied in a different manner to conclude that it would have been obvious in view of Roberts or Berkebile to modify the length of the underdrain block disclosed by Brown '388 in order to form longer blocks necessary to support longer filter media beds of liquid filtration systems. Finding nothing in the disclosures by Roberts and Berkebile of extruded multi-block sections or lengths intended to be cut into individual blocks which would have suggested providing the individual block disclosed by Brown '388 with a longitudinal length any longer than its disclosed about 4 foot length, we declined to sustain the rejection (see section III, pages 10 and 11 in the decision). In doing so, we found the Roberts, Berkebile and Brown '388 references to be wanting only as to the particular manner in which they were combined by the examiner to support the rejection. Our suggestion that the examiner reconsider the patentability of claims 6, 7 and 28 involves a different application of these references, and consequently a different issue. Accordingly, it does not run afoul of any

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principles of res judicata, even if it is assumed that such principles are relevant to these circumstances.

In light of the foregoing, section IV will not be stricken from our decision, but it is modified to the extent that the reference therein to "claims 6, 7 and 18" should be read as --claims 6, 7 and 28--. Hence, the appellants' request for rehearing is granted-in-part.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

GRANTED-IN-PART

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	APPEALS AND
LAWRENCE J. STAAB)	
Administrative Patent Judge)	INTERFERENCES
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JOHN P. MCQUADE)	
Administrative Patent Judge)	

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