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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte EGBERT CLASSEN, HELMUT JERG,
HANS-PETER NANNT, and
ROLAND RIEGER

Appeal 2011-000309
Application 11/990,318
Technology Center 1700

Before CHARLES F. WARREN, TERRY J. OWENS, and
KAREN M. HASTINGS, *Administrative Patent Judges*.

HASTINGS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final decision rejecting claims 33-53. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM.

Claim 33 is illustrative of the subject matter on appeal¹:

¹ Independent claim 52 is to a substantially corresponding method for operating a dishwasher, and further recites "receiving in a soil reservoir . . . impurities removed from the first filter . . ." (claim 52, Claims App'x).

33. A dishwasher, comprising:

a water circuit;

a program controller for selecting one of a first flow direction of washing liquor in the water circuit and a second flow direction that is counter to the first flow direction;

a first filter in the water circuit; and

a flow reversing device for reversing the direction from the first flow direction to the second flow direction in response to a selection by the program controller,

wherein washing liquor flows through the first filter both in the first flow direction and in the second flow direction.

The Examiner maintains, and Appellants appeal, the following rejections:

A. Claim 53 under 35 U.S.C. §112, first and second paragraphs;

B. Claims 33, 49, and 51 under 35 U.S.C. § 103(a) as unpatentable over the combined prior art of Weiner² and Gurubatham³;

C. Claims 34, 36-40, 42-46, 50, 52, and 53 under 35 U.S.C. § 103(a) as unpatentable over the combined prior art of Weiner, Gurubatham and Geiger⁴;

D. Claims 35 and 47 under 35 U.S.C. § 103(a) as unpatentable over the combined prior art of Weiner, Gurubatham, and Fujita⁵;

² DE 100 46 349 A1, issued Mar. 28, 2002; as translated

³ US 2006/0005863 A1, published Jan. 12, 2006

⁴ US 4,346,723, patented Aug. 31, 1982

- E. Claim 41 under 35 U.S.C. § 103(a) as unpatentable over the combined prior art of Weiner, Gurubatham, Gieger and Fujita;
- F. Claim 48 under 35 U.S.C. § 103(a) as unpatentable over the combined prior art of Weiner, Gurubatham, Gieger, and Cooper⁶.

OPINION

The § 112 Rejections

For an applicant to comply with the 35 U.S.C. § 112, first paragraph, written description requirement, the applicant's Specification must "convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention." *Carnegie Mellon Univ. v. Hoffmann-La Roche Inc.*, 541 F.3d 1115, 1122 (Fed. Cir. 2008) (quoting *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64 (Fed. Cir. 1991)).

After review of the respective positions provided by Appellants and the Examiner, we find that a preponderance of the evidence supports the Examiner's position that the original disclosure does not provides support for the soil reservoir location "positioned above a normal static level of the washing liquor in the washing compartment" as recited in claim 53 (Ans. 4). As the Examiner points out, there was no explicit description of this location of the soil reservoir (Ans. 16). Notably, Fig. 1 depicts the elongated soil reservoir 14 location such that at least a portion thereof would extend below

⁵ JP 10-272315, issued Oct. 13, 1998; as translated

⁶ US 5,345,957, patented Sep. 13, 1994

the normal static level of the washing liquor, since as Appellants explain, such a normal level is below spray arm 14 (App. Br. 6).

Accordingly, we affirm the Examiner's § 112, first paragraph rejection on appeal.

On the other hand, with respect to the rejection of claim 53 under 112, second paragraph, a preponderance of the evidence supports Appellants' position that the claim language is definite. Specifically, one of ordinary skill in the art would understand that "positioned above a normal static level of the washing liquor in a washing compartment of the dishwasher" as recited in claim 53 means positioned higher than the dishwasher's normal operation static washing liquor level which, as pointed out Appellants, must be "below spray arm 4 (Fig. 1) in order for the spray arm to operate properly" (App. Br. 6; *see also*, Reply Br. 5, 6). *See Miles Labs., Inc. v. Shandon, Inc.*, 997 F.2d 870, 875 (Fed. Cir. 1993) (citation omitted) ("The test for definiteness is whether one skilled in the art would understand the bounds of the claim when read in light of the specification. If the claims read in light of the specification reasonably apprise those skilled in the art of the scope of the invention, § 112 demands no more.").

Accordingly, we reverse the Examiner's § 112, second paragraph rejection on appeal.

The § 103 Rejections

We have thoroughly reviewed each of Appellants' arguments for patentability. However, we are in agreement with the Examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art.

Accordingly, we will sustain the Examiner's rejections for essentially those reasons expressed in the Answer, including the Response to Argument section, and we add the following primarily for emphasis.

In assessing whether a claim to a combination of prior art elements would have been obvious, the question to be asked is whether the improvement of the claim is more than the predictable use of prior art elements according to their established functions. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007). (“[T]he analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.”). *Id.* at 418.

“For obviousness under § 103, all that is required is a reasonable expectation of success.” *In re O'Farrell*, 853 F.2d 894, 904 (Fed. Cir. 1988).

With respect to the Rejection (B) of claim 33, Appellants do not dispute the Examiner's findings that Weimer discloses a dishwasher with the claimed features including a flow reversing device, only not specifically disclosing a program controller (Ans. 6, 7; *see generally* App. Br.). Appellants also do not dispute the Examiner's finding that it was known to use a program controller to control a dishwasher as exemplified in Gurubatham (*id.*). Rather, Appellants' main argument is that Gurubatham does not disclose reversing a flow and thus one would not combine it with Wiemer (App. Br. 7). This argument is unavailing for reasons well stated by the Examiner (Ans. 16, 17).

Notably, Appellants have not adduced any persuasive technical reasoning or otherwise in response to the Examiner's reasonable

determination that an artisan would have, using no more than ordinary creativity, used a known program controller, as exemplified in Gurubatham, and would have programmed it to reverse the flow as required in Weimer. The use of such a program controller would have been no more than the predictable use of a known prior art element for its known function to automate the dishwasher reverse flow filter invention of Weimer (*see, e.g.*, Ans. 6, 7, 16, 17; *generally* App. Br.; Reply Br). *See KSR*, 550 U.S. at 421 (“[a] person of ordinary skill is also a person of ordinary creativity, not an automaton.”).

With respect to claim 49 as included in Rejection (B), Appellants have not convinced us of any error in the Examiner’s reasonable position that the second filter 50 will filter all the washing liquor that flows through 30 once the flow is reversed as is taught by the reference (Ans. 17, 18; App. Br. 8, Reply Br. 6). Likewise, Appellants have not shown any error in the Examiner’s reasonable position that the flow reversing pump of Weimer is capable of being operated in a “pulsed manner” as recited in claim 51 (Ans. 18, App. Br. 8).

With respect to the § 103 Rejections (C), (E), and (F) that all further rely upon Geiger to exemplify the known use of a soil reservoir in a dishwasher drain line, Appellants’ argument that the Examiner is using improper hindsight to combine the soil collector of Geiger with Weimer (App. Br. 9-13; Reply Br. 7) is unpersuasive. Notably, Appellants have provided no evidence, or any persuasive line of technical reasoning, explaining why the Examiner’s obviousness determination to use a known soil reservoir as exemplified in Geiger in the drain line of Weimer for the predictable result of removing impurities therefrom “thereby allowing the

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washing liquid to be reused in the washing cycle” (Ans. 19) is in error (*e.g.*, Ans. 18, 19; *see generally* Briefs).

Appellants do not present any further arguments specific to rejections (C) to (F).

Accordingly, the preponderance of the evidence supports all of the Examiner’s § 103 rejections on appeal.

DECISION

The Examiner’s § 112, first paragraph rejection of claim 53 is sustained.

The Examiner’s § 112, second paragraph rejection of claim 53 is reversed.

The Examiner’s § 103 rejections of all the claims on appeal are sustained.

The decision of the Examiner is affirmed.

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

AFFIRMED

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