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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL
BOARD

Ex parte JOHN B. BRANDRETH III

Appeal 2011-012476
Application 12/004,289
Technology Center 1700

Before ANDREW H. METZ, PETER F. KRATZ and
GRACE KARAFFA OBERMANN, *Administrative Patent Judges*.

METZ, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1 through 5 and 7 through 18, which are all the claims remaining in the application. We have jurisdiction under 35 U.S.C. § 6.

We REVERSE.

THE INVENTION

Appellant's invention is directed to a dispenser device for use in a filtration system for water where the rate of introduction of a dissolved chemical into the water is controlled relative to the flow volume of water.

Spec., page 1, lines 8 through 15. Appellant's claimed invention is an improvement of the chemical dispenser system of his prior U.S. Patent Number 5, 580,448. Spec., page 3, lines 12 through 19 and Appellant's Brief at page 16. See also Fig. 1 of Appellant's specification which shows a cross-sectional view of Appellant's previously patented invention.

Claim 1 is believed to be adequately representative of the appealed subject matter and is reproduced below for a more facile understanding of the claimed invention.

1. An adjustable chemical dispensing device for introducing a chemical solution into a flow of liquid, said device adapted to be received within a base member adapted to be incorporated into a flow conduit line, said base member having an inlet opening adapted to receive an inlet conduit, an outlet opening adapted to receive an outlet conduit, a downflow opening communicating with said inlet opening, a centrally located upflow opening communicating with said outlet opening, and mating means adapted to receive a cylindrical housing; said cylindrical housing comprising an outer wall, closed bottom and open top, and adapted to mate with said mating means of said base member, said adjustable chemical dispensing device comprising:

an upper tube connected to a lower chemical dispensing chamber, said upper tube comprising an apertured midsection segment and an open top and open bottom;

said open top adapted to sealingly mate with said upflow opening of said base member;

said apertured midsection segment having multiple flow openings to allow liquid to flow into said upper tube;

said chemical dispensing chamber comprising a closed bottom, a top wall, at least one side wall, multiple intake

refilling apertures, and multiple dispensing apertures, said bottom, top and at least one side wall defining an interior and containing a dissolvable chemical in solid or granular form, whereby refill liquid enters said chemical dispensing chamber through said intake apertures and contacts said chemical to dissolve said chemical and form a saturated chemical solution within said chemical dispensing chamber, and whereby said saturated solution exits said chemical dispensing chamber through said dispensing apertures in response to liquid flow through said apertured midsection and upper tube;

said adjustable chemical dispensing device further comprising

means for adjusting the rate of main liquid flow through said upper tube;

means for adjusting the inflow rate of refill liquid into said chemical dispensing chamber; and

means for adjusting the outflow rate of said saturated chemical solution into said upper tube and said main liquid flow.

The references of record which are being relied on by the Examiner as evidence of obviousness are:

Brandreth, III (Brandreth)	US 5,580,448	Dec. 03, 1996
Hatch et al. (Hatch)	US 5,897,770	Apr. 27, 1999

THE REJECTIONS

Claims 1 through 5 and 7 through 18 stand rejected as being unpatentable under 35 U.S.C. § 103(a) as the claimed subject matter would

have been obvious at the time Appellant made his invention from the disclosure of Brandreth, considered with Hatch.

OPINION

The issue before us is a question of law, specifically, whether the subject matter claimed by Appellant in Claim 1¹ would have been obvious to a person of ordinary skill in the art at the time Appellant made his invention. The ultimate legal conclusion of obviousness is based on the underlying facts in each specific case including the scope and content of the prior art, the differences between the claimed invention and the prior art and the level of ordinary skill in the relevant art.

Appellant concedes that the Hatch reference discloses two of three “means” set forth in claim 1 that distinguish the claimed subject matter from the prior art. Specifically, Appellant concedes that Hatch discloses: (i) means for adjusting the rate of main liquid flow through said upper tube; and, (ii) means for adjusting the inflow rate of refill liquid into said chemical dispensing chamber. Brief at page 17, lines 3 through 21. Appellant challenges the Examiner’s determination that element (iii) would have been obvious from the disclosure of Hatch. Accordingly, the narrow question before us to decide is whether Hatch teaches or suggests Appellant’s claimed element (iii), that is, means for adjusting the outflow rate of said saturated chemical solution into said upper tube and said main liquid flow, in an adjustable chemical dispensing device as claimed or equivalents thereof.

¹ Both the Appellant and the Examiner have limited their discussion of the issue before us to the subject matter set forth in claim 1 and, accordingly, we have limited our discussion of the issue and our ultimate decision solely to the subject matter claimed in claim 1.

By choosing to use “means-plus-function” limitations in his claims invoking 35 U.S.C. §112, ¶6², Appellant has chosen to limit the claimed “means-plus-function” limitations to the disclosed structure in the specification and equivalents thereof. *In re Donaldson Co.*, 16 F.3d 1189, (Fed. Cir. 1994)(en banc). Appellant and the Examiner agree that said structure ((iii)) is disclosed in Appellant’s specification at least from page 11 through page 12, line 22 and in Figs. 3, 6 and 8. Brief at page 8, Answer at page 5.³

Appellant’s disclosed “means-for adjusting the outflow rate of said saturated chemical solution into said upper tube and said main liquid flow” is described as comprising a combination of dispensing apertures **141** positioned in the lower wall member **191** and an opening **186** in the top wall member **185** of the top neck portion **184**. According to Appellant’s disclosure from page 12, lines 10 through 22 of the specification, page 12 of the specification:

depending on the rotational position of the lower wall **191** of the upper tube **131** relative to the neck top wall opening **186**, any number or none of the non-centrally located dispensing apertures **141** will be aligned with the neck top wall opening **186** such that saturated chemical solution **144** may be pulled from the dispensing chamber **133** into the interior of the upper tube **131** by the movement of water through the upper tube apertured midsection **132**. By rotating the

² Beginning on September 16, 2012, 35 U.S.C. § 112, paragraph 6 became 35 U.S.C. § 112, paragraph (f).

³ To the extent that independent claim 15 may include sufficient structure to avoid the strictures of 35 U.S.C. §112, ¶6, the Examiner has not specifically addressed claim 15 and articulated how the applied prior art teaches or suggests the recited structure for adjusting the outflow rate of claim 15.

upper tube **131** and lower wall member **191** relative to the inflow gate member **181**, the amount of saturated chemical solution **144** drawn into the main water flow stream may be regulated – increasing or decreasing the flow of saturated chemical solution **144** as conditions dictate. The neck opening **186** is preferably positioned such that at least a portion of the centrally disposed dispensing aperture **141** remains unblocked no matter the rotational position of the upper tube **131** relative to the neck portion **184**. This combination defines a means for adjusting the flow rate of saturated chemical solution **144** into the main water flow.

The Examiner relies on the disclosure in Hatch of rotatable end caps **42** that can be rotated to cover a number of apertures **26** in upstream (lower) end cap **24** as a means for controlling the inflow water into the containment chamber **20** of Hatch and directs our attention to column 7, lines 32 through 63 and Figs. 8 through 10 and 14 of Hatch in support of these findings. Additionally, the Examiner relies on the disclosure in Hatch of an adjustable ring **34** that may be rotated to cover or uncover metering slots **30** which allow water to bypass the chemical **22** in containment chamber **20**. The Examiner directs us to column 4, lines 3 through 23; column 6, lines 29 through 47 and Figs. 5 through 7 and 11 of Hatch in support of these findings. The Examiner observes that the rotatable end caps and ring are independently controllable from each other.

The Examiner concludes that while Hatch does not teach that a rotatable end cap may be located on both the downstream (upper) and upstream (lower) end caps it would have been obvious to do so for “the purpose of providing structure to adjust the flow rate into and out of the chemical dispensing chamber and the flow rate through bypass to optimize the rate of dispensing the chemical.” Answer at page 7. The Examiner also

agrees with Appellant that including rotatable end caps on both ends of the containment vessel of Hatch would be redundant but argues that they would also be redundant in the apparatus of Brandreth and therefore amount to “the mere duplication of parts” that would not produce any new or “unexpected” results. We find the Examiner’s stated rationale and conclusion evidences a misunderstanding of the law with respect to “means-plus-function” limitations.

The Examiner carries the initial burden of proof for showing that the prior art structure is the same as or equivalent to the structure described in the specification that has been identified as corresponding to the claimed means-plus-function. The Examiner has conceded that Appellant’s claimed means-plus-function apparatus limitation (iii) is neither shown nor suggested by Hatch. Thus, it was incumbent on the Examiner to show the structure from Hatch on which he relied was equivalent to the structure described in the specification identified as corresponding to the claimed means-plus-function. This the Examiner has not done.

The Examiner’s burden to make out a prima facie case of obviousness was not to explain why it would have been obvious to modify the apparatus of Hatch so the means disclosed therein as proposed to be modified would meet the means claimed by Appellant in claim 1. Rather, the Examiner’s burden was to establish equivalence between the means disclosed in Hatch and the means in claim 1. In order to show the structure in Hatch on which the Examiner has relied is the “equivalent” of the means-plus-function” element claimed by Appellant the Examiner had to establish by reference to factual findings in the record, for example, that: the element **42** from Hatch

performs the same function specified in the claim in substantially the same way, and produces substantially the same results as the corresponding element disclosed in the specification; or, the hypothetical person of ordinary skill in the art would have recognized the interchangeability of the element shown in the prior art for the corresponding element disclosed in Appellant's specification; or there are insubstantial differences between the prior art element and the corresponding element disclosed in the specification.

The disclosures on which the Examiner relies from column 7, lines 32 through 63 and Figs. 8 through 10 and 14 of Hatch discuss an adjustable, rotatable end cap for use on the upstream (lower) end of the containment chamber **20** that is used to control the amount of water flowing into the upstream containment chamber. The "means" in question from claim 1 requires that it is for "adjusting the outflow rate of said saturated chemical solution into said upper tube and said main liquid flow." Thus, the means **42** on which the Examiner relies in Hatch does not perform the same function as that specified in claim 1 in substantially the same way, and does not produce substantially the same result as the corresponding element disclosed in the specification. Neither has the Examiner shown that element **42** disclosed in Hatch would have been recognized by the hypothetical person of ordinary skill in the art as being interchangeable with element (iii) in claim 1 and disclosed in Appellant's specification nor has the Examiner provided evidence which establishes there are insubstantial differences between the prior art element and the corresponding element disclosed in the specification.

Finally, Appellant argues in his Reply Brief at pages 5 and 6 that because Appellant's device requires control of both the incoming water into the chemical dispensing chamber and control of the outflow from the chemical dispensing chamber into the upper tube and main liquid flow the use in Appellant's claim of means for adjusting both the inflow and outflow is not as the Examiner has argued "redundant." We agree to the extent we consider Appellant's argument establishes that the Examiner has failed to make out a case of equivalence between the claimed means in claim 1 and the rotatable end caps **42** in Hatch.

For all the above reasons we find the Examiner has failed to make out a prima facie case of obviousness with respect to the subject matter claimed by Appellant in claim 1.

The decision of the Examiner is reversed.

REVERSED

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