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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/778,856	07/17/2007	Carsten Niedworok	RF-45	1180
54630	7590	02/11/2013	EXAMINER	
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			ART UNIT	PAPER NUMBER
			3651	
			MAIL DATE	DELIVERY MODE
			02/11/2013	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CARSTEN NIEDWOROK

Appeal 2010-011525
Application 11/778,856
Technology Center 3600

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

TARTAL, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE¹

Carsten Niedworok (Appellant) seeks our review under 35 U.S.C § 134 of the Examiner's final decision rejecting claims 1-20. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

Appellant's claimed invention relates to a method of filling large-capacity storage silos with a fluidizable material, and to an arrangement for filling the same. Spec. 1.

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A method of filling a large-capacity silo with a fluidizable material while preventing air-flow or gas-flow separation, comprising: conducting a material-charging operation in a controlled manner via a delivery line, a delivery channel and air- or gas-delivery channels into a top part of the large-capacity silo, towards a silo wall, and downwards to a surface of the fluidizable material above a base of the large-capacity silo, and further conducting a uniform and controlled suction-extraction operation for air or gas, which is carried out by means of one or more annular suction-extraction lines, arranged directly beneath the silo top part, or via annular suction gaps on fluidizable material-outflow heads.

The Examiner relies upon the following evidence:

Hough	US 3,827,578	Aug. 6, 1974
Ahrens	US 4,491,419	Jan. 1, 1985
Karlsen	US 6,632,063 B1	Oct. 14, 2003

Claims 1-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ahrens, Karlsen, and Hough.

¹ Our decision will make reference to the Appellant's Appeal Brief ("App. Br.," filed Mar. 10, 2010) and the Examiner's Answer ("Ans.," mailed May 19, 2010).

FINDINGS OF FACT

We find that the findings of fact which appear in the Analysis below 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).

ANALYSIS

Appellant argues claims 1-20 as a group (App. Br. 5-12). We select claim 1 as the representative claim for this group, and the remaining claims 2-20 each stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(vii).

We are unpersuaded by Appellant's contention that various features of the claimed invention are not disclosed by the cited references. Appellant asserts that Ahrens fails to disclose air or gas-delivery channels that not only charge materials into the silo, but also "serve to *extract air* from the silo." App. Br. 7. Claim 1, however, contains no such requirement, and limitations from the Specification will not be read into the claims. *See In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993). We also reject Appellant's claim that Ahrens fails to show a material-charging operation "towards a silo wall" as claimed. As the Examiner notes, the claim requires nothing more than what Ahrens shows: channels sloped towards a silo wall.

Appellant also argues that Karlsen does not disclose air or gas-delivery channels. App. 9. The Examiner, however, relies on Ahrens for the disclosure of air or gas-delivery channels, not Karlsen. Ans. 4. Thus, Appellant has not addressed the combination of prior art references as a whole but simply improperly argues the merits of references individually. *See In re Keller*, 642 F.2d 413, 425 (CCPA 1981) ("The test for obviousness

is not . . . that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art”).

We are also not persuaded by Appellant’s argument that Hough does not disclose the claimed “suction gaps,” but instead teaches “suction *chutes*.” App. Br. 10. We agree with the Examiner that there is no structure in the claims that would differentiate the “chute” of Hough from the “gaps” as claimed and find Appellant’s argument is not commensurate with the scope of the claim. Moreover, claim 1 is not limited to only suction gaps, but instead requires “suction gaps” *or* “suction-extraction lines.” Thus, the claim limitation is satisfied if either of the alternatives is disclosed and Appellant has not overcome the Examiner’s determination that Karlsen discloses “suction-extraction lines.”

We are also unpersuaded by Appellant’s argument that both Ahrens and Karlsen teach away from the claimed invention. Appellant contends that Ahrens discloses that stored material is extracted from the bottom of the silo and returned to the top and that when material is charged into the silo it is directed away from the silo walls. App. 7. Appellant further asserts that Karlsen discloses a plurality of distributor pipes which run along the length of the interior wall of the silo, states that problems related to air induced segregation are present under conditions where the falling height of a material is high, and teaches that it is important to make the material feed as airtight as possible. App. 8-9. In each instance where Appellant attacks the prior art, Appellant has identified alleged differences, but has not convincingly shown that the prior art reference criticizes, discredits, or otherwise discourages the solution claimed in the application. *See In re*

Fulton, 391 F.3d 1195, 1201 (Fed. Cir. 2004) (“The prior art's mere disclosure of more than one alternative does not constitute a teaching away from any of these alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claimed in the ... application.”). It would have been obvious to combine features of the method and apparatus for mixing materials in a silo disclosed by Ahrens with Karlsen’s suction extraction lines and Hough’s suction chutes to arrive at a method that improves the ability to reduce the separation of materials according to particle size when filling a silo as claimed.

CONCLUSIONS OF LAW

We conclude that the Appellant has not overcome the Examiner’s rejection of claims 1-20 under 35 U.S.C. § 103(a) as being unpatentable over Ahrens, Karlsen, and Hough.

DECISION

We AFFIRM the decision of the Examiner to reject claims 1-20.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2011).

AFFIRMED

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