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EXAMINER
KRUER, STEFAN

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHRISTIAN G. TONNA, HELMUT SCHRÖDER-BRUMLOOP, and CHRISTOPH DURAND

Appeal 2010-011268
Application 11/397,457
Technology Center 3600

Before: STEFAN STAICOVICI, MICHELLE R. OSINSKI, and NEIL T. POWELL, *Administrative Patent Judges*.

POWELL, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants[1] seeks our review under 35 U.S.C. § 134 of the rejection of claims 63-73. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

The Claimed Subject Matter

Independent claim 63, reproduced below, is representative of the appealed subject matter:

> 63. An elevator car assembly, comprising:
>
> a cabin having a door opening on at least a front face with a portion of the front face between a top of the door opening and a top of the cabin;
>
> a door track supported adjacent the front face between the top of the door opening and the top of the cabin;
>
> at least one elevator door that is supported by a door hanger that is moveable along the door track for movement between an open position exposing the door opening and a closed position covering the door opening, the hanger having at least one roller that follows the door track during door movement;
>
> a drive belt;
>
> a plurality of sheaves supported adjacent the portion of the front face such that the sheaves are between the top of the door opening and the top of the cabin, the sheaves being distinct from the roller, the drive belt engaging an exterior surface of the sheaves such that the at least one door moves responsive to rotation of the sheaves, the sheaves each rotating about an axis of rotation perpendicular to a direction of movement of the least one elevator door; and
>
> a drive motor that is at least one of
>
> (i) supported on or
>
> (ii) supported at least partially within a periphery of

[1] Appellants identify the real party in interest as Otis Elevator Company. App. Br. 1.

> at least one of the sheaves such that the entire drive motor is adjacent the portion of the front face and between the top of the door opening and the top of the cabin.

The Rejection

Appellants seek review of the rejection of claims 63-73 under 35 U.S.C. § 103(a) as unpatentable over Borden (US 2,905,463, iss. Sept. 22, 1959), Parente (US 4,503,637, iss. Mar. 12, 1985), and Sukale (US 5,852,897, iss. Dec. 29, 1998).[2] Ans. 3.

ANALYSIS

The Examiner finds that Borden discloses an elevator car assembly that meets most of the limitations of independent claim 63 but does not have the drive motor positioned "adjacent the portion of the front face and between a top of the door opening and a top of the cabin." Ans. 3-4. The Examiner finds that Parente discloses a drive motor so positioned. *Id.* at 4. The Examiner concludes that it would have been obvious to modify Borden's elevator to have its drive motor in the position disclosed by Parente "for compactness and esthetics."[3] *Id.*

Appellants argue that the Examiner's combination of Parente with Borden stems from improper hindsight reconstruction. App. Br. 4-5 and 7-9.

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[2] The Examiner had finally rejected claim 63 on the ground of nonstatutory obviousness-type double patenting, but that rejection is moot in view of the Terminal Disclaimer, filed February 23, 2010. Ans. 2; Final Rejection, mailed December 9, 2009, at 2.

[3] The Examiner does not rely on Sukale for his conclusion that it would have been obvious to position the drive motor "adjacent the portion of the front face and between a top of the door opening and a top of the cabin." *See* Ans. 3-11.

Appellants argue that Parente does not teach that its disclosed arrangement provides the advantage of compactness. *Id.* at 8. Instead, Appellants assert, Parente "focuses on having a building door assembly that is structurally sound, allows for repair and replacement of parts and is adjustable because of building distortion and changes in function over time." *Id.* Appellants further argue that concerns about aesthetics would not constitute a reason to modify the position of Borden's drive motor based on Parente, as people generally would not see the door-drive system of Borden, making aesthetics of no concern in the configuration of the door-drive system. *Id.* Based on these assertions, Appellants argue that the Examiner's reason for looking to Parente stems from Appellants' disclosure that the claimed location of a motor makes an elevator more compact. *Id.*

In response to Appellants' arguments, the Examiner advances that:

> the teachings of Parente - compactness, functionality and esthetics - are reasonable interpretations in view of a comparison of drive components and layouts of the respective disclosures. As noted by Appellant, the specification of Parente reviews " ... a building door assembly that is structurally sound, allows for repair and replacement parts and is adjustable ... ", for which Examiner has drawn similar teachings with respect to functionality and compactness, therein fewer drive components, wherein said drive components are mounted on a front face of an elevator car. Said teachings afford compactness without compromising servicing and replacement of wear components, the latter of interest in view of the superfluous, antiquated drive components of Borden and probable concerns for contemporary sourcing of spare parts as well.

Ans. 10. In response to Appellants' argument that the hidden nature of the door-drive system obviates any need to modify it for aesthetic reasons, the Examiner advances that Appellants have not considered aesthetics concerns for "parties involved in the critique and selection of elevator systems or technical service personnel servicing said systems." *Id.*

Consistent with Appellants' arguments, the Examiner does not provide viable support that it would have been obvious, independent of Appellants' disclosure, to modify Borden based on Parente for compactness and aesthetics. The Examiner does not point to any specific portion of Parente that explicitly or implicitly discloses any concern with "compactness." Nor does the Examiner clearly explain how Parente's disclosures related to adjustment, repair, and structural integrity of its system would have given a person of ordinary skill in the art a reason to modify the location of the drive motor in Borden's system for "compactness" or any other reason. Additionally, without any objective evidence that a person of ordinary skill in the art would consider the appearance of an elevator door-drive, we cannot adopt the Examiner's position that aesthetic considerations would have given the person of ordinary skill in the art an adequate reason to combine the teachings of the references.

Without a persuasive articulated rationale based on rational underpinning for combining the references as proposed, the Examiner's rejection appears to be the result of hindsight analysis. *See In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (*cited with approval in KSR*, 550 U.S. at 418) ("rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness").

Therefore, absent hindsight, we fail to see why one having ordinary skill in the art would have been led to modify Borden based on Parente, as the Examiner proposes. Accordingly, we cannot sustain the Examiner's rejection of independent claim 63 and claims 64-73 depending therefrom.

DECISION

We reverse the Examiner's decision regarding claims 63-73.

REVERSED

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