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CAPITAL SQUARE
400 LOCUST, SUITE 200
DES MOINES, IA 50309-2350

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BRENT M. VELDKAMP

Appeal 2010-007637
Application 12/257,919
Technology Center 3600

Before JENNIFER D. BAHR, JOHN C. KERINS, and
EDWARD A. BROWN, *Administrative Patent Judges*.

BROWN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-8 and 16-22 under 35 U.S.C. § 102(b) as anticipated by Ranniger (US 6,086,470; iss. Jul. 11, 2000). App. Br. 2, 3. Claims 9-14 have been canceled, and claim 15 has been withdrawn. *Id.* at 2. We have jurisdiction over this appeal under 35 U.S.C. § 6(b).

We reverse.

CLAIMED SUBJECT MATTER

Claims 1 and 16 are the independent claims on appeal. Claim 1, reproduced below, is illustrative of the appealed subject matter:

> 1. A toothroll assembly for use with a device for removing fat and skin from a meat part, comprising:
>
> a first section having an outer surface, the first section adapted to rotate at a first surface speed; and
>
> a second section having an outer surface, the second section adapted to rotate at a second surface speed independent from the first surface speed.

ANALYSIS

The Examiner found that Ranniger discloses a toothroll assembly comprising a “first section” (any one of 226-258) having an outer surface and being adapted to rotate at a first surface speed, and a “second section” (any one of 226-258) having an outer surface and being adapted to rotate at a second surface speed independent from the first surface speed. Ans. 3. The Examiner also found that each sub-assembly 226 of the toothroll assembly has an outer surface that can pivot/rotate individually about follower

member 258, at its own rate of rotation. *Id.* (citing Ranniger, col. 14, ll. 35-40; Figs. 20-21).

Appellant contends that Ranniger does not teach "a first section having an outer surface, the first section adapted to rotate at a first surface speed; and a second section having an outer surface, the second section adapted to rotate at a second surface speed independent from the first surface speed," as claimed. App. Br. 4. Appellant contends that Ranniger's units 226 are uniform with each other and are all driven by a common shaft 232, and thus cannot rotate at surface speeds that are independent of each other. App. Br. 5. Appellant contends that Ranniger discloses that "'each <u>unit</u> (sub assembly) 226 can <u>pivot</u> individually about driven shaft 230,'" but "the pivoting of a unit does not anticipate <u>rotating</u> a first or second <u>surface</u> as required by the claim." Reply Br. 2 (citing Ranniger, col. 14, ll. 37-38; Figs. 20, 21). Appellant contends that the pivoting of a unit 226 does not change the rotational surface speed of any sub-assembly 226, and every sub-assembly 226 rotates at the exact same surface speed because all of the gears are mechanically driven at the same rotational speed by the same shaft 230. *Id.* at 2-3.

We agree with Appellant that the Examiner did not establish by a preponderance of the evidence that Ranniger discloses all of the limitations of claim 1. Ranniger discloses a skinning machine including a plurality of tractor units 226. *See* Ranniger, col. 13, l. 66 – col. 14, l. 1; Fig. 19. Each tractor unit 226 comprises a set of gears including a drive gear 238, follower gear 242, idler gear 254, and feed gear 248 mounted to a frame 234. *See* Ranniger, col. 14, ll. 17-32. Ranniger discloses that each drive gear 238 is fixedly attached to the driven shaft 230, which is driven via a drive shaft

232, to rotate the drive gear 238 and, in turn, rotatably drive the follower gear 242, idler gear 254, and feed gear 248. *See* Ranniger, col. 14, ll. 10-20, 32-35; Figs. 4, 18.

The Examiner found that the "pivoting" of the tractor units 226 described in Ranniger corresponds to the claimed "rotating" of a section of the toothroll assembly. We understand the Examiner's position to be that the rate of pivoting of the individual tractor units 226 corresponds to the claimed "surface speed," and that pivoting of two individual tractor units 226 at different speeds meets the claimed limitation "the second section adapted to rotate at a second surface speed independent from the first surface speed." *See* Ans. 5. The Examiner's position appears to disregard the rotational motion of the sets of gears of the respective tractor units 226 produced by rotating the shaft 230. In contrast, Appellant contends that the rotational "surface speed" of each of Ranniger's tractor units 226 corresponds to the rotational speed of its set of gears, while the "pivoting" of the tractor units 226 described in Ranniger does not affect the rotational "surface speed."

We determine the scope of claims not solely based on the claim language, but upon giving claims "their broadest reasonable interpretation consistent with the specification" and "in light of the specification as it would be interpreted by one of ordinary skill in the art." *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). Claim 1 recites "a first section" and "a second section." Appellant indicates that the claimed "first section" corresponds to the first section 38, and the "second section" corresponds to the second section 44. *See* App. Br. 2-3. This indication is consistent with Appellant's Specification. For example, the first and second

sections 38 and 44 are described as sections of the embodiments of the toothroll 18 shown in Figures 2, 3, and 4 of Appellant's application. *See also* Spec. 4, ll. 14-19; 5, ll. 31-33. We are unable to locate any disclosure in the Specification where the term "section" is described in relation to any portion of the toothroll assembly other than the toothroll. Accordingly, we construe the terms "first section" and "second section" as sections of a toothroll of the claimed toothroll assembly.

Regarding the claim term "surface speed," while Appellant has not directed us to a specific definition of this term in the Specification, the Specification provides sufficient guidance as to its meaning in the context of the claim language. Particularly, the Specification describes removing fat and skin from a meat part by driving the toothroll to engage and rotate the meat part relative to the trimming blade assembly. *See* Spec. 8, ll. 9-16. The first and second sections of the toothroll are rotated simultaneously at first and second surface speeds that are independent from each other. *See* Spec. 8, ll. 16-21. Figure 2 of Appellant's application depicts the first section 38 having an outer surface 40, and the second section 44 having an outer surface 46. *See* Spec. 4, ll. 14-19. Reading the claim term "surface speed" in light of the Specification, it is sufficiently clear that the "first surface speed" and "second surface speed" are the speeds of the outer surfaces of the respective first and second sections during the rotation of these sections.

The Examiner made no finding that any one of Ranniger's tractor units 226 includes a particular "surface" having a "surface speed," as claimed. Rather, the Examiner found that the "surface speed" of the respective tractor units 226 corresponds to the "rate of rotation" of the

individual tractor units 226 (which would appear to include the entire structure of each tractor unit 226 that pivots) during the "pivoting" movement described in Ranniger. We agree with Appellant that the appropriate finding with respect to Ranniger's apparatus is the rotational speed of the sets of toothed gears of the respective tractor units 226. We also agree with Appellant that because Ranniger discloses that these sets of gears of the respective tractor units 226 have the same diameter and are all driven by rotation of the same shaft 230, the gears of different tractor units 226 do not rotate independently from each other, but rotate simultaneously at the *same* rotational speed, and thus the *same* "surface speed." Accordingly, we do not sustain the anticipation rejection of claim 1, and its dependent claims 2-8.

Claim 16 is directed to a device for removing fat and skin from a meat part comprising "a toothroll assembly having a first section with an outer surface, a second section having an outer surface, the first section adapted to rotate at a first surface speed, and the second section adapted to rotate at a second surface speed independent from the first surface speed." We do not sustain the rejection of claim 16, and its dependent claims 17-22, for similar reasons as those discussed in relation to claim 1.

DECISION

The Examiner's decision rejecting claims 1-8 and 16-22 is REVERSED.

REVERSED

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