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Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO. Includes details for application 11/467,247 filed 08/25/2006 by Noah Montena, attorney PPC.91279-NY, examiner DINH, PHUONG K, art unit 2833, and notification date 03/13/2013.

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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* NOAH MONTENA

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Appeal 2010-011728  
Application 11/467,247  
Technology Center 2800

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Before CARL W. WHITEHEAD, JR., ERIC S. FRAHM, and  
ANDREW J. DILLON, *Administrative Patent Judges*.

FRAHM, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

*Introduction*

This is a decision on appeal under 35 U.S.C. § 134(a) of the final rejection of claims 1, 2, 4, and 5. Claims 3 and 6 stand objected to as being dependent upon a rejected base claim, but as allowable if rewritten in independent form including all of the limitations of the base claims and any intervening claims. Final Rej. 4. Claims 1, 2, 4, and 5 were rejected by the Examiner and are before us on appeal. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

*Invention*

The invention is related to a torque transmitting housing for a CATV filter 10 (Figures 1 and 2) having an outer sleeve or housing 16 that has a face 30 with a centered hole 32 for a threaded cable connector 38, and two engagement holes (12 and 14). Spec. ¶ [01]; Abs.; claims 1 and 4). The two engagement holes (12 and 14) are drifted (*see e.g.*, Figure 2) to permit use of a special engagement tool or wrench having driving pins to turn the outer sleeve or housing (Abs.; Spec. ¶ [03]). The outer sleeve or housing 16 can be made of stainless steel, and contains both the two drifted holes (12 and 14) for engagement with the tool, as well as a central opening 32 for insertion of the threaded connector 38.

*Representative Claim*

Claim 1 is representative of the invention and is reproduced below with emphasis added:

1. A housing for a CATV filter, comprising:

*an outer sleeve;*

a first end of the sleeve having a first hole therein which is equal in size to an inner diameter of the sleeve;

*a second end of the sleeve having a face;*

*the face having a centered second hole therein which is sized to permit entry of a threaded cable connector therein; and*

*the face further including two engagement holes therein.*

#### *Examiner's Rejections*

(1) The Examiner rejected claims 1 and 4 under 35 U.S.C. § 103(a) as being unpatentable over Zennamo '813 (US 6,829,813 B2). Ans. 3-4.

(2) The Examiner rejected claims 1, 2, 4, and 5 under 35 U.S.C. § 103(a) as being unpatentable over Zennamo '813 and Shepherd (US 2,777,998). Ans. 5.

#### *Examiner's Findings and Conclusions*

With respect to both of the independent claims on appeal, claims 1 and 4, the Examiner relies (Ans. 3-5) upon Zennamo '813 as teaching an outer sleeve have a first end at male end 3 (right side of Fig. 1), and a second end having a face with (i) a central hole for a female connector end 1 that permits entry of a threaded cable connector, and (ii) two engagement holes 2a and 2b (left side of Fig. 1). The Examiner determines that Zennamo '813's outer sleeve is the cross hatched portion that is labeled/annotated with an arrow as "Outer sleeve" as shown in the annotated Figure 1 on page 4 of the Answer.

*Appellant's Contentions<sup>1</sup>*

(1) Appellants contend (App. Br. 3-5; Reply Br. 1-2) that the Examiner erred in rejecting claims 1 and 4 under 35 U.S.C. § 103(a) over Zennamo '813 for numerous reasons, including:

(a) Zennamo '813's holes 2a and 2b are in the header, and not in the outer sleeve (App. Br. 4);

(b) Zennamo '813's engagement holes 2a and 2b are in the filter housing, and not the outer sleeve as recited in claims 1 and 4 (App. Br. 4);

(c) the extrinsic evidence of Zennamo '494 (US 5,662,494) illustrates the meaning of Zennamo '813's Figure 1, especially Figures 9 and 10 of Zennamo '494 showing outer sleeve 50 and filter housing 30 (App. Br. 3-4);

(d) what the Examiner asserts is Zennamo '813's outer sleeve is really the inner frame 26 of Appellant's invention as shown in Figure 1 and described in paragraph [012] of the Specification (App. Br. 3);

(e) the portion of Zennamo '813 (*see* Ans. 4, annotated Figure 1) relied on by the Examiner as teaching a filter housing is equivalent to Appellant's inner frame 26, and Zennamo '494's outer sleeve 50 (Fig. 10) is equivalent to outer sleeve 16 of Appellant's invention as shown in Figures 1 and 2 (App. Br. 4); and

(f) the claim limitation "outer sleeve" cannot mean "inner

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<sup>1</sup> We recognize that Appellant's arguments present additional issues. Many of the arguments presented by the additional issues are not persuasive; nonetheless we were persuaded of error by the issue raised by the arguments listed herein, and as such we do not reach the additional issues. We only address the dispositive issue.

sleeve” because the meaning of the word “outer” is “on or around the outside of something” (Reply Br. 1-2).

(2) Appellant contends (App. Br. 5-7) that the Examiner erred in rejecting claims 1, 2, 4, and 5 under 35 U.S.C. § 103(a) over the combination of Zennamo ‘813 and Shepherd for numerous reasons, including Zennamo ‘813 fails to meet the limitations of claims 1 and 4.

(a) for the same reasons as provide with regard to the § 103(a) rejection of claims 1 and 4 over Zennamo ‘813;

(b) because Zennamo ‘813 and Shepherd do not show a face of an outer sleeve with three holes therein, or with two holes and a centered hole (App. Br. 5-7); and

(c) the combination of Zennamo ‘813 and Shepherd would not yield the invention recited in claims 1 and 4 (App. Br. 4-5).

#### ISSUE

Based on Appellant’s arguments enumerated above, the principal and dispositive issue presented on appeal is:

Did the Examiner err in rejecting claims 1, 2, 4, and 5 because the base reference of Zennamo ‘813 fails to teach or suggest a housing for a CATV filter having an outer sleeve that has (i) a face with a centered hole for a threaded cable connector, and (ii) two engagement holes as recited in representative claim 1, and as similarly recited in remaining independent claim 4?

#### ANALYSIS

We have reviewed the Examiner’s rejection in light of Appellants’ arguments in the briefs (App. Br. 3-7; Reply Br. 1-2) that the Examiner has

erred. We agree with all of Appellant's specifically enumerated contentions above relating to claims 1 and 4 on appeal, and highlight and address specific findings regarding Zennamo '813 and Zennamo '494 for emphasis as follows.

Representative claim 1 and remaining independent claim 4 each require a housing for a CATV filter 10 having an outer sleeve 16 (Appellant's Figs. 1 and 2). Appellant's outer sleeve 16 has two ends. The first end of the outer sleeve 16 has a hole in it the size of the inner diameter of the outer sleeve (e.g., the end of outer sleeve 16 shown at the top left of Figure 1). The second end of the outer sleeve 16 has a face 30 (e.g., the end of the outer sleeve 16 shown at the bottom right of Figure 1; *see also* Fig. 2) with (i) a centered hole 32 for a threaded cable connector 38, and (ii) two drifted engagement holes (12 and 14) for engaging with a special tool/wrench.

To ascertain the scope and meaning of the claims, we consider the claim language, the specification, the prosecution history, and relevant extrinsic evidence. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1314-17 (Fed. Cir. 2005) (*en banc*). “[A]bsent contravening evidence from the specification or prosecution history, plain and unambiguous claim language controls the construction analysis.” *DSW, Inc. v. Shoe Pavilion, Inc.*, 537 F.3d 1342, 1347 (Fed. Cir. 2008). Extrinsic evidence “may be used only to help the court come to the proper understanding of the claims; it may not be used to vary or contradict the claim language.” *Vitronics Corp. v. Conceptor, Inc.*, 90 F.3d 1576, 1584 (Fed. Cir. 1996).

Appellant relies on two types of extrinsic evidence to show that Zennamo '813's holes are in the header or inner frame (*see e.g.*, Appellant's

Figure 1 showing inner frame 26 and header 24) and not in the outer sleeve: (i) Zennamo '494, incorporated by reference in Zennamo '813 in relation to the filter shown in Figure 1 of Zennamo '813 (Zennamo '813, col. 1, ll. 44-49), showing an outer sleeve 50 in Figures 9 and 10 (App. Br. 3-4); and (ii) the plain meaning of the term "outer" as supported by the definition for the term "outer" provided in *The Encarta Dictionary: English (North America)* (Reply Br. 1-2).

Appellant's contention (App. Br. 3-4) that the extrinsic evidence of Zennamo '494 (US 5,662,494) illustrates the meaning of Zennamo '813's Figure 1 is persuasive. Figures 9 and 10 of Zennamo '494 show an outer sleeve 50 and a filter housing 30 (*see* col. 2, l. 25 to col. 3, l. 14). We agree with Appellant (App. Br. 3) that what the Examiner asserts is Zennamo '813's outer sleeve is equivalent to Appellant's inner frame 26 shown in Figure 1 and described in paragraph [0012] of the Specification. We also agree with Appellant (App. Br. 4) that Zennamo '494's filter housing 30 is equivalent to Appellant's inner frame 26, and Zennamo '494's outer sleeve 50 (Fig. 10) is equivalent to the outer sleeve 16 of Appellant's invention as shown in Figures 1 and 2. Zennamo '813 makes clear that Zennamo '494's Figure 9 is a drawing of Zennamo '813's filter shown in Figure 1 of Zennamo '813, showing the two engagement holes 2a and 2b (col. 1, ll. 44-49).

Because the inventors and assignee of Zennamo '813 and Zennamo '494 are identical, and the inventions are related to each other and both deal signal filters, we consider Zennamo '404 to be strong evidence that Zennamo '813's outer sleeve is *not* the element as annotated by the Examiner at page 4 of the Answer, thus Zennamo '813's outer sleeve does

not have two holes 2a and 2b therein. *Z4 Techs., Inc. v. Microsoft Corp.*, 507 F.3d 1340, 1348 (Fed.Cir.2007) (“We presume, unless otherwise compelled, that the same claim term in the same patent or related patents carries the same construed meaning.” (internal quotation marks omitted)); *August Technology Corp. v. Camtek, Ltd.*, 655 F.3d 1278, 1284 (Fed. Cir. 2011).

Appellant’s contention (Reply Br. 1-2) that the claim limitation “outer sleeve” cannot mean “inner sleeve” because the meaning of the word “outer” is “or around the outside of something” is also persuasive. The cross hatched area shown in the Examiner’s annotated Figure 1 of Zennamo ‘813 (Ans. 4) is plainly an inner frame or material of some kind, whereas what Appellant clearly claims (claims 1 and 4, outer sleeve), describes (Spec. ¶¶ [012] and [013]), and shows (Figs. 1 and 2, outer sleeve 16) is an outer sleeve or housing that is provided around the outside of header 24, inner frame 26, and circuit board 28.

Appellant has presented persuasive extrinsic evidence as to the meaning of “outer sleeve” as that term is used in claims 1 and 4 on appeal. In view of the foregoing, we are persuaded by Appellant’s arguments that the Examiner has not shown that Zennamo ‘813 disclose a housing for a CATV filter having an outer sleeve that has a face with a centered hole for a threaded cable connector and two engagement holes as recited in representative claim 1, and as similarly recited in remaining independent claim 4. Accordingly, we do not sustain the Examiner’s 35 U.S.C. § 103(a) rejection of independent claims 1 and 4 over Zennamo ‘813. For similar reasons, we also do not sustain the Examiner’s rejections of dependent

claims 2 and 5, depending from respective ones of claims 1 and 4, over Zennamo' 813 and Shepherd.

### CONCLUSIONS

(1) Zennamo '813 fails to teach or suggest a housing for a CATV filter having an outer sleeve that has (i) a face with a centered hole for a threaded cable connector, and (ii) two engagement holes as recited in representative claim 1, and as similarly recited in independent claim 4. Therefore, Appellant has persuaded us of error in the Examiner's decision to reject claims 1 and 4 under 35 U.S.C. § 103(a) as being unpatentable over Zennamo '813.

(2) For similar reasons, and because claims 2 and 5 each ultimately depend from respective ones of claims 1 and 4 and are also rejected upon the base combination of Zennamo '813 and Shepherd, Appellant has also persuaded us of error in the Examiner's decision to reject claims 2 and 5 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Zennamo '813 and Shepherd.

### ORDER

The decision of the Examiner to reject claims 1, 2, 4, and 5 is reversed.

REVERSED

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