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22850	7590	07/01/2020	EXAMINER	
OBLON, MCCLELLAND, MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314			HOWELL, MARC C	
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* KAZUO YAMAGUCHI, TAKAYA UDA, YOSHINORI  
KURODA, and TSUGUSHI FUKUI

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Appeal 2019-003062  
Application 13/810,672  
Technology Center 1700

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BEFORE BEVERLY A. FRANKLIN, JAMES C. HOUSEL, and  
MONTÉ T. SQUIRE, *Administrative Patent Judges*.

FRANKLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 1–12 and 15–20. We have jurisdiction under 35 U.S.C. § 6(b). An oral hearing was held on June 11, 2020.

We REVERSE.

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<sup>1</sup> We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as KABUSHIKI KAISHA KOBE SEIKO SHO. Appeal Br. 1.

### CLAIMED SUBJECT MATTER

Claim 1 is illustrative of Appellant's subject matter on appeal and is set forth below (with text in bold for emphasis):

1. A continuous mixer for continuously mixing a material, comprising:
  - a barrel with a hollow interior;
  - a hopper positioned to feed a material to be mixed to the interior of the barrel; and
  - a pair of mixing rotors which are housed in the barrel and rotate in mutually different directions, each of the mixing rotors including a feeding portion which is an upstream part in an axial direction, the feeding portion including a first screw flight shaped to feed the material supplied from the hopper to the downstream side through the barrel, a mixing portion which is an intermediate part in the axial direction, the mixing portion including a plurality of mixing flights shaped to mix the material fed from the feeding portion, the mixing flights being formed about an axial center of the mixing rotor and projecting radially outward, and a discharging portion which is a downstream part in the axial direction, the discharging portion including a second screw flight shaped to feed the material mixed by the mixing portion to the downstream side, wherein:
    - each of the mixing flights is shaped differently from each of the first screw flight and the second screw flight;
    - the mixing flights each have a tip, a spacing between the tip of one mixing flight of the pair of mixing rotors and the other mixing flight of the pair of mixing rotors comprising an inter-rotor clearance which is a smallest clearance between the mixing portions in a cross section perpendicular to axial directions of both of the mixing rotors at each rotation phase of the mixing rotors, the rotations of the pair of mixing rotors in the mutually different directions causing respective surfaces of the mixing rotors to move in the same direction on the both sides of the inter-rotor clearance;

both of the mixing rotors are arranged so as to make a center distance there between smaller than a rotation outer diameter of each of the mixing flights; and

**the inter-rotor clearance at each rotation phase of the mixing portions of the mixing rotors has a size equal to or smaller than 0.16-fold of an inner diameter of the barrel over a rotation region of 85% or more of one rotation of each of the mixing rotors.**

Appeal Br. 15–16 (Claims App.).

#### REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Street	US 3,447,582	June 3, 1969
Song et al.	US 6,086,925	July 11, 2000
Ek et al.	US 2009/0213681 A1	Aug. 27, 2009

#### REJECTIONS

1. Claims 1–10 and 15–20 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Street in view of Song et al. (hereinafter “Song”).

2. Claims 11 and 12 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Street in view of Song, as applied to claim 10 above, and further in view of Ek et al. (hereinafter “Ek”).

#### OPINION

We review the appealed rejections for error based upon the issues identified by Appellant and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential), *cited with approval in In re Jung*, 637 F.3d 1356, 1365 (Fed. Cir. 2011) (“[I]t

has long been the Board's practice to require an applicant to identify the alleged error in the examiner's rejections."). After considering the evidence presented in this Appeal (including the Examiner's Answer, the Appeal Brief, and the Reply Brief), we are persuaded that Appellant identifies reversible error. Thus, we reverse the Examiner's rejections, with the following emphasis.

In making our determinations herein, we focus on the claim element pertaining to the size of the inter-rotor clearance being "equal to or smaller than 0.16-fold of an inner diameter of the barrel over a rotation region of 85% or more of one rotation of each of the mixing rotors" as recited in claim 1.

The Examiner finds that Street suggests that the square flights 49 in Street can have the same clearance  $C_1$  as the V-shaped flights 48 in Street, and therefore meets the aforementioned claimed element. Ans. 3–4. However, as argued by Appellant (Appeal Br. 9–12), the gap clearance  $C_1$  at the V-shaped flights 48 of Street is controlled to meter the material thickness on the flights 48 so that the material in a thin layer can be exposed to a vacuum and polymerized on flights 48; the square threads 49 instead have the function of positively advancing the polymerized material under pressure (Street, col. 5, lines 33–35). The valid point being made is that the different functions undermines the Examiner's position that Street suggests that the square flights 49 in Street can have the same clearance  $C_1$  as the V-shaped flights 48 in Street.

In response to this argument, the Examiner states that the gap clearance is a result effective variable. Ans. 9–10. However, we agree with Appellant that this finding by the Examiner is without proper foundation.

Reply Br. 1–2. As Appellant explains, there is no disclosure in Street to indicate that the inter-rotor clearance of the square threads 49 would be effective for generating an extensional flow in the material. The Examiner’s Answer itself recognizes that this disclosure is only found in Appellant’s own Specification. Ans. 9. Reliance upon Appellants’ own Specification rather than the applied prior art in this manner is improper. *See W.L. Gore & Assocs. v. Garlock, Inc.*, 721 F.2d 1551, 1553 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984) (“To imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher.”).

Lastly, with regard to the Examiner’s position that Figure 1 of Street would appear to show that threads 48 and 49 have similar clearances (Ans. 4), we agree with Appellant that the rejection acknowledges that the drawings are not to scale (Ans. 4), and that no other disclosure in Street supports the Examiner’s interpretation of Figure 1 in this regard. Appeal Br. 12. It is well settled that “[a]bsent any written description in the specification of quantitative values, arguments based on measurement of a drawing are of little value.” *In re Wright*, 569 F.2d 1124, 1127 (CCPA 1977). Precise proportions should not be read into patent drawings when the patent does not expressly provide such proportions. *Nystrom v. TREX Co., Inc.*, 424 F.3d 1136, 1149 (Fed. Cir. 2005). Therefore, such “arguments based on measurement of the drawing features are of little value.” MPEP 2125(11).

In view of the above, we reverse Rejections 1 and 2 (the Examiner does not rely upon the other applied references in Rejection 2 to cure the stated deficiencies of the combination of references applied Rejection 1).

### CONCLUSION

We reverse the Examiner's decision.

### DECISION SUMMARY

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1-10, 15-20	103	Street, Song		1-10, 15-20
11, 12	103	Street, Song, Ek		11, 12
<b>Overall Outcome</b>				1-12, 15-20

REVERSED