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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* FORREST F. WING

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Appeal 2010-011100  
Application 11/033,531  
Technology Center 3600

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Before: STEVEN D.A. MCCARTHY, BRETT C. MARTIN, and  
PATRICK R. SCANLON, *Administrative Patent Judges*.

MARTIN, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF CASE

Forrest F. Wing (Appellant) appeals under 35 U.S.C. § 134 from the Examiner's rejection of claims 1-18. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

## THE INVENTION

Appellant's invention is directed generally "to a mounting arrangement for a handle on a refrigerator." Spec. 1, l. 6. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A refrigerator comprising:
  - a cabinet defining an interior compartment;
  - a door pivotally mounted to the cabinet for selectively accessing the compartment, said door having a first side edge pivotally attached to the cabinet and a second side edge defined by an upper inner edge portion and a lower inner edge portion which are offset by a lateral portion, said door further having front and back sides, as well as an opening between the front and back sides at the lateral portion; and
  - a handle assembly for pivoting the door relative to the cabinet, said handle assembly including:
    - a first attachment member fixed to the door adjacent one of the upper and lower inner edge portions;
    - a handle member including first and second end portions separated by an intermediate portion, said second end portion including an in-turned portion having a projection extending substantially perpendicular therefrom, said handle member being mounted to the front side of the door with the first end portion of the handle member being connected to the first attachment member and the projection of the in-turned portion being received within the opening in the lateral portion of the door.

## REFERENCES

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

Weidner	US 4,922,576	May 8, 1990
Donaghy	US 5,797,164	Aug. 25, 1998
Pohl	US 6,629,339 B2	Oct. 7, 2003

## THE REJECTIONS ON APPEAL

The Examiner made the following rejections:

Claims 1 and 6-15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pohl and Donaghy. Ans. 3.

Claims 2-5 and 16-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pohl, Donaghy, and Weidner. Ans. 8.

## ANALYSIS

### *Obviousness over Pohl and Donaghy*

#### Claims 1, 6, 7, 11, and 15

Appellant argues claims 1, 6, 7, and 11 as a group. App. Br. 8-13. Further, although Appellant submits a separate section containing argument purportedly relating to claim 15, this argument restates the same argument made with respect to claims 1, 6, 7, and 11 and presents no new argument specific to the method limitations of claim 15. App. Br. 15-17. Appellant also argues claims 1, 6, 7, 11, and 15 in one section in the Reply Brief. Reply Br. 2-4. As such, we treat claims 1, 6, 7, 11, and 15 as argued as a single group and choose claim 1 as representative of this group. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2011).

As an initial matter, Appellant argues that “[t]he Examiner interprets end portion 66 of Pohl et al. as corresponding to the claimed ‘projection’

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extending from an in-turned portion” (citing p. 3 of the Office Action), which is in alleged contradiction to the Examiner’s later statement that Pohl “does not disclose an in-turned portion being received between the front and back sides at the lateral portion of the door, or an in-turned portion having a projection extending substantially perpendicular therefrom.” App. Br. 9; *see also* Reply Br. 2-3. This is likely due to what we see as a minor error in the rejection where the Examiner states “the second end portion including an in-turned portion having a projection (at 66) extending therefrom.” Ans. 4. As we understand the Examiner’s rejection, the Examiner finds that Pohl teaches an in-turned portion of the handle (at 66), but that the in-turned portion does not extend as claimed, nor does it include the projection. It appears that the Examiner merely placed the parenthetical notation to element 66 in the incorrect location, but it is clear to us from the remainder of the rejection that the Examiner finds an in-turned portion in Pohl, but looks to Donaghy to supply the remainder of the claimed structure, including the projection.

Appellant next asserts that the Examiner’s finding that Donaghy’s screws amount to the claimed projections (Ans. 3-4) is improper because “Donaghy shows no projection ... with the projection being part of the second end portion of the handle member” and that the screws “are separate elements.” App. Br. 10. Although it is correct that Donaghy’s screws are separate elements, we see no limitation in claim 1 that requires the projection to be integral to the handle. As asserted by the Examiner, we agree that the screws project perpendicularly from mounting bracket 36 as claimed and the fact that they are separate is not precluded by the claims.

Appellant next argues that “Donaghy does not actually teach a ‘lateral portion of the door’ as claimed, but instead simply teaches a standard door

having a handle mounted to a top surface of the door.” *Id.* While it is true that Donaghy teaches a standard door, we do not find this argument persuasive because the Examiner uses Pohl for the specific configuration of the door as claimed, with which Appellant does not argue. Whereas a pair of normal side-by-side doors without the claimed “lateral portions” requires two side-by-side handles, the presently claimed door configuration allows the handles to be placed in-line as shown both in Pohl and in Appellant’s figures. This is also the same kind of handle configuration found in the over-under door configuration of Donaghy and thus the portion of the door where the in-turned portion of Donaghy mounts is, in fact, a lateral portion. As such, we agree with the Examiner that one of ordinary skill in the art would understand the mounting of such in-line handles in all three cases to be equivalent as it is the capability to utilize in-line handles, not the entirety of the claimed door construction, that matters with respect to the in-turned portion of the handle relative to the “lateral portion of the door.”

Appellant next attacks the Examiner’s motivation to combine the references as “arbitrary and does not find any support in the prior art supplied by the Examiner.” App. Br. 10. Appellant goes on to state that “[a]t most, the prior art teaches that it is desirable to utilize but hide mounting screws, which Pohl et al. already does by having the screws inserted from behind the front panel of the door.” App. Br. 10-11. What the Examiner actually states, however, is that Donaghy’s mounting allows “that the in-turned portion and/or securement of the handle is not required on the face of the door, thus aiding the appearance of the door.” Ans. 5. Albeit hidden from behind, Pohl requires that the in-turned portion be mounted to the door face, whereas the Examiner correctly points out that the mounting of the in-turned portion in Donaghy is removed entirely from the face and is

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moved to the top at the “lateral portion.” This is not merely hiding the screws, but moving them from the face entirely, which we accept as an adequate reasoning with a rational underpinning for the Examiner’s proposed combination of Donaghy with Pohl.<sup>1</sup>

Lastly, Appellant argues that the combination of Donaghy and Pohl is improper because it would result in the handle assembly being inoperable. *See App. Br. 12.* Appellant asserts that second end 66 “would scrape the front of the door until it abutted cap 140, never reaching the upper lateral portion of the door for final securement.” *Id.* This statement first assumes that cap 140 would be in place before the handle is secured as well as that such a cap is even necessary, and Appellant has not established that this would necessarily be the case. Second, given that the Examiner has utilized the handle and its equivalent “lateral portion” in Donaghy for the associated mounting area, it is not clear that there even would be a cap as none is clearly shown in Donaghy, nor has Appellant clearly shown that even if there were one that the handle would be incapable of clearing it for mounting. Lastly, while the alleged scraping might be considered a disadvantage, if it indeed were to occur, such a disadvantage can merely be weighed versus the other advantage(s) of the proposed combination. Regardless, we do not agree that the alleged scraping rises to the level of making the handle configuration inoperable as asserted by Appellant. Accordingly, because we do not agree that the Examiner’s proposed combination would be inoperable, we do not find this argument persuasive.

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<sup>1</sup> Appellant goes on to further attack the Examiner’s additional statements regarding motivation, but we do not address these further because we find the Examiner’s statement regarding the desirability of moving the screws from the face to the top of the door to be sufficient. *See App. Br. 11-12; see also Reply Br. 3-4.*

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For the reasons stated above, we do not find Appellant's arguments persuasive and sustain the Examiner's rejection of claims 1, 6, 7, 11, and 15 as obvious over Pohl and Donaghy.

Claims 8 and 9

Appellant asserts that the "mounting section 82 is not a clip member" because there allegedly "is no clipping action associated with mounting section 82." App. Br. 13-14; *see also* Reply Br. 4. While Pohl does not specifically refer to this as a clip, we agree with the Examiner that "there is nothing in the claim to preclude such a reading." Ans. 13. Further, Appellant does not point to any portion of the Specification providing a specialized definition of the term "clip member" that would exclude Pohl's mounting section 82. Given the Examiner's stated broad, and reasonable, interpretation of the term "clip member" we do not find Appellant's argument persuasive. Accordingly, we sustain the rejection of claims 8 and 9.

Claims 10 and 12-14

Although Appellant provides separate argument sections for claims 10, 12 & 13, and 14, these arguments essentially repeat the argument with respect to claims 8 and 9 that the elements put forth by the Examiner are not "clip members." For the same reasons stated above with respect to claims 8 and 9, we do not find this argument persuasive and as such we sustain the Examiner's rejection of claims 10 and 12-14.

*Obviousness over Pohl, Donaghy, and Weidner*

With respect to claim 2, the Examiner finds that Weidner teaches a cap 27 that supposedly meets the limitations recited in claim 2. Ans. 8-9. The Examiner does not provide much detail in the initial rejection as to the limitations of claim 2, but in the Response to Arguments the Examiner

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asserts that “cap (27) [is] between a handle (26) and an opening in a door (13).” Ans. 13. The specific language at issue in claim 2 is that the cap is “positioned within the opening of the door.” The “opening” here refers to the specific opening from claim 1, which is “in the lateral portion of the door” and receives the “projection.” As Appellant states, however, “there simply is no opening in Weidner et al. [that] receives a projection extending from an in-turned portion of a handle assembly, *let alone a cap positioned within the opening.*” App. Br. 18 (emphasis added). We agree with Appellant that “[e]ven if part 27 [were] viewed as a separate cap, it would not be received in any sort of opening,” let alone located “within the opening” in the “lateral portion of the door” as claimed. App Br. 18. Accordingly, we do not sustain the rejection of claim 2 as obvious over Pohl, Donaghy, and Weidner.

Claims 3-5 each depend from claim 2 and as such we do not sustain these rejections for the same reasons as stated above with respect to claim 2.

Each of claims 16 and 17, which depend from claim 15, contains a similar limitation to claim 2 regarding a “cap” in “the opening” that is “formed in the lateral portion” of the door. As such, we do not sustain the rejection of claims 16 and 17 for the same reasons as stated above with respect to claim 2.

The Examiner rejects claim 18 purportedly for the same reason as claim 5 and finds “said in-turned portion of the handle member being received between the additional wall portions (claims 5 and 18).” Ans. 8. Claim 18, however, does not contain the same or even similar language to that of claim 5. We agree with Appellant that the Examiner fails to “specifically address the limitations of claim 18.” App. Br. 23. Accordingly, we do not sustain the rejection of claim 18.

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DECISION

For the above reasons, we REVERSE the Examiner's decision to reject claims 2-5 and 16-18 and AFFIRM the Examiner's decision to reject claims 1 and 6-15.

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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