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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SCOTT WU

Appeal 2010-006788
Application 11/164,346
Technology Center 3700

Before: WILLIAM V. SAINDON, BRETT C. MARTIN, and
JEREMY M. PLENZLER, *Administrative Patent Judges*.

PLENZLER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's decision rejecting claims 1-8, 21, and 22. Claim 11 is objected to and claims 12-18, 23, and 24 depend from claim 11¹. Claims 9, 10, 19, and 20 are cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

CLAIMED SUBJECT MATTER

Claim 1, reproduced below, is the sole independent claim:

1. A portable direct-circuit sprayer comprising:
a body comprising a water chamber containing water, with the water chamber having a first portion and a second portion separated from the first portion, with the body further including a component chamber with first and second open sides, with the first open side opposite the second open side, with the body further including an integrated floor integrated to and extending between the first and second portions of the water chamber, with the water chamber having an intermediate portion connecting the first and second portions and spaced from and opposite the integrated floor, with the body including the first, second, and intermediate portions of the water chamber and the integrated floor being a single inseparable element, with the integrated floor extending between the first and second open sides, with the component chamber positioned between the first and second portions, with first and second portions and the integrated floor defining the first and second open sides, and with the component chamber accessible through the first and second open sides;
a pump installed in the component chamber and carried on the integrated floor, with the pump provided to pressurize the water from the water chamber;

¹ Claims 12-18, 23, and 24 were originally rejected and appealed. However, the Examiner has withdrawn the rejection of claims 12-18, 23, and 24. *See* Ans. 6.

a panel removably secured to the body and shutting the first open side of the component chamber; and
a cover removably secured to the body and shutting the second open side of the component chamber.

REJECTIONS

1. Claims 1-5, 21, and 22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Shapanus (US 2005/0006400 A1; pub. Jan. 13, 2005), Frank (US 6,243,913 B1; iss. Jun. 12, 2001), and Lin (US 4,925,105; iss. May 15, 1990); and

2. Claims 6-8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Shapanus, Frank, Lin, and Louis (US 6,158,669; iss. Dec. 12, 2000).

OPINION

The Examiner finds that “Shapanus et al. discloses all the limitations of the claims except for an intermediate portion, an integrated floor, [and] first and second open sides of the component chamber.” Ans. 3. The Examiner cites Frank as teaching “an integrated floor 104/106/108” and “an intermediate portion 50” and Lin as teaching “a component chamber 30 with first and second open sides.” *Id.* The Examiner reasons that

it would have been obvious . . . to have provided . . . Shapanus et al. with an intermediate portion and an integrated floor . . . to strengthen[] the sprayer body, and to [have] provided . . . Shapanus et al. with first and second open sides of the component chamber.

Ans. 3-4. The Examiner explains that “[d]oing so would provide an easy access for servicing the spraying components.” Ans. 4.

Appellant contends that “cover 104/106/108 of Frank . . . is not integrated to and does not extend between first and second portions of the water chamber.” App. Br. 4. We agree. In Frank, the housing cover 104, pump chamber cover 106, and suction chamber cover 108 are coupled to the housing 52 (and ultimately the “first portion” 36, the “second portion” 40, and the “intermediate portion” 50) by screws 98, 100, making the covers 104, 106, 108 removable. Claim 1 requires “the first, second, and intermediate portions of the water chamber and the integrated floor being a single *inseparable* element.” Emphasis added. Because the covers 104, 106, 108 in Frank are removable from the housing 52 via the screwed attachment, they do not form a single *inseparable* element with the “first portion” 36, the “second portion” 40, and the “intermediate portion” 50 as required by claim 1.

The Examiner further reasons that “to make the floor 104/106/108 integral is obvious to one skilled in the art and would be merely a matter of obvious design choice.” Ans. 4. The Examiner does not specify whether it would have been obvious as a matter of design choice to make the floor integral in Shapanus or Frank (and then incorporate that integral floor into Shapanus). However, by referencing “the floor 104/106/108,” it appears that the Examiner is indicating that it would have been obvious to have made the floor integral in Frank and then use this “integral” floor to modify Shapanus. As Appellant points out, however, it does not make sense to make Frank’s floor integral because the pump would no longer be accessible. *See* App. Br. 4. If the Examiner’s proposal is to modify Frank to include an integral floor piece (i.e., make 104/106/108 a single piece) *and subsequently* modify Shapanus with the modified Frank to also include an integral floor, one is

left wondering what purpose the Frank reference serves (Shapanus already has detachable floor 296), and what rational underpinnings serve such a modification. Without further explanation, the Examiner's reason, "design choice," fails to adequately explain the underpinnings for such a proposal.

In the Response to Arguments, the Examiner alternatively finds that Shapanus teaches an integrated floor, contrary to the position initially taken in the rejection. Ans. 6. Specifically, the Examiner finds that Shapanus teaches "a water chamber 28 . . . having a first portion and a second portion . . . and an integrated floor 292 (see figure 17) between and connecting the first and second portions of the water chamber." *Id.* However, the "integrated floor" 292 in Shapanus does not form a single *inseparable* element with the first and second portions of the "water chamber" 28. In Shapanus, "[t]he pump cover 284 [including base 292] can be connected to the bracket 196 (and therefore, the tank 28) by fastening the upstanding wall 288 to the cover connecting flange 276 using fasteners and by positioning each of the projections 296 above a respective one of the cover support flanges 280." Para. [0084]. These incorrect findings do not cure the deficiencies in the rejection noted above.

The Examiner further reasons that "the use of a one piece construction instead of the structure disclosed in the Shapanus or the Frank et al. references would be merely a matter of obvious engineering choice." Ans. 8. For the reasons discussed above, we are not persuaded that it would have been an obvious design choice to make the floor integral in Frank and subsequently modify Shapanus with the modified Frank. With respect to Shapanus, the Examiner merely asserts that it is a matter of obvious engineering choice to include the integral floor but fails to articulate any

Appeal 2010-006788
Application 11/164,346

rational underpinnings in support of this allegation. Thus, we are also not persuaded that making the floor integral in Shapanus would have been an obvious design choice.

The stated basis for the rejection of claims 6-8 fails to cure the deficiencies in the rejection of claim 1. Accordingly, we do not sustain the rejections of claims 1-8, 21, and 22.

DECISION

We REVERSE the Examiner's decision to reject claims 1-8, 21, and 22.

REVERSED

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