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Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO. Includes details for application 11/345,070, inventor Robert L. Krouse, and attorney Faegre Baker Daniels I.J.P.

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int eas@faegrebd.com
cynthia.payson@faegrebd.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERT L. KROUSE

Appeal 2010-001028
Application 11/345,070
Technology Center 3600

Before LINDA E. HORNER, TIMOTHY J. O'HEARN, and
JEREMY M. PLENZLER, *Administrative Patent Judges*.

HORNER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Robert L. Krouse (Appellant) seeks our review under 35 U.S.C. § 134 of the Examiner's decision rejecting claims 1-7 and 27-39. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

THE INVENTION

Appellant's claimed invention "relates generally to the treatment of water within an egg processing facility." Spec., para. [0001]. Claims 1 and 32 are independent. Claim 1, reproduced below, is representative of the subject matter on appeal.

1. An egg production and processing facility comprising:
 - at least one house for housing a plurality of egg producing birds;
 - an egg washer configured to wash eggs produced by the plurality of birds and thereby producing a wastewater effluent;
 - a wastewater treatment facility in fluid communication with the egg washer and configured to receive the wastewater effluent from the egg washer;
 - the wastewater treatment facility configured to treat the wastewater effluent by removing contaminants; and
 - a bird water device in fluid communication with the wastewater treatment facility and configured to supply the treated effluent from the wastewater treatment facility to the plurality of birds.

THE REJECTIONS

Appellant seeks review of the following rejections:

1. Claims 1-6, 27, 29, 31-35, 37, and 39 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Perkins (US 6,802,984 B1; iss. Oct. 12, 2004) and Phillips (US 4,230,071; iss. Oct. 28, 1980).
2. Claims 7, 28, 30, 36, and 38 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Perkins, Phillips, and Sheaffer (US 6,203,702 B1; iss. Mar. 20, 2001).

Appeal 2010-001028
Application 11/345,070

ISSUES

The issues presented by this appeal are:

Is Perkins analogous art?

Would the combined teachings of Perkins and Phillips have led one of ordinary skill in the art to the egg production and processing facility of claims 1 and 27?

Is the city water disclosed in Perkins a “water treatment facility” as called for in claims 2 and 32?

ANALYSIS

Rejection of claims 1-6, 27, 29, 31-35, 37, and 39 as unpatentable over Perkins and Phillips

Claims 1 and 6

Appellant presents arguments pertaining to independent claim 1 and does not present any separate arguments for patentability of dependent claim 6. We select claim 1 as representative, and claim 6 stands or falls with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2011).

Appellant argues that Perkins “is not within the field of the invention, is not reasonably pertinent to the inventions [sic] involvement, and is not a familiar item to a person of ordinary skill in the art.” App. Br. 8. We agree with the Examiner’s analysis on pages 9-10 of the Answer in which the Examiner found that the teaching in Perkins is not limited to poultry carcass processing and is pertinent to the problem facing the Appellant of addressing water recovery and re-use for poultry processes which consume large

amounts of water, such as egg cleaning/washing.¹ We note, by way of supplementation to the Examiner’s response, that Perkins discloses that “poultry industry interests having been actively seeking methods of reducing the consumption of water due to economic reasons,” “limited availability of sufficient volumes of water to meet the processing requirements,” and “considerations involving limited water treatment resources.” Perkins, col. 1, ll. 42-48. Perkins discloses that the process disclosed therein “provide[s] new solutions to reducing the volume of water required for processing poultry [and] other foodstuffs.” *Id.* at col. 1, ll. 49-51. As such, we agree with the Examiner’s determination that one of ordinary skill in the art would have looked to Perkins as pertinent to the problem facing the Appellant, and is thus analogous art to the claimed invention.

Appellant also argues that the Examiner “fails to provide any articulated reason with a rational underpinning to support a legal conclusion of obviousness.” App. Br. 9, 14. We understand the Examiner to be proposing to add the chicken house and egg room of Phillips to the poultry processing facility of Perkins “in order to save time and cost by having the devices of poultry processing facility to be located in the same facility/area so that the devices can use the recycled water treated by the wastewater

¹ As noted by the Examiner, the Specification identifies that a problem facing the Appellant was that “egg processing facilities may consume a large amount of water which is traditionally supplied by raw water sources, such as water wells or municipal water systems” and identifies “a need for an egg processing facility which reduces the amount of raw water utilized. . . .” Spec., paras. [0002] – [0003].

Appeal 2010-001028
Application 11/345,070

treatment of Perkins et al.” Ans. 4. This proposed combination of an egg production and processing facility and a poultry carcass processing facility is based on rational underpinnings, particularly in light of the disclosure in Phillips that it was commonplace in the poultry industry to maintain chickens in chicken houses through about 42 weeks of age, at which point their egg production begins to decline, and then remove the chickens from the chicken houses and slaughter them for sale. Phillips, col. 1, ll. 36-42.

The rest of the Examiner’s proposed modifications to the water recycling systems of Perkins to extend it to include an egg production and processing facility, such as the one disclosed in Phillips, naturally follow as a matter of common sense. *See* Ans. 12-13. In other words, the Examiner proposes nothing more than to extend the water recycling systems of Perkins to those systems in the egg production and processing facility that employ the use of water (e.g., to the egg washing equipment in the egg room and to the water pots in the chicken houses). Ans. 4-5 (“so that the wastewater can be recycled on-site and reused as need[ed] to various poultry processing points” and “to save cost and the environment”). The Examiner’s proposed modification to Perkins based on the teaching of Phillips is based on rational underpinnings and Appellant has not persuaded us of error in this combination.

Appellant also argues that even if combined, the combined teachings would not result in the claimed invention because neither reference discloses “an egg washer producing a wastewater effluent,” “a wastewater treatment facility in fluid communication with the egg washer and configured to

Appeal 2010-001028
Application 11/345,070

receive the wastewater effluent therefrom,” or “a bird water device in fluid communication with a wastewater treatment facility.” App. Br. 9, 15. These arguments fail to address the Examiner’s proposed modification of Perkins with the teaching of Phillips and the resulting facility based on the proposed combination, in which those systems within the egg production and processing facility that use water would be tied into the water recycling system of Perkins. *See* Ans. 12-13. As such, the proposed combination would result in the facility as called for in claim 1. For these reasons, we affirm the rejection of claims 1 and 6 under 35 U.S.C. § 103(a) as being unpatentable over Perkins and Phillips.

Claims 2-5, 29, 31-35, 37, and 39

With regard to dependent claim 2 and independent claim 32, Appellant argues that neither Perkins nor Phillips discloses a water treatment facility in fluid communication with a raw water source, in combination with a separate wastewater treatment facility in fluid communication with an egg washer. App. Br. 10, 15. The Examiner determined that the city water disclosed in Perkins for use as a back-up system in the event of a process system malfunction, upset, or power interruption is the claimed separate water treatment facility, and that this water treatment facility “has to get ‘raw’ water from somewhere.” Ans. 13 (citing Perkins, col. 6, ll. 60-67). The Specification, however, defines “raw water” as including municipal water systems, such as Perkins’s city water. Spec., paras. [0002], [0015]. Based on our understanding of “raw water” as described in the Specification,

Appeal 2010-001028
Application 11/345,070

we understand the city water in Perkins to be the “raw water source” and we disagree with the Examiner’s finding that the disclosure of city water in Perkins satisfies the limitation of a “water treatment facility” that forms part of the claimed “egg production and processing facility.” For this reason, we reverse the rejection of claims 2 and 32, and claims 3-5, 29, 31, 33-35, 37, and 39, which depend therefrom, under 35 U.S.C. § 103(a) as being unpatentable over Perkins and Phillips.

Claim 27

Claim 27 depends from claim 1, and calls for the egg washer to be configured to receive the treated effluent from the wastewater treatment facility. Appellant argues that “[t]here is simply no disclosure in the relied upon references that would cause one of ordinary skill in the art to apply treated effluent to an egg washer, much less incorporate an egg washer in the carcass processing facility of Perkins et al.” App. Br. 13. For the reasons discussed *supra* in our analysis of claim 1, we find that the Examiner’s reasoning for modifying the facility of Perkins to include an egg production and processing facility, such as disclosed in Phillips, is based on rational underpinnings. We also determined *supra* that it would have been obvious, when adding such an egg processing facility to Perkins to extend the water recycling system to those portions of the egg processing facility that use water “for reason[s] of saving cost and the environment.” *See* Ans. 13, 17. This same reasoning would have rendered it obvious to one of ordinary skill in the art to recycle the effluent from the egg washer and reuse it, once

Appeal 2010-001028
Application 11/345,070

treated, for further egg washing. As such, we affirm the Examiner's rejection of claim 27 under 35 U.S.C. § 103(a) as being unpatentable over Perkins and Phillips.

Rejection of claims 7, 28, 30, 36, and 38 as unpatentable over Perkins, Phillips, and Sheaffer

Claims 7, 28, and 30 depend from claim 2 and claims 36 and 38 depend from claim 32. The Examiner does not rely on Sheaffer to cure the deficiency in the underlying rejection of claims 2 and 32 as discussed *supra*. In particular, the Examiner relies on Sheaffer to teach that storm water collectors were a known raw water source, but the rejection still relies on Perkins's city water as the claimed "water treatment facility." Ans. 8. As such, we reverse the rejection of claims 7, 28, 30, 36, and 38 for the same reasons.

CONCLUSIONS

Perkins is analogous art.

The combined teachings of Perkins and Phillips would have led one of ordinary skill in the art to the egg production and processing facility of claims 1 and 27.

The city water disclosed in Perkins is not a "water treatment facility" as called for in claims 2 and 32.

DECISION

We affirm the decision of the Examiner to reject claims 1, 6, and 27. We reverse the decision of the Examiner to reject claims 2-5, 7, and 28-39.

Appeal 2010-001028
Application 11/345,070

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

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