DECISION OF THE COMMISSIONER

OBVIOUS: Adaption of Mode of Operating Known Apparatus.

Stopping the suction fans after the circulation fans have stopped, thereby keeping the fibres in place on the conveyor to remedy the problem of dispersal of the fibres in the apparatus when the fans are stopped simultaneously, is obvious for being nothing more than adapting the operation of the apparatus according to the dictates of common sense of a competent person giving his mind to the problem.

FINAL ACTION: Affirmed.

This decision deals with a request for review by the Commissioner of Patents of the Examiner's Final Action dated May 31, 1972 on application 063,607. This application was filed in the name of Charles A. Amos et al and refers to "Dryer Apparatus Control".

In the prosecution terminated by the Final Action the examiner refused the claims of the application for lack of inventive ingenuity.

In the Final Action the examiner stated in part:

> The rejection of the claims is maintained, the reason for such rejection being lack of inventive ingenuity. The claims are directed to a method of temporarily stopping and restarting a dryer comprising a perforated conveyor belt, a circulating fan, and an exhaust fan. The method being claimed comprises a series of three procedural steps of stopping the belt, the circulating fan and then the exhaust fan in sequence and then reversing these steps to restart the operation. These procedural steps of stopping and starting the various elements of the system are accomplished by opening or closing conventional mechanical means or appropriate electrical circuitry as disclosed on pages 6 and 7 of the application.
>
> The steps of opening and closing circuits to start or stop the operation of elements of apparatus in a certain desired sequence are steps which are carried out by workers in many industrial plants and in view of the obvious nature of such procedural steps the claims are rejected for lack of inventive ingenuity.

In the response of August 28, 1972, the applicant stated in part:

> No prior art of any form has been cited by the Examiner. Indeed, Applicant believes that there is no prior art to be cited either by way of patent specifications or by way of text books or technical journals. Under such circumstances, it is respectfully submitted, the rejection of the claims

> cannot be validly upheld in the absence of a pertinent citation to back up such a rejection since such action would run contrary to every known judicial pronouncement dealing with lack of inventive ingenuity. It has been held time and time again that the actual quantum of inventive genius applied is immaterial when considering patentability. In other words no matter how simple an invention may appear to be, it will be patentable if there has been some exercise of inventive genius.
>
> It may well be obvious to open and close circuits, to start or stop operations but this is not what Applicant is claiming, Applicant is claiming the stopping of the operation in a particular manner and sequence during the drying of staple fiber and other material, and is so able to inhibit loss of product due to degradation or overdrying of the product. Applicant's invention thus facilitates continuous operation.

This application refers to the improved operation of a continuous dryer. Claim 1 reads as follows:

> An improved method for temporarily stopping the operation of dryer for moist material supplied by a feed means, conveyed on a moving perforated belt and dried by a heated gas passed by at least one circulating fan downward through the said conveyor belt and removed from the space beneath said conveyor belt by at least one exhaust fan beneath conveyor belt comprising:
>
> (1) stopping the operation of said conveyor belt and said feed means substantially simultaneously.
>
> (2) stopping the operation of said circulating fan as soon as said conveyor belt has stopped, and
>
> (3) stopping said exhaust fan as soon as the force of said circulating fan has substantially stopped.

Having considered the prosecution the Board agrees with the applicant that the question of obviousness or lack of inventive ingenuity must be judged by the state of the prior art; however, the examiner has related to the state of the prior art by reference to the disclosure. The disclosure, page 2, line 10 to page 3, line 3 admits that the apparatus is conventional; that is, a dryer apparatus is known which comprises a continuous perforated belt which carries moist fibers through a dryer zone, supply means for depositing the fibers on the belt, fan means for circulating heated air through the fibers carried by the belt, and fan means for exhausting the air from beneath the belt.

In practice, the operation has to be shut down at times due to equipment failure and other reasons (page 2 last paragraph). Also, in practice, the usual procedure to avoid the material being damaged by exposure to heat for too long a period was to shut off the heat and open the doors and vents while leaving the fans on to cool down the dryer. However, shutting off all the fans at the same time produced gusts which dispersed the fibers over the inside of the apparatus. The applicant has decided on a procedure in which, after the supply means and belt means have been shut off, the blower fans are shut off before the suction fans. Since no mention is made of the heating means, the whole object appears to be to prevent dispersal of the fibers, thus the essence of the alleged invention lies in the sequence of operating the fans.

Therefore, the question to be decided is whether the applicant has made a prima facie showing of ingenuity in the method of operation of a known apparatus in the manner claimed, consisting of three steps:

(1) Stopping the operation of said conveyor belt and said feed means substantially simultaneously.

(2) Stopping the operation of said circulating fan as soon as said conveyor belt has stopped, and

(3) Stopping said exhaust fan as soon as the force of said circulating fan has substantially stopped.

The court in Somerville Paper Boxes Limited et al v. Cormier (1941) Ex. C.R. 49 held that, "In order that a new use of a known device may constitute the subject matter of an invention, it is necessary that the new use be quite distinct from the old one and involve practical difficulties which the patentee has by inventive ingenuity succeeded in overcoming; if the new use does not require any ingenuity but is in a manner and purpose analogous to the old use, although not exactly the same, there is no invention."

Furthermore it has been settled that there is no patentable subject matter in adapting a known device to an analogous use, even if the adaptation has utility and a certain degree of novelty, unless there are difficulties to be overcome, or advantages to be gained, and there is ingenuity in the mode of making the adaption. (Burt Business Forms v. Autographic Register 1932 Ex. C.R. 39). Since a competent person in the art would know what adaption of existing apparatus would be necessary to provide sequential shutting off of the fans once the suggestion has been made, there is no question of invention in the mode of the adaption.

As previously noted the applicant has turned off the blower fans before the suction fans to prevent the dispersal of fibers. Therefore, the circumstances in the present case are analogous to the question of obviousness put forward in Siddell v. Vickers, Sons & Co. (1890) 7 R.P.C. 292, "Is the invention so obvious that it would at once occur to anyone acquainted with the subject and desirous of accomplishing the end?"; and in Savage v. Harris (1896) 13 R.P.C. 364 at 370 in which the question to be considered is whether the alleged discovery lies so much out of the track of what was known before or not naturally to suggest itself to anyone thinking on the subject. It must not be the obvious or natural suggestion of what was previously known." (emphasis added)

The disadvantage to be overcome is the dispersal problem. Remedying this problem by keeping the fibers in place with the aid of the suction fans until the circulation fans have stopped is held to be nothing more than using known apparatus according to the dictates of common sense, being of a nature which would at once occur to a competent person operating such apparatus and desirous of accomplishing the end. This does not, in the opinion of the Board, merit the distinction of exercising inventive ingenuity which warrants a claim to monopoly. In making its decision the Board had in mind, while it is important to encourage inventions because of their

possible influence upon trade and manufacture, yet it is equally important the manufactures or traders of the public generally, should not be hampered by the granting of patents where there has been no exercise of the inventive faculty, (Crossley Radio v. C.G.E. (1936) S.C.R. 551). If one could monopolize every variation of an existing method, process, manufacture or machine, simply because it had not been done before, industrial effort would be intolerably impeded.

The Board considers that the solution claimed by the applicant is one which would naturally have occurred to persons of ordinary intelligence and acquainted with the subject matter who gave his mind to the problem. In other words it is held that it is merely an exercise of expected skill, even though the idea might well be a meritorious one, for a person versed in the art to operate the fans in a manner to prevent dispersal of the fibers, and that it falls within that category of a patent of which the Supreme Court was concerned in the above quotation from the Crossley Radio v. C.G.E. decision.

Accordingly, the Board is satisfied that the applicant is not by law entitled to a patent and recommends that the decision of the examiner, to refuse the claims of the application, be upheld. Moreover, it appears that no patentable subject matter is present and recommends that the application be refused.

J.F. Hughes
Acting Chairman,
Patent Appeal Board

I concur with the findings of the Patent Appeal Board and refuse the grant of a patent. 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 12th day of October, 1972.