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15/151,323	05/10/2016	Clifford Lee Hilpert	3260-01001	5712
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TOD T. TUMEY TUMEY LLP P.O. BOX 22188 HOUSTON, TX 77227-2188			VILLALUNA, ERIKA J	
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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* CLIFFORD LEE HILPERT, LEWIS JACKSON DUTEL,  
LAURA TUFTS MEYER, JEFFREY LEE HILPERT,  
DAVID WILLIAM BLACKLAW, and  
MATTEO GIOVANNI BATISTA

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Appeal 2019-005709  
Application 15/151,323  
Technology Center 2800

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Before ROMULO H. DELMENDO, MONTÉ T. SQUIRE, and  
JANE E. INGLESE, *Administrative Patent Judges*.

DELMENDO, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellant<sup>1</sup> appeals under 35 U.S.C. § 134(a) from the Primary Examiner's final decision to reject claims 1–3 and 5.<sup>2</sup> We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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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—“HilFlo, LLC” (Application Data Sheet filed May 10, 2016 at 6), which is also identified as the real party in interest (Appeal Brief filed November 27, 2018 (“Appeal Br.”) at 3).

<sup>2</sup> See Appeal Br. 6–7; Reply Brief filed July 17, 2019 (“Reply Br.”) at 2; Final Office Action entered June 28, 2018 (“Final Act.”) at 2–5; Examiner's Answer entered May 29, 2019 (“Ans.”) at 3–4.

## I. BACKGROUND

The Appellant states that “[t]here are no related appeals and interferences in this matter” (Appeal Br. 4). The current application, however, is a parent of co-pending continuation-in-part Application 15/360,861 filed November 23, 2016, in which an Appeal Brief was filed on September 11, 2018 and a Decision on Appeal affirming the Examiner’s final decision to reject claims 1–5 was entered April 16, 2020. *See Ex parte Hilpert*, Appeal 2019-003348 (PTAB Apr. 16, 2020).<sup>3</sup>

The subject matter on appeal relates to a method of testing for leaks in a closed hydraulic system (Specification filed October 31, 2016 (“Spec.”) ¶ 1). Representative claim 1 is reproduced from the revised Claims Appendix, as follows:

1. A method of testing for leaks in a closed hydraulic system comprising:
  - a. pressurizing the portion of the closed hydraulic system to a first test pressure level,
  - b. maintaining a constant pressure within the portion of the closed hydraulic system to be tested, *for a period of about thirty seconds*,
  - c. measuring any amount of fluid added to or removed from the pressurized portion of the closed hydraulic system that is required to maintain the pressure within the portion to be tested at a constant level during the thirty second period,
  - d. dumping the pressure within the portion of the closed hydraulic system immediately after the thirty seconds period, and
  - e. determining a pressure decay rate without any subsequent testing.

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<sup>3</sup> Available at <https://e-foia.uspto.gov/Foia/RetrievePdf?system=BPAI&flNm=fd2019003348-04-16-2020-0>.

(Supplemental Appeal Brief filed February 7, 2019 at 2 (emphasis added)).

## II. REJECTIONS ON APPEAL

The claims on appeal stand rejected under AIA 35 U.S.C. § 103, as follows:

- A. Claims 1 and 5 as unpatentable over Maresca, Jr. et al.<sup>4</sup> (“Maresca”); and
- B. Claims 2 and 3 as unpatentable over Maresca in view of Serafin et al.<sup>5</sup> (“Serafin”).

(Final Act. 2–5; Ans. 3–4).

## III. DISCUSSION

For Rejection A, the Appellant argues claims 1 and 5 together, focusing only on independent claim 1 (Appeal Br. 6). Therefore, we confine our discussion of Rejection A to claim 1, with which claim 5 stands or falls. 37 C.F.R. § 41.37(c)(1)(iv). For Rejection B, the Appellant adds merely that “Serafin . . . does not deal with the time period for a test,” which is the same claim limitation at issue in Rejection A (Appeal Br. 6). Therefore, our ruling on claim 1 is also dispositive for claims 2 and 3 subject to Rejection B.

The Examiner finds that Maresca describes a method for detecting leaks in a closed hydraulic system (i.e., a pressurized pipeline system carrying petroleum, solvents, or other chemical products) having the same steps recited in claim 1, except that the prior art method uses a maintained constant pressure period of nominally five minutes rather than “about thirty

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<sup>4</sup> US 5,090,234, issued February 25, 1992.

<sup>5</sup> US 6,328,542 B1, issued December 11, 2001.

seconds” as recited in the claim (Final Act. 3–4). The Examiner finds further, however, that Maresca teaches the relationship between variables such as time and the elasticity of the pipeline system—i.e., that the time required for pressure to decay increases as the elasticity of the pipeline system increases (*id.* at 4). Based on this teaching, the Examiner concludes that “[i]t would have been obvious to one of ordinary skill in the art . . . to modify the apparatus of Maresca to select a time period of pressurization that is commensurate with the particular elasticity of the pipeline, such as a thirty second period” (*id.*).

The Appellant contends that the claimed method “substantially reduce[d] the time necessary to conduct the test” compared to “current monitoring steps [that] take about nine minutes” (Appeal Br. 6 (citing Spec. ¶ 4)). The Appellant argues that “[i]n order to arrive at a test monitoring period of thirty seconds the examiner relies upon examples in Maresca that requires [sic] 15 or 60 minutes of monitoring” and that “[n]owhere in the Maresca disclosure is there a basis for concluding that a time period of thirty seconds for monitoring the pressure stage would result in an accurate test” (*id.*).

For the reasons cogently and succinctly stated in the Answer (Ans. 3–4), the Appellant’s arguments fail to identify reversible error in the Examiner’s rejection. *In re Jung*, 637 F.3d 1356, 1365 (Fed. Cir. 2011).

As the Examiner finds (Final Act. 3–4), Maresca describes a method for detecting leaks in a pipeline system that includes the same steps recited in claim 1, except the constant pressure is maintained for nominally five minutes rather than “about thirty seconds” (Maresca col. 20, l. 59–col. 21, l. 22). Although Maresca discloses maintaining constant pressure for five

minutes rather than “about thirty seconds,” as recited in claim 1, it also teaches that “[t]he relationships between pressure and (1) volume, (2) leak rate, and (3) time are controlled by the elasticity of the pipeline system” and that “[a]s the elasticity of the line increases, the time required for the pressure to decay from the operating pressure of the line to zero (or to any other pressure below the operating pressure) increases” (*id.* at col. 2, ll. 25–33).

Although claim 1 limits the scope of the claim in terms of time rather than the elasticity of the materials that make up the system, a person having ordinary skill in the art would have understood from Maresca’s disclosure that the elasticity of the pipeline system would be a result-effective variable that controls time (Ans. 3). Thus, when a pipeline system (or a portion thereof) made of a relatively inelastic material is subjected to Maresca’s leak test method, it would reasonably appear that the time required for the test would be relatively low—i.e., times approaching “about thirty seconds” or even lower, as required by claim 1. The Appellant does not direct us to objective evidence showing the contrary.<sup>6</sup> *Cf. In re Best*, 562 F.2d 1252, 1255 (CCPA 1977).

For these reasons, and those well-stated by the Examiner, we uphold the Examiner’s rejections.

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<sup>6</sup> The description in paragraph 4 of the current Specification does not compare the claimed method against Maresca’s method as applied to relatively inelastic piping systems. Nor does it establish that the claimed test method requires only “about thirty seconds” for *all* hydraulic systems regardless of the materials used, including those that are made of relatively high elasticity materials.

IV. CONCLUSION

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1, 5	103	Maresca	1, 5	
2, 3	103	Maresca, Serafin	2, 3	
<b>Overall Outcome</b>			1-3, 5	

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

AFFIRMED