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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/154,344	05/22/2008	Dave Elliott Whitten	6003.1036DIV	8473
23280	7590	01/18/2013	EXAMINER	
Davidson, Davidson & Kappel, LLC			TAWFIK, SAMEH	
485 7th Avenue			ART UNIT	PAPER NUMBER
14th Floor			3721	
New York, NY 10018			MAIL DATE	DELIVERY MODE
			01/18/2013	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVE ELLIOTT WHITTEN and JOHN LEE KETCHUM

Appeal 2010-011293
Application 12/154,344
Technology Center 3700

Before WILLIAM V. SAINDON, LYNNE H. BROWNE and BARRY L.
GROSSMAN, *Administrative Patent Judges*.

BROWNE, *Administrative Patent Judge*

DECISION ON APPEAL

STATEMENT OF THE CASE

Dave Elliott Whitten and John Lee Ketchum (Appellants) appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1-5 and 7 under 35 U.S.C. § 102(b) as being anticipated by Fischer (US 4,629,175, iss. Dec. 16, 1986) and rejecting claim 6 under 35 U.S.C. § 103(a) as being unpatentable over Fischer. We have jurisdiction under 35 U.S.C. § 6(b).

We Reverse.

THE INVENTION

Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A method for removing signatures from a cylinder comprising the steps of:
 - transporting the signatures around a cylinder at a first surface speed, the signatures being gripped at a folded edge by a gripping device;
 - pressing the signatures at a first location with a first conveyor against the cylinder, the first conveyor at the first location moving at a second surface speed lower than the first surface speed;
 - releasing the signatures from the gripping device; and
 - further transporting the signatures.

OPINION

The Examiner finds that Fischer describes “transporting the signatures around a cylinder at a first surface speed (Fig. 1; via at the speed of cylinder/drum 4);” and “pressing the signatures with a first conveyor against the cylinder at a second surface speed lower than the first speed (Fig. 1; via

the speed of conveyors 1 and 3; lower than the speed of cylinder 4; column 4, lines 63-65 and column 5, lines 57-59).” Ans. 3.

Appellants argue that Fischer does not disclose “pressing the signatures at a first location with a first conveyor against the cylinder” App. Br. 4; Reply Br. 2. Further, Appellants argue that “[t]here is absolutely no indication in Fischer et al. that delivery belt 3 presses the printed products against drum 4.” App. Br. 5; Reply Br. 2.

Appellants’ argument is convincing because there is insufficient evidence to support the Examiner’s finding that Fischer discloses “pressing the signatures at a first location with a first conveyor against the cylinder” as required by claim 1. While Figure 1 appears to show the signatures (11) in contact with both the conveyor (3) and the drum (4), Fischer’s Specification does not describe conveyor (3) as pressing the signatures (11) against the drum (4). The Examiner has not explained nor do we discern how conveyor (3) presses the signatures (11) against the drum (4). Indeed, Fischer seems to indicate that the drum is moving faster than the conveyor 3 (*see, e.g.*, col. 6, ll. 3-9), such that if the drum were pressing the signatures against the conveyor 3, then the drum would induce an undesirable shearing force on the signatures.

Accordingly, we do not sustain the Examiner’s rejection of claim 1 or claims 2-5 and 7 which depend therefrom. The Examiner’s obviousness rejection of claim 6 contains the same factual deficiency and is likewise not sustained.

DECISION

We reverse the Examiner’s rejection of claims 1-5 and 7 under 35 U.S.C. §102(b).

Appeal 2010-011293
Application 12/154,344

We reverse the Examiner's rejection of claim 6 under 35 U.S.C.
§ 103(a).

REVERSED

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