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LUCAS & MERCANTI, I.L.P. 475 PARK AVENUE SOUTH 15TH FLOOR NEW YORK, NY 10016			MCKINLEY, CHRISTOPHER BRIAN	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte UDO SCHUTZ

Appeal 2010-006000
Application 11/316,225
Technology Center 3700

Before: PHILLIP J. KAUFFMAN, WILLIAM V. SAINDON, and
NEIL A. SMITH *Administrative Patent Judges.*

KAUFFMAN, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF CASE

Appellant appeals under 35 U.S.C. § 134 from a rejection of claims 1 and 2 under 35 U.S.C. § 103(a) as unpatentable over Roesing (US 6,145,694; iss. Nov. 14, 2000) and Krishnakumar (US 4,108,324, iss. Aug. 22, 1978).¹ We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

The Invention

Claim 1 is the sole independent claim on appeal, and is reproduced below:

1. A drum of thermoplastic synthetic material, the drum comprising a drum wall and an upper head and a lower bottom, a circumferentially extending carrying and transport ring arranged on the drum wall in the vicinity of the upper head of the drum, at least one bunghole connection sleeve arranged in a trough-shaped indentation of the upper head in a rim area thereof, and a stiffening hump extending integrally upwardly from the bottom section of the indentation of the upper head between the carrying and transport ring and the bunghole connection sleeve, wherein a stiffening bead is integrally formed on an inner side of the carrying and transport ring in the vicinity of the bunghole connection sleeve so as to oppose the stiffening hump.

OPINION

The Examiner found that Roesing discloses a drum as called for in claim 1 except the stiffening bead. Ans. 3. The Examiner concluded that it

¹ Though not explicitly noted in the Answer, we presume that the Examiner's rejection of claims 1 and 2 under 35 U.S.C. § 112, second paragraph, as indefinite was withdrawn due to Appellant's amendment. *See* Ans. 2; Br. 6; Office Action dated Dec. 5, 2008, at 2.

would have been obvious to modify Roesing's drum to include a stiffening bead (rib 24), as taught by Krishnakumar, on an inside of the transportation ring (peripherally extending collar 58) "in order to increase the stability of an area subject to increased operational stress so as to obviate plastic deformation or failure." *Id.*

Appellant acknowledges that Krishnakumar's ribs 24 reinforce the bottom structure 16 of bottle 10 against high internal pressure.² Br. 8-9. However, Appellant contends that "[t]he geometry of the bottom 16 of the bottle 10 is in no way comparable with the geometry of the bottom 4 of the barrel 1 of the presently claimed invention." Br. 9. Appellant's comparison is nonresponsive because the Examiner proposes to add a stiffening bead (rib 24), as taught by Krishnakumar, to the inside of the transportation ring (peripherally extending collar 58) of Roesing's drum, not to modify the bottom of Roesing's drum.

Appellant argues that in Krishnakumar,

there is no teaching of a stiffening bead 15 integrally formed in the vicinity of the bunghole connection sleeve 9 on an inner side 14 of the carrying and transport ring 6 so as to oppose the stiffening hump 17 of the upper head 4, as in the present invention.

Id.

To begin, this argument is not responsive because the Examiner did not find that Krishnakumar discloses a stiffening bead on the inner side of a carrying and transport ring as claimed. *See* Ans. 3. Rather, the Examiner found that Krishnakumar discloses a stiffening bead (rib 24) that provides rigidity and resistance to load. Ans. 5. Further, such argument is an

² Appellant presents a single argument for claims 1 and 2 and we select claim 1 as representative. Br. 6-11.

unpersuasive individual attack on Krishnakumar because the rejection relies upon a combination of the references for this limitation. *See In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) citing *In re Keller*, 642 F.2d 413, 425 (CCPA 1981) (one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references).

Appellant also argues that Krishnakumar's ribs 24 cannot perform the function of the claimed stiffening bead to remain undeformed to a predetermined magnitude of force so as to prevent damage to the bunghole connection sleeve 9. Br. 9-10. Claim 1 contains no such limitation. *See In re Self*, 671 F.2d 1344, 1348 (CCPA 1982) (“[A]ppellant's arguments fail from the outset because . . . they are not based on limitations appearing in the claims.”). Rather, claim 1 calls for the stiffening bead to be integrally formed on the inner side of the carrying and transport ring in the vicinity of the bunghole connection so as to oppose the stiffening hump. Appellant has conceded Kirshnakumar's ribs 24 serve to reinforce (Br. 9), and has failed to cogently explain how reinforcing as disclosed by Kirshnakumar is not stiffening as claimed.

As such, we affirm the rejection of claim 1.

DECISION

We affirm the Examiner's decision to reject claims 1 and 2 under 35 U.S.C. § 103(a) as unpatentable over Roesing and Krishnakumar.

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).

Appeal 2010-006000
Application 11/316,225

AFFIRMED

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