In re Broco, 225 USPQ 227 (TTAB 1984), are distinguished. In *TMS* (THE MONEY SERVICE for financial services) the applicant did not sell "money." In *House Store* (HOUSE STORE for retail store services in the field of furniture), the applicant did not sell "houses." In *Broco* (THE LIBRARY COMPANY for library supply services) the applicant did not sell "libraries." Appellant here does sell wickerware, hence the rationale supporting registrability in the cited cases is inapplicable.

Decision:

The refusal of registration is affirmed.

Patent and Trademark Office
Board of Patent Appeals and Interferences

Ex parte Clapp

Opinion dated Feb. 28, 1985

PATENTS

1. Anticipation — Combining references (§51.205)

To support conclusion that claimed combination is directed to obvious subject matter, references must either expressly or impliedly suggest claimed combination or examiner must present convincing line of reasoning as to why artisan would have found claimed invention to have been obvious in light of references' teachings.

Application for patent of Thomas R. Clapp, Serial No. 257,162, filed Apr. 24, 1981. From rejection of Claim 9-19, applicant appeals (Appeal No. 553-54). Reversed.

Gomer W. Walters, for appellant.

Before Bennett, Henon and Spencer, Examiners-in-Chief.

Henon, Examiner-in-Chief.

This appeal is from the decision of the examiner rejecting claims 9 through 19, which constitute all the claims remaining in the application.

The invention relates to an auger type mixing apparatus for mixing cementitious materials employing a volatile liquid. Representative claim 9 reads as follows:

9. Apparatus mounted on a vehicle for mixing a cementitious material in which a volatile liquid is employed comprising:

an enclosed mixing chamber sealed to prevent the escape of the volatile liquid and any potentially dangerous fumes;

a solid frame forming the top of said mixing chamer and having an inlet end thereof pivotably mounted on the vehicle,

an easily removable elastomeric trough forming the bottom of said mixing chamber the elastomeric material selected to be compatible with the materials being mixed;

an auger having a central shaft and mounted in said frame to convey materials through said mixing chamber;

mixing paddles mounted on the shaft of said auger;

a drive motor for said auger mounted on said frame;

a releasable flexible coupling between the aligned shafts of said motor and said auger to permit removal of said auger from said frame;

an inlet hopper to introduce substantially dry materials into said mixing chamber;

liquid injection means to introduce a liquid into said mixing chamber at a distance removed from said inlet hopper to have said substantially dry material form a plug to prevent the liquid and any fumes from backing up said inlet hopper; and

a discharge opening formed in said elastomeric trough.

The references relied on by the examiner are:

Clemens	2,159,205	May 23, 1939
August	2,709,075	May 24, 1955
Tiemersma	3,199,145	Aug. 10, 1965
Cunningham	3,227,424	Jan. 4, 1966
Zimmerman	3,310,293	Mar. 21, 1967
Futty et al. (Futty)	3,339,898	Sep. 5, 1967
Wilkinson et al. (Wilkinson)	3,348,820	Oct. 24, 1967
Lasar	3,901,483	Aug. 26, 1975

Claims 9 through 14 and 17 stand rejected as being directed to obvious subject matter within the meaning of 35 U.S.C. 103 in light of the teachings of Zimmerman in view of Wilkinson, Futty, Lasar, Clemens and Cunningham. The examiner contends that Zimmerman discloses the claimed subject matter except for "having the mixing chamber enclosed with a solid top frame and having a removable auger and having liquid injection means and aligned shafts between the motor and auger and a discharge formed in the elastomeric trough," (final rejection, page 2, paper number 5). The examiner cites Wilkinson as disclosing an enclosed mixing chamber

where the enclosure comprises an inverted substantially U-shaped top frame portion and concludes that it therefore would be obvious to the artisan to modify the open frame in Zimmerman to be an enclosed mixing chamber as taught by Wilkinson "if desired." Since Wilkinson also discloses the concept of providing liquid injection means for the introduction of liquid into a mixing chamber remote from the inlet hopper, the examiner concludes that it would therefore be obvious to modify Zimmerman accordingly. Since Lasar discloses the concept of having an auger with mixing paddles mounted thereon wherein the auger is releasably coupled to a frame, the examiner concludes that it would have been obvious to the artisan to modify the auger in Zimmerman as taught by Lasar. Futty is cited to show that it is well known to provide coaxial alignment between an auger shaft and the shaft of a driving motor. Clemens is cited as disclosing the concept of haivng a discharge opening in a trough. The examiner concludes that it would have been obvious in light of Futty and Clemens to modify the auger/motor alignment and discharge opening of Zimmerman to be of the nature suggested by Futty and Clemens. Cunningham is cited as disclosing seal means to preclude leakage of the material within the mixing chamber. The examiner concludes that it would have been obvious in light of the teachings of Cunningham to employ seal means on the modified device of Zimmerman.

Claim 15 stands rejected as being directed to obvious subject matter under 35 U.S.C. 103 in light of the combined teachings of Zimmerman, Wilkinson, Futty, Lasar, Clemens, Cunningham and August. Combining the teachings of Zimmerman, Wilkinson, Futty, Lasar, Clemens and Cunningham in the manner specified supra, the examiner concludes that it would have been further obvious to the artisan in light of the teachings of August to provide spray elements with selectively activated controls since August teaches such devices to be known.

Claims 16, 18 and 19 stand rejected as being directed to obvious subject matter under 35 U.S.C. 103 in light of the combined teachings of Zimmerman, Wilkinson, Futty, Lasar, Clemens, Cunningham and Tiemersma. Combining the teachings of Zimmerman, Wilkinson, Futty, Lasar, Clemens and Cunningham in the manner specified supra, the examiner concludes that it would have been obvious to further modify the structure of Zimmerman to include a gas-filled bearing housing for sealing purposes.

Rather than reiterate the arguments of appellant and the examiner, reference is made to the brief and answer for the respective details thereof.

Opinion

We will not sustain any of the rejections.

[1] Presuming arguendo that the references show the elements or concepts urged by the examiner, the examiner has presented no line of reasoning, and we know of none, as to why the artisan viewing only the collective teachings of the references would have found it obvious to selectively pick and choose various elements and/or concepts from the several references relied on to arrive at the claimed invention. In the instant application, the examiner has done little more than cite references to show that one or more elements or subcombinations thereof, when each is viewed in a vacuum, is known. The claimed invention, however, is clearly directed to a combination of elements. That is to say, appellant does not claim that he has invented one or more new elements but has presented claims to a new combination of elements. To support the conclusion that the claimed combination is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed combination or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references. We find nothing in the references that would expressly or impliedly teach or suggest the modifications urged by the examiner. Additionally, as aforementioned, we find no line of reasoning in the answer, and we know of none, as to why the artisan would have found the modifications urged by the examiner to have been obvious. Based upon the record before us, we are convinced that the artisan would not have found it obvious to selectively pick and choose elements or concepts from the various references so as to arrive at the claimed invention without using the claims as a guide. It is to be noted that simplicity and hindsight are not proper criteria for resolving the issue of obviousness. Note In re Horn, 203 USPQ 969, 971 (CCPA 1979). Accordingly, we will not sustain any of the rejections presented.

The decision of the examiner rejecting claims 9 through 19 as being directed to obvious subject matter within the meaning of 35 U.S.C. 103 is reversed.

District Court, E. D. Pennsylvania

Allen Organ Company v. ELKA S.p.A.

No. 85-90