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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DARELL WAYNE FIELDS

Appeal 2010-011326
Application 10/255,058
Technology Center 3600

Before: PHILLIP J. KAUFFMAN, WILLIAM V. SAINDON, and
JOHN W. MORRISON, *Administrative Patent Judges*.

MORRISON, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from a rejection of claims 1-10, 15-17, and 19. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

The claims are directed to frameless window module. Spec 1. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A window module providing, in dependence on the number of modules arrayed, operable windows of any length in a wood stud frame wall having opposing interior and exterior faces and structural members including a top, longitudinally-extending cap piece, a longitudinally-extending sole plate and a continuous run of laterally-spaced, upstanding studs interconnecting the cap piece and sole plate, said window module eliminating both the need to cut any stud to provide a window box opening and the use of a window box installed in a window box opening, comprising:

first and second glazing member subassemblies;

first means coupled to said first glazing member subassembly for mounting said first glazing member subassembly exteriorly outwardly to at least one of said structural members of said wood stud frame wall without penetrating said wood stud frame wall at one of said opposing interior and exterior faces of said wood stud frame wall for pivoting motion between open and closed positions away from and towards said one of said opposing faces of said wood stud frame wall; and

second means coupled to said second glazing member subassembly for mounting said second glazing member subassembly exteriorly outwardly to at least one of said structural members of said wood stud frame wall without penetrating said wood stud frame wall at the other of said opposing interior and exterior faces of said wood stud frame wall for pivoting motion between open and closed positions away from and towards said other one of said opposing faces of said wood stud frame wall, said first and second means thereby eliminating both the need to cut any said upstanding stud of

said wood stud frame wall to provide a window box opening therein through, and the use of a window box installed in the window box opening

REFERENCES

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

Winship	US 2,226,274	Dec. 24, 1940
Crescentini	US 2,286,899	Jun. 16, 1942
Glover	US 5,400,557	Mar. 28, 1995

REJECTIONS

The Examiner made the following objection and rejections:

Claims 1-10, 15-17, and 19 stand objected to under 35 U.S.C §112, second paragraph as being indefinite. *See* Office Action mailed March 23, 2006, page 2.

Claims 1-10, 15-17, and 19 stand rejected under 35 U.S.C §112, second paragraph as being indefinite.

Claims 1-3 and 10 stand rejected under 35 U.S.C §102(b) as being anticipated by Crescentini.

Claims 1, 6-8, 15-17, and 19 stand rejected under 35 U.S.C §102(b) as being anticipated by Winship.

Claim 4 stands rejected under 35 U.S.C §103(a) as being unpatentable over Crescentini and Glover.

ANALYSIS

Objections under §112

The Examiner objected to claims 1-10 for formalities. The Examiner further objected to claims 1-10, 15-17, and 19 “because the claimed language between preamble and body of the claim is inconsistent because the preambles set forth a subcombination of a window module (claims 1-10) and a frameless integument module (claims 15-15 and 19) and the portion of the claims positively related to wood studs, for example: ‘without penetrating said wood stud’.” Ans. 3.

The Examiner objected to claims 1-10, 15-17, or 19 under 35 U.S.C. § 112, second paragraph. *See* Office Action mailed on March 23, 2006, at 2. Ordinarily, an objection is a petitionable matter, and not an appealable one. *See* MPEP §§ 706.01 and 1201 (8th ed., Rev. 9, Aug. 2012); *see also Ex Parte Frye*, 94 USPQ2d 1072, 1077-78 (BPAI 2010) (precedential) (similarly determining an objection to the drawings was outside of the Board’s jurisdiction).

Further, addressing the rejections before us does not require consideration of the scope of independent claims 1 and 15 with regard to how the window module recited in the preamble and a frameless integument module are inconsistent with regard to positively claiming the wood studs. In other words, the objection does not relate to the other rejections. *See In re Hengehold*, 440 F.2d 1395, 1404 (CCPA 1971) (“the kind of adverse decisions of examiners which are reviewable by the board must be those which relate, at least indirectly, to matters involving the rejection of claims”).

Accordingly, the objection is not before us on review.

Rejections under §112

The Examiner rejected claims 1-10, 15-17, and 19 under 35 U.S.C. 112, second paragraph, as being indefinite. Addressing claim 1, the Examiner determined that the claim language “in dependence on the number of modules arrayed, operable windows of any length in a wood stud frame wall” and “said first and second means thereby eliminating both the need to cut any said upstanding stud of said wood stud frame wall to provide a window box opening therein through” as set forth in claim 1 is indefinite. Ans. 3. Appellant contends, “Since no reasons are explicitly set forth why the identified limitations are considered to be indefinite beyond the mere allegation that the identified claim language is ‘confusing,’ and because the applicant-appellant is not able to try to resolve, let alone rebut, such unstated deficiencies” App. Br. 9. We agree with Appellant that the Examiner has failed to make a prima facie case of indefiniteness. The general statements provided by the Examiner fail to provide sufficient reasoning as to why one skilled in the art would not understand the metes and bounds of the claim language in question. As such, we cannot sustain the indefiniteness rejection of claim 1, or claims 2-10 which depend therefrom.

Addressing claim 5, the Examiner determined the claim language that each of the seals “when the subassemblies are in their closed positions is a pneumatic seal” to be indefinite. Ans. 3. Again, Appellant argues that the Examiner presented a “mere allegation” of indefiniteness and has not made a prima facie case of indefiniteness. App. Br. 9-10. We agree with the Appellant because the Examiner includes no analysis as to why one skilled in the art would not understand the metes and bounds of the claim language

in question. As such, we cannot sustain the indefiniteness rejection of claim 5.

Addressing claim 15, the Examiner stated that “it is unclear how could one third hinge [be] couplable to both said first and second integument members.” Ans. 3. Again, Appellant argues that the Examiner presented a “mere allegation” of indefiniteness and has not made a prima facie case of indefiniteness. App. Br. 9-10. We agree with the Appellant because the Examiner includes no analysis as to why one skilled in the art would not understand the metes and bounds of the claim language in question. As such, we cannot sustain the indefiniteness rejection to claim 15, or claims 16, 17, and 19 which depend therefrom.

Anticipation by Crescentini

Independent claim 1 calls for the first means to mount the first glazing member subassembly exteriorly outwardly to at least one of the structural members of the wood stud frame wall without penetrating the wood frame stud frame wall at the exterior face of the wood stud frame wall. In parity with the claim language, the Specification states that the first means includes upper and lower pivot hinges 30, 32 that mount the first glazing member 26 exteriorly outwardly of the wood stud frame wall 14. Br. 3 (identifying the claimed subject matter in the Specification); Spec. 10:1-6; figs. 1-3.

Addressing claims 1-3 and 10, the Examiner found that Crescentini discloses “a window assembly comprising window panes or a pair of glazing member subassemblies 18, first mean 17 coupled to said first glazing member subassembly for mounting said first glazing member subassembly

exterior outwardly, second means 21 coupled to said second glazing member 18.” Ans. 4.

Crescentini’s storm sashes 15 are mounted within the opening in the frame, and for that reason, Crescentini’s first means (hinge 21) does not mount the first glazing member subassembly (storm window 15 having glass 18) exteriorly outwardly to at least one of the structural members of the wood stud frame wall (wall 10), and the first glazing member subassembly (storm window 15 having glass 18) penetrates the wood frame stud frame wall at the exterior face of the wood stud frame wall. Crescentini 1, col. 1, ll. 45-49; col. 2, ll. 17-19, figs. 1, 2 (note storm sash 15 mounted by hinge 21 within wall 10 rather than exterior to the face of that wall 10).

Consequently, we agree with Appellant that Crescentini’s first glazing member subassembly (storm window 15 having glass 18) penetrates the wood stud frame wall (wall 10) in contravention of claim 1. *See* Br. 11.

We do not sustain the rejection of independent claim 1 its respective dependent claims 2, 3, and 10, as anticipated by Crescentini.

Anticipation by Winship

Addressing claim 1, the Examiner found that Winship teaches

[A] window construction comprising a pair of glazing subassemblies 26, 27 (col. 1, lines 1-10 and Fig. 1), a first means 28 couples to said first glazing member 26 for mounting said first glazing member subassembly exterior outwardly, second means 28 coupled to said second glazing member 27, the glazing members are pivot hinged to window frame 11, 13, and an interconnection hinge 38 coupleable to the two sashes 26, 27 of the two glass panes, respectively.

Ans. 4-5. Appellant counters that “[s]ince each of the sashes is mounted for combined pivoting/sliding motion inside the frame between its inner and

outer surfaces, thereby penetrating the frame at least partially which itself completely penetrates its containing wall.” App. Br. 14. Again, the Examiner’s findings are not persuasive. The first and second glazing members are not mounted “exterior outwardly” to the wood stud frame wall, but rather to a surface that between the inner and outer surface of the wall. In addition, as argued by Appellant, this mounting arrangement partially penetrates the wood stud frame wall. As such, we cannot sustain the anticipation rejection of claim 1 or claims 6-8 which depend therefrom.

Addressing claim 15, the Examiner relied on the findings made above with respect to claim 1. Appellant counters that Winship fails to disclose a “third interconnection hinge couplable to both said first and second integument members adapted to cause said first and second integument members to pivotally move together away from and towards respective ones of said exterior and interior faces of said wood stud frame wall.” App. Br. 14-15. As discussed above, the sashes, or integument members, are not mounted to move away from and toward the exterior faces of the wall, but are rather mounted in such a way that partially penetrates, or moves through the exterior faces of the wood stud frame wall. As such, we cannot sustain the anticipation rejection of claim 15, or claims 16, 17, and 19 which depend therefrom.

Obviousness over Crescentini and Glover

Addressing claim 4, the Examiner determined that

Crescentini discloses the claimed invention as stated except for wherein each of said first and second glazing member subassemblies has lateral and longitudinal edges, and further includes a seal and a seal seat adapted to seal the lateral edges

of each of [s]aid glazing member subassemblies, and a seal on a seal seat. Glover teaches a removable glass windowpane 84 having seal strip 300 seat on seal seat 90 (Figs. 1 and 3). In view of Glover, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Crescentini with seal and seal seat for the seal positioned on as Crescentini is concerns thus for preventing heat lost.

Ans. 5. However, nothing in this determination cures the underlying deficiency of the use of a casing or window box in Crescentini. As such, we cannot sustain the obviousness rejection of claim 4.

DECISION

For the above reasons, the Examiner's rejections of claims 1-10, 15-17, and 19 are reversed.

REVERSED

llw