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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JEFFERY KELSCH

Appeal 2010-005392
Application 11/259,487
Technology Center 3700

Before: WILLIAM V. SAINDON, JOHN W. MORRISON and
TIMOTHY J. O'HEARN, *Administrative Patent Judges*.

MORRISON, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellant appeals under 35 U.S.C. § 134 from a rejection of claims 1, 3, 4, 6-10, and 12-18. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

The claims are directed to a sleeve-like device placed over a spindle onto which articles are stacked. Spec. 1, ll. 7-8. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A spindle sleeve configured to slip over a spindle for stacking optical discs, said spindle sleeve comprising:

a hollow cylindrical body having an outer diameter, an inner diameter, a closed top end and an open bottom end, said cylindrical body being configured to slip over the spindle; and

a tip assembly removably attached to said top end of said cylindrical body,

wherein said inner diameter of said cylindrical body is greater than an outer diameter of the spindle, and said outer diameter of the cylindrical body is smaller than a diameter of a center hole of an optical disc, and

the bottom end of the cylindrical body includes an extending portion serving as a base over which the optical discs stack.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Campbell	US 4,085,875	Apr. 25, 1978
Prusak	US 4,316,281	Feb. 16, 1982
Fujii	US 4,700,839	Oct. 20, 1987

REJECTIONS

The following rejections are under review¹:

Claims 1, 3, 4, 7-9, and 12-17 stand rejected under 35 U.S.C. §102(b) as being anticipated by Campbell.

Claim 6 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Campbell and Fujii or Prusak.

Claims 10 and 18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Campbell.

ANALYSIS

Anticipation by Campbell

Appellant argues claims 1, 7-9, and 12-17 as a group on the basis of claim 1 (Reply Br, 8-11). We select independent claim 1 as the representative claim. Claims 7-9 and 12-17 stand or fall with representative claim 1. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2011). Addressing claim 1, the Examiner finds that Campbell anticipates each element of the claimed invention. Appellant counters that

The central hole of 45 RPM phonograph records is conventionally 1 ½ inches (38.1 mm) in diameter. . . . In contrast, the center hole diameter of each optical disc is approximately 15 mm, that is less than half that of a 45 RPM phonograph record. Thus, the spindle 16 of Campbell must have an outer diameter, being only “slightly smaller” than the opening of the phonograph record and allowing “a minimum of shifting about the spindle,” that simply could not be smaller than a diameter of a center hole of an optical disc. (Campbell, col. 2, lines 52-58).

¹ All grounds of rejection employing the reference to Dickens alone, or in conjunction with another reference have been withdrawn. Ans. 3.

App. Br. 8-9. In response, the Examiner concludes that

The claimed structure is merely related to a spindle and optical discs by inference, and accordingly the limitations on what is actually defined by the claims is maintained to be met by the disclosed structure of Campbell et al.. Optical discs do not come in a single set size, nor do their center holes. Wikipedia discloses optical discs may vary in diameter typically from 3 to 12 inches.

Ans. 8. The Specification is silent regarding the dimension of the central hole of the optical disc and optical discs have been manufactured with central holes of various sizes. Accordingly, that the particular format of the data on the disc intended to be placed on the spindle is specified as “optical” appears not to require or imply any specified spindle size or range of sizes. As such, we find no error in the Examiner’s determination not to give much patentable weight to an unspecified dimension of the spindle to fit a central hole of an unspecified optical disc.

Next, the Examiner addresses whether Campbell discloses a “tip assembly removably attached” as required by claim 1. The Examiner finds two embodiments which disclose this limitation. In the embodiment of Figure 1, the Examiner finds “the knots (24, 26) identified by [A]ppellant as rendering the tip assembly not ‘removably attached’ may be unknotted to allow the entire element 18 be removable.” Ans. 8. In the embodiment of Figure 3, the Examiner finds that “unscrewing separation of element 40 from element 41 will render the element 41 removable from the top end of the cylindrical body.” *Id.*

For the embodiment of Figure 1, Appellant argues that “handle 18 of Campbell has an inner knot 24 formed inside the hollow portion of the spindle 16 as well as an outer knot 26 formed outside the spindle 16 for the

purpose of preventing removal of the handle 18.” App. Br. 9. We are not persuaded that either knot cannot be unknotted and, thus, prevents removal of the handle 18. Thus, we find no error in the Examiner’s determination that the tip assembly (handle 18) in the embodiment of Figure 1 is removable

For the embodiment of Figure 3, the Appellant argues “handle 41 of Campbell has an enlarged head 42 which prevents the handle 41 from being removed.” *Id.* The stem 41 can be removed downwardly through the aperture 21 when the carrying knob is unscrewed (*see* Reply Br. 12) from the stem 41. The enlarged head 42 will not prevent removal in a downward direction. We find no error in the Examiner’s finding that the tip assembly 41 of the embodiment of Figure 3 is removable.

In addition, Appellant argues that “Campbell teaches that handle assemblies with removable handles ‘are undesirable because the separation of the handle from the remaining portions of the record carrier facilitates loss or damage to the handle.’ (Campbell, col.1, lines 37-39).” App. Br. 9. Furthermore, regarding removing handles, Appellant contends that “such actions are expressly taught against by Campbell.” Reply Br. 11. It appears that Appellant is arguing that Campbell “teaches away” from its own disclosure. Such teaching away arguments are viable to rebut a finding that combining references is obvious, but do not negate the disclosure of a single reference. For the reasons stated above, we sustain the anticipation rejection of claims 1. Claims 7-9 and 12-17 fall with claim 1. Claims 3 and 4 are argued separately below.

Addressing claim 3, the Examiner finds “the removably attached tip assembly is inherently self-centering.” Ans. 5. Appellant argues “neither of the handles 18 or 41 equated in the Office Action are disclosed to have any

feature for self-centering themselves in relation to the spindle.” Reply Br. 11. Addressing the embodiment of Figure 1, the Examiner has erred as the string handle 18 does not appear to be self-centering relative to the spindle 16. Addressing the embodiment of Figure 3, Campbell discloses a handle 41 which is placed through a circular aperture 21 formed on the center axis of the spindle 16. Placing the handle 41 through the aperture 21 self-centers the handle 41 relative to the spindle 16. Based on the embodiment of Fig. 3, we sustain the anticipation rejection of claim 3.

Addressing claim 4, the Examiner finds “Campbell et al. disclose (Figure 2) employing a threaded screw portion to secure portions of the spindle.” Ans. 5. Appellant contends that “[t]he only threads proposed by Campbell are between a removable base portion 14’ and the spindle 16’ and between the carrying knob 40 and the stem 41.” Reply Br. 12. Appellant has identified error in the Examiner’s finding. Campbell does not disclose a “tip assembly [which] includes a threaded stud which screws into a tapped hole of complementary thread in the spindle” as required by claim 4, but rather shows complementary threads between the base portion 14’ and the spindle 16’ (embodiment of Figure 2). For the embodiment of Fig. 3, the complementary threads are positioned between portions of the stem 41 and carrying knob 40, not the spindle 16. As the Examiner has made reversible error, we do not sustain the rejection of claim 4.

Obviousness over Campbell and Fujii or Prusak

Addressing claim 6, the Examiner finds that “[t]o employ the riser plate teaching of either one of Fujii and Prusak in conjunction with the prior art spindle sleeve reference to Campbell et al. would have been obvious in order to protect the surfaces of retained optical discs, as suggested by either

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one of Fujii and Prusak.” Ans. 6. Appellant argues that “neither Fujii nor Prusak disclose or suggest the aspects (i) through (iv) of independent claim 1 of the present application.” Reply Br. 12. Finding no deficiency in Campbell to anticipate claim 1, we sustain the rejection of claim 6.

Obviousness over Campbell

Addressing claims 10 and 18, the Examiner finds that “[t]o provide a spindle sleeve of dimensions so as to hold at least 125 discs would have been an obvious matter of choice and degree in view of the above references, as it is possible to provide the spindle sleeve of increasing length to accommodate a desired amount of discs.” Ans. 7. Appellant argues that “Campbell, as discussed above, does not disclose or suggest the aspects (i) through (iv) of independent claim 1 of the present application.” Reply Br. 13. Finding no deficiency in the Campbell reference to anticipate claim 1, we sustain the rejection of claims 10 and 18.

DECISION

For the above reasons, the Examiner’s rejection of claims 1, 3, 6-10, and 12-18 is affirmed and the rejection of claim 4 is reversed.

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

AFFIRMED-IN-PART

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