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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHRISTIAN DRABE and THOMAS KLOSE

Appeal 2010-010895
Application 11/484,250
Technology Center 3600

Before: MICHAEL L. HOELTER, BENJAMIN D. M. WOOD, and MICHELLE R. OSINSKI, *Administrative Patent Judges*.

WOOD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134 from a rejection of claims 10-15. Claims 1-9 and 16 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

THE INVENTION

The claims are directed to a torsion spring for micromechanical applications. Claim 10, reproduced below with emphasis added, is illustrative of the claimed subject matter:

> 10. A torsion spring for micromechanical applications comprising:
>
> a first clamping end;
>
> a second clamping end spaced from the first clamping end along a longitudinal axis; and
>
> *a spring portion extending linearly fully between the first clamping end and the second clamping end along the longitudinal axis*, the spring portion having one of a rectangular, square, and trapezoidal cross-section,
>
> wherein at least one of the first clamping end and the second clamping end defines a first slot spaced from the spring portion along the longitudinal axis and extending orthogonally to the longitudinal axis,
>
> wherein the clamping end defining the first slot defines a second slot having a first end opening into the first slot and a second end spaced closer to the spring portion along the longitudinal axis than the first end.

REJECTION

Claims 10-15 stand rejected under 35 U.S.C §103(a) as unpatentable over DE 199 35 819A1, pub. Mar. 8, 2001 (hereinafter "DE '819.")

ANALYSIS

The Examiner found that the embodiment depicted in DE'819 fig. 1 renders unpatentable claims 10-15. Ans. 3-4. The Examiner provided an annotated version of this figure in which the Examiner drew ellipses around the structure that the Examiner found to be the first and second clamping ends, and found that the area between the clamping ends, or a portion thereof, corresponds to the "linear spring portion [extending] linearly fully between the first clamping end and the second clamping end," *i.e.*, along axis 12. *Id*. at 5. Appellants dispute, *inter alia*, this latter finding. Br. 4-5. According to Appellants, the Examiner identified bell-shaped "contact spring 4"[1] as the spring portion that corresponds with this limitation. *Id.* at 5, fig. B (citing DE'819, col. 3, ll. 48-49, fig. 1). Appellants reason that because of its bell shape it "cannot be considered to extend fully linear along the longitudinal axis between clamping ends." *Id.* The Examiner responds that Appellants are incorrect that the Examiner relies on the bell-shaped portion of contact part 6. Ans. 6 ("Appellant's discussion of the circled portion [i.e., the bell-shaped portion of contact part 6] in figure B on pg. 5 of the Brief is not in keeping with Examiner's interpretation of the spring portion"). Rather, the Examiner found that "the spring portion of DE'819 [is] that portion of the spring that extends linearly in the area along line 12 between the first and second clamping ends." Ans. 6.

[1] The bell-shaped part that Appellants identified as contact spring 4 is actually a portion of contact part 6. *See* DE '819, fig. 1 (translation). Contact spring 4 includes not only contact part 6, but also spring parts 7 (which the Examiner found corresponds to the claimed first and second clamping ends). DE '819 translation at 12; Ans. 5.

We understand, then, that the Examiner is identifying some middle portion of contact part 6 to correspond to the claimed linear spring portion. However, the Examiner has not provided any evidence or reason why a person of ordinary skill would consider some middle portion by itself based on some imaginary boundary, rather than together with the bell-shaped structures adjacent the middle portion. In the absence of such evidence or reason we consider it arbitrary to carve out some middle portion of this structure for consideration, and therefore we disagree with the Examiner's finding that DE '819 discloses this claim limitation.

Further, if our understanding of the Examiner's finding is wrong and the Examiner actually found that the entire contact part 6 corresponds to the claimed linearly extending spring portion, we disagree with that finding as well. The specification does not expressly define "linearly" or "linear," so it is appropriate to consult a general dictionary definition of the word for guidance in determining the ordinary and customary meaning of the claim term as viewed by a person of ordinary skill in the art. *Comaper Corp. v. Antec, Inc.*, 596 F.3d 1343, 1348 (Fed. Cir. 2010). "Linear" is well understood to mean "of, relating to, resembling, or having a graph that is a line and esp. a straight line . . . involving a single dimension." MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (11th ed. 2005); *see also* MCGRAW-HILL DICTIONARY OF SCIENTIFIC AND TECHNICAL TERMS, 1209 (6th ed. 2003) ("1. Of or relating to a line. 2. Having a single dimension."). Based on this definition we would expect structure extending linearly along an axis to resemble a line oriented along the longitudinal axis, which here would mean, at a minimum, that the dimension along the axis should be larger than the dimensions transverse to that axis. This is not the case with respect to the

contact part 6, as is evident from figure 1. Accordingly, we disagree with the Examiner's finding that DE '819 discloses a spring portion that extends linearly along the longitudinal axis. Because the Examiner's rejection of claims 10-15 is based on this finding, we do not sustain that rejection.

DECISION

For the above reasons, the Examiner's rejection of claims 10-15 is reversed.

REVERSED

Klh