

DECISION OF THE COMMISSIONER

INDEFINITE CLAIMS: Statement of Result.

DIVISION: Combination and Sub-combination.

While the amended claims proposed are deemed in subject matter to distinguish over the prior art, the claims are not clear and distinct. Some apparatus claims are defined in terms of result without reciting the elements necessary to obtain it. The corresponding U.S. patent claims discussed with a view to allowance. Claims for an apparatus and claims for a method which cannot be carried out by that apparatus are not directed to the same invention.

FINAL ACTION: Affirmed with modification.

This decision deals with a request for review by the Commissioner of Patents of the Examiner's Final Action dated June 22, 1971 on application 991,629. This application was filed in the name of Warren J. Zuercher and refers to "Slowdown Means For Longitudinal Movement To Lateral Movement".

In the prosecution terminated by the Final Action the examiner refused claims 9, 10, 11 and 12 on the ground that they fail to distinguish patentably over the prior art, also that claims 10, 11 and 12 are not directed to the same subject matter of invention as claims 1, 2 and 9. The art cited is as follows:

United States Patents			
1,777,048	Sept. 30/30		Molins
2,525,132	Oct. 10/50	Cl. 198-33	Herts et al
2,848,100	Aug. 19/58	Cl. 198-100	Jasper

(The decision quotes parts of the Final Action, and of the applicant's response of September 17, 1971.)

This application relates to apparatus and method for changing the longitudinal movement of an object to a transverse movement. Amended claim 1 reads as follows:

A conveying apparatus, said apparatus comprising:

- (a) a first conveyor for conveying an object in a longitudinal movement;
- (b) said first conveyor comprising a base;

- (c) a table capable of being rotated;
- (d) said base comprising a plate;
- (e) a passageway in said plate;
- (f) said passageway being a pivot area;
- (g) a guide in said plate;
- (h) said table having two spaced-apart studs for mating with the passageway and the guide in the plate;
- (i) said table having a first conveying means capable of receiving and discharging said object while in many different positions of rotation of the table and the conveying means with respect to the base so as to simultaneously longitudinally and transversely carry and convey said object; and,
- (j) means for positioning said table with respect to said base.

The applicant requested that all the claims be cancelled as a result of the Final Action, therefore, the Board has considered only the amended claims which however, in the Board's view, do not overcome the objection as set out in the Final Action.

The cited patent to Molins discloses a device of the type which receives an article and has a conveyor movable in a direction transverse to the direction of movement of the article on receipt of the article. The patent to Jasper discloses a conveyor with a mechanism known as a "swinging conveyor". The patent to Herts discloses a conveyor with a directional "mechanism changer".

Having considered the disclosures of the above references the Board finds that claim 1 does not distinguish patentably over the teaching of the patents to Herts and Jasper. It is noted that the amended claim 1 is former claim 9 (rejected in the Final Action) amended to include a statement of result to the effect that the conveying means is capable of carrying and conveying an object in simultaneous longitudinal and transverse directions.

The inclusion of such a statement, however, does not overcome the objection made in the Final Action since the added statement does not apply to the subject matter of claim 1 and only applies to the subject matter wherein the three conveyors operate in combination. In any case, the patent to Jasper discloses advancing the load along the conveyor during its swinging movement (see column 1 lines 51 to 53) and claim 1 does not clearly avoid the function capable of being carried out by the swinging conveyor of Jasper.

It is well settled that claiming in the sense of claiming in terms of a new result; is per se, permissible under Canadian Patent Law. Nonetheless, such a claim, like any other claim must not, inter alia, be ambiguous. A claim is usually considered to be ambiguous if a workman skilled in the art cannot understand what comes within the boundaries of the monopoly claimed. In other words the functional limitations or statement of result must not be indefinite or couched in terms as to make it almost impossible to determine the scope of the monopoly claimed. The office of a claim is to define and limit with precision the boundaries of the invention.

In the Final Action it was stated that the single conveyor defined in claims 1, 2 and 9 will not carry out the method defined in claims 10, 11 and 12. Former method claims 10, 11 and 12 and former apparatus claims 1, 2 and 9 were therefore held to be directed to different subject matters of invention. Amended apparatus claims 1, 2 and 3 and amended method claims 10, 11, 12 and 13 are subject to the same objection, which is that claims 1, 2 and 3 will not carry out the method of claims 10-13 inclusive. Therefore, the matter of unity of invention discussed in the Final Action has not been resolved. Notwithstanding the above, amended claims 10-13 inclusive are deemed, in subject matter, to distinguish patentably over the reference to Molins, however, these claims are not clear and distinct in their present form.

It is also pointed out that in amending the claims the applicant has introduced vagueness and indefiniteness which was formerly not present in the claims. For example, clause (a) in each of claims 4, 5, 7, 8 and 9 is repetitive over a similar statement contained in clause (1) of parent claim 1.

The Board is satisfied that the application contains patentable subject matter, however, the applicant does not appear to understand the basis of patent claiming. It is suggested that claims, similar to claims 1 and 2 of the United States patent, appear to avoid the prior art. However, note that in claim 1, clause (m) is repeated and in claim 2 clause (1) is also repeated.

Claims 3 to 9 of the United States patent are directed to a combination of 1st, 2nd and 3rd conveyors each feeding articles in a specified related manner. However, in view of Section 38, these claims would be acceptable together with Section these claims would be acceptable together with claims 1 and 2 of the United States patent only if claim 3 was amended to include the suggested novel subject matter defined in claims 1 and 2 of the United States patent; i.e. a table pivotally mounted on, and rotatable relative to a sloping base plate, and sloping conveying means carried by said table. It is noted that in claim 7 of the United States patent "said base" has no antecedent,

and also in claim 8 of the United States patent "said rotating table" has no antecedent.

Amended method claims 10-13 are not allowable in the same application as the suggested United States patent claims 1 and 2. The conveyor of suggested claims 1 and 2 will not carry out the method as disclosed in these claims.

The Board is satisfied that the decision of the examiner in the Final Action, to reject all the claims, is well taken. The Board also holds that the amended claims are not allowable for reasons given herein, and recommends that they be refused.

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

I concur with the findings of the Patent Appeal Board and reject all the claims in the application. The applicant has six months in which to appeal this decision in accordance with Section 44 of the Patent Act, or to overcome the rejection by removal of the rejected claims and amendment of the proposed claims in a manner as discussed herein.

Decision accordingly,

A. M. Laidlaw,
Commissioner of Patents.

Dated at Ottawa, Ontario,
this 14th day of April, 1972

Agent for Applicant

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