

DECISION OF THE COMMISSIONER

UNOBVIOUS: Non-analogous prior art.

The objective in the manufacture of different size needle cylinders is completely different from the objective of the 80-year old citation, and that what applicant has done is not obvious from its teaching.

FINAL ACTION: Refusal of the application overruled; some claims refused.

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IN THE MATTER OF a request for a review by the Commissioner of Patents of the Examiner's Final Action under Section 46 of the Patent Rules.

AND

IN THE MATTER OF a patent application serial number 024,078 filed July 3, 1968 for an invention entitled:

SPRING NEEDLE KNITTING MACHINE CYLINDER

Agent for Applicant

Mr. George H. Riches,  
Toronto, Ontario.

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This decision deals with a request for review by the Commissioner of Patents of the Examiner's Final Action dated July 14, 1971 on application 024,078. This application was filed in the name of David P. Moore and refers to "Spring Needle Knitting Machine Cylinder".

In the prosecution terminated by the Final Action the examiner refused the application as obvious in view of prior art, namely:

Canadian Patents		
17,347	July 24, 1883	Irvine et al
36,946	July 10, 1891	Coddington

In the Final Action the examiner stated:

Irvine et al discloses a pulley comprising a hub, radially extending spokes and rim structure. The pulley further comprises an arcuate, detachable segment connected to the rim by flange, bolts, keys, or equivalent means. The arcuate segment is further connected to a spoke by an inwardly projecting stub having a reduced portion which fits into a socket in the spoke.

Coddington discloses the principle of a pulley structure whose cylindrical rim is made up of arcuate segments. The spokes are connected at the hub. This patent has been cited primarily to show that it is well known to form the rim of a wheel-like structure from a plurality of separate arcuate segments.

The subject matter disclosed and claimed in this application is directed to the structure and particularly the inner structure of a needle cylinder. In so far as this inner structure is a wheel-like structure, consideration of design and manufacture are analogous to those of other wheel-like structures such as the pulley structures disclosed in the above patents. It would be expected that when an unusually large part is to be manufactured such as the needle cylinder in question, ways and means would be sought to build up such large part from several parts. Irvine et al and Coddington show how this may be done with pulleys. The size of the pulley structures is not disclosed and may well be compatible with the size of applicant's cylinder. Furthermore, it is well established that the mere size of a structure - is not a patentable characteristic.

Applicant's argument .....to the effect that there is a presumption that it was not obvious to a person skilled in the art to arrive at applicant's idea from the disclosures of the cited patents is refuted. It is stated that the presumption is supported by the allowance of the corresponding British and United States applications. However, it is noted that the above Canadian Patents have not been cited in these countries. The presumption therefore is not properly based.

In the response dated October 14, 1971 the applicant stated:

Applicant submits, in addition to what was said in the previous responses, that the Examiner is not on strong ground when he relies for his rejection

on the basis of obviousness when he relies on two prior patents which were granted over 80 years ago. It is quite evident that what the Examiner says is obvious, has escaped persons skilled in the art for over 80 years.

It is respectfully submitted that the Examiner is using hindsight in making his findings of obviousness. With the teachings of the applicant before him, he has taken the prior art and reconstructed the same in order to find applicant's invention. It is well settled in Canadian jurisprudence that a person seeking to establish obviousness is not entitled to approach the question in such a manner.

With reference to the second to last paragraph of the Examiner's Report in which he comments on applicant's submission re presumption and the Examiner then states "The presumption therefore is not properly based." In making such a finding, the Examiner points out that the above Canadian patents were not cited in the United States or Great Britain. In answer thereto, applicant points out that a person skilled in the art is presumed to have all of the art at the time that he made the invention. Likewise, the two Canadian patents cited by the Examiner were available to the United States Examiner when he examined the United States application. The British and United States Examiners being skilled in this art and being presumed to have knowledge of the applied Canadian patents, it is therefore submitted that these Examiners did consider such art and decided that the same were not applicable. Furthermore, they must have considered that the invention was not obvious in view of the art.

After reviewing the grounds for rejection set forth by the examiner, as well as the arguments set forth by the applicant, I am not satisfied that the rejection is well founded.

The application discloses a needle cylinder for a knitting machine composed of a plurality of identical arcuate interlocking segments secured to a central supporting member and wherein the segments may be replaced with segments of a different size to change the overall size of the cylinder. Claim 1 reads as follows:

A spring needle knitting machine needle cylinder comprising a central supporting member, an annular member composed of a plurality of arcuate segments connected to form a cylinder, and means connecting

certain of the segments to the central supporting member.

The reference to Irvine refers to, and I quote: "a pulley for machine-belted, provided with a removable section of the rim, which is designed to be taken out at any time for slaking the belt ...." The removable section is connected to the rim and is further connected to a spoke by an inwardly projecting stub. The reference refers to a pulley which somewhat resembles a wheel and has only this in common with a needle cylinder of a knitting machine in that it also somewhat resembles a wheel. The problem facing the applicant; the manufacture of different size needle cylinders, is completely foreign to the objective of the reference; means to facilitate the slackening of a belt.

The reference to Coddington was cited to show the principle of a pulley structure whose cylindrical rim is made up of arcuate segments and "the object of the invention", and I quote: "... is to secure the separable pulley to the shaft in such a manner that an equal bearing of all parts ...."

I find that claims 1 and 4 are met by the references for the reasons set forth by the examiner in refusing all the claims. Claim 2 when written in independent form is considered allowable over the cited references. There is no disclosure in the references of; a central supporting member comprising a hub having a plurality of stub-spokes, and arcuate segments with inwardly projecting stubs for engagement with said respective stub-spokes. Furthermore, I do not find that this would be obvious from the teachings of the Irvine reference in that the objective of the applicant and that disclosed in the reference is completely different. Admittedly, a segment of the pulley, as shown in the reference, is removable from the rim, however, I am not satisfied that this reference would teach the applicant, even considering obviousness, how to construct a needle cylinder for a knitting machine as disclosed in this application. Claim 3, renumbered as Claim 2, would then, under the circumstance, be considered allowable. Claim 5 when written in independent form is also considered allowable. The last line in Claim 4 should be changed to properly read: "...member about a rotatable supporting member". I also find Claim 6 allowable. Claims 5 and 6 are considered allowable for basically the same reasons as that set forth for claim 2, however, they are considered more restricted while adding more detail.

I am satisfied that applicant has made an advance in the art. There is no teaching in the references which would indicate the manner in which to manufacture a needle cylinder, of any required size, while at the same time using the same or a standard central supporting member; furthermore, I

maintain it would not be obvious. I am also satisfied that applicant has made a prima facie showing of inventive ingenuity.

I recommend that the decision of the examiner, to refuse the application as obvious in view of prior art, be withdrawn, and that the claims 2, 3, 5 and 6 indicated as containing patentable subject matter, be allowed.

R. E. Thomas,  
Chairman, Patent Appeal Board.

I concur with the findings of the Patent Appeal Board and withdraw the rejection against the allowance of the application, however, claims 1 and 4 stand rejected for the reasons set forth. The applicant has six months in which to appeal this decision in accordance with Section 44 of the Patent Act.

Decision accordingly,

A. M. Laidlaw,  
Commissioner of Patents.

Dated at Ottawa, Ontario,  
this 15th day of November, 1971.