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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GEORGES EFTYMIADES

Appeal 2010-011424
Application 10/181,235
Technology Center 3700

Before JOSEPH A. FISCHETTI, BIBHU R. MOHANTY, and JAMES A. TARTAL, *Administrative Patent Judges*.

TARTAL, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE[1]

Georges Eftymiades (Appellant) seeks our review under 35 U.S.C § 134 of the Examiner's final decision rejecting claims 29-32, 42-46, 48, 49, 55, and 66. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

[1] Our decision will make reference to the Appellant's Appeal Brief ("App. Br.," filed Feb. 22, 2010) and the Examiner's Answer ("Ans.," mailed May 26, 2010).

Appellant's claimed invention relates to a manufacturing method for metal sections. Spec. 1, ll. 1-10.

Claim 55, reproduced below, is illustrative of the subject matter on appeal.

> 55. Manufacturing method for a metal profile having a T-shaped cross-section in a direction substantially orthogonal to a length direction of the profile, said metal profile including a first non-plane metal part forming a lower wing of the T -shaped cross section and a second non-plane metal part forming an upper wing of the T -shaped cross-section, said first and second non-plane metal parts being non-aligned and forming, one relative to the other, an angle evolutionary according to the length direction of said metal profile, wherein said method comprises the steps of:
>
> defining a substantially flat outline of the first non-plane metal part and a substantially flat outline of the second non-plane metal part;
>
> cutting out in at least one flat metal plate a first flat metal element following the flat outline of the first non-plane metal part and a second flat metal element following the flat outline of the second non-plane metal part;
>
> forming the first flat metal element according to the non-plane shape of the first non-plane metal part and the second flat metal element according to the non-plane shape of the second non-plane metal part; and
>
> coupling a longitudinal edge of said first metal element to a face of said second metal element to thereby form said metal profile having a substantially T -shaped cross section.

The Examiner relies upon the following evidence:

Smith	US 3,268,985	Aug. 30, 1966
Prye	US 3,785,631	Jan. 15, 1974
Irie	US 5,704,570	Jan. 6, 1998
Basista	US 6,128,546	Oct. 3, 2000
Andrews	US 6,886,251 B1	May 3, 2005

Claims 29-32, 42, 44-46, 48, 49, 55, and 66 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Andrews, Smith, and (Prye or Irie).

Claim 43 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Andrews, Smith, (Prye or Irie), and Basista.

FINDINGS OF FACT

We find that the following enumerated findings of fact (FF) are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

FF1. The Specification states:

> The precise object of this invention is a new manufacturing method for metal sections of a complex form. …
>
> According to this invention this result is obtained thanks to a manufacturing method of a metal section when viewed as a cross section, composed of at least two separate non-aligned parts, said method being characterised in that it is applied to the manufacturing of a section of complex form, exclusively composed of non-plane parts that combine to form an angle of any degree and evolution according to the length of the section.

Spec 3, l. 21 – 4, l. 5.

FF2. The Specification states:

> In the embodiment method shown in figure 3, the method as described in this invention is applied to the production of a section P3 with a T-shaped cross-section, bent in two different spatial directions, and at right angles to each other.

Spec. 12, ll. 1-5.

FF3. The Specification does not specifically define the term "non-plane," nor does it use the term contrary to its customary meaning.

FF4. An ordinary and customary definition of the term "plane" is: "a surface of such nature that a straight line joining two of its points lies wholly in the surface." *Webster's Ninth New Collegiate Dictionary* (1990).

ANALYSIS

Claims 29-32, 42-46, 48, 49, 55 and 66 each require "forming the first flat metal element according to the *non-plane* shape of the first non-plane metal part and the second flat metal element according to the *non-plane* shape of the second non-plane metal part." (emphasis added.) The questions of obviousness under the rejections at issue turn primarily on the meaning of "non-plane." Appellant contends that Andrews and Smith do not disclose a metal section formed of upper and lower flanges having different non-plane shapes, wherein "non-plane" means "non-planar." App. Br. 10-11. The Examiner does not assert that any of the cited references disclose a metal profile with first and second non-planar elements. Instead, the Examiner maintains that "non-plane" may be "interpreted as being not smooth or rough, that is, not subject to planing." Ans. 7-8.

We determine the scope of the claims in patent applications "not solely on the basis of the claim language, but upon giving claims their

broadest reasonable construction 'in light of the specification as it would be interpreted by one of ordinary skill in the art.'" *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005) (en banc) (*quoting In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004)).

We find that the Specification makes clear to one of ordinary skill in the art that "non-plane" means "non-planar," that is, a surface *not* of such nature that a straight line joining two of its points lies wholly in the surface.. The Specification uses "non-plane" with respect to the shape of the metal elements, and states that the claims are directed to "manufacturing of a section of complex form, exclusively composed of non-plane parts that combine to form an angle of any degree and evolutional according to the length of the section." FF1. The Specification also describes a figure showing an embodiment of the invention as depicting "the method as described in this invention" applied to the production of "a T-shaped section, bent in two different spatial directions." FF 2. There is no suggestion in the Specification that "non-plane" merely means "rough" as the Examiner contends (Ans. 7). The claim term "non-plane" would thus be interpreted by one of ordinary skill in the art, in light of the specification, to mean "a surface *not* of such nature that a straight line joining two of its points lies wholly in the surface," that is, "non-planar." Here, the rejections of record neither cite to an individual portion of Andrews, Smith, Prye, Irie, or Basista that discloses "forming the first flat metal element according to the *non-plane* shape of the first non-plane metal part and the second flat metal element according to the *non-plane* shape of the second non-plane metal part" nor provide articulated reasoning with rational underpinnings for such modification. Thus, we will not sustain the rejections of record.

CONCLUSIONS OF LAW

We conclude that Appellant has overcome the Examiner's rejection of claims 29-32, 42, 44-46, 48, 49, 55, and 66 under 35 U.S.C. § 103(a) as being unpatentable over Andrews, Smith, and (Prye or Irie).

We further conclude that Appellant has overcome the Examiner's rejection of claim 43 under 35 U.S.C. § 103(a) as being unpatentable over Andrews, Smith, (Prye or Irie), and Basista.

DECISION

We REVERSE the decision of the Examiner to reject claims 29-32, 42-46, 48, 49, 55, and 66.

REVERSED

Klh