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JACOBSON HOJ.MAN P.L.L.C. 400 SEVENTH STREET N.W. SUITE 600 WASHINGTON, DC 20004			DINH, TIEN QUANG	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte WOLFGANG BILLINGER and WALTER A. STEPHAN

Appeal 2011-000630
Application 10/053,666
Technology Center 3600

Before MICHAEL C. ASTORINO, LYNNE H. BROWNE and
SCOTT A. DANIELS, *Administrative Patent Judges*.

BROWNE, *Administrative Patent Judge*

DECISION ON APPEAL

STATEMENT OF THE CASE

Wolfgang Billinger and Walter A. Stephan, (Appellants) appeal under 35 U.S.C. § 134 from the Examiner's decision finally rejecting claims 15, 19, 21-23, 26, 27, 30 and 32-36 under 35 U.S.C. § 103(a) as being unpatentable over Hirahara (US 6,234,423 B1, iss. May 22, 2001) and Padden (US 5,224,670, iss. Jul. 6, 1993) and claim 20 under 35 U.S.C. § 103(a) as being unpatentable over Hirahara, Padden and Koppelman (US 3,102,559, iss. Sep. 3, 1963). Claims 1-14, 16-18, 29 and 31 have been canceled. Claims 24, 25 and 28 have been withdrawn from consideration. Appellants' representative presented oral argument on January 7, 2013. We have jurisdiction under 35 U.S.C. § 6(b).

We Reverse.

THE INVENTION

Claim 15, reproduced below, is illustrative of the subject matter on appeal.

15. A connecting device used in an aircraft to connect a movable part of said aircraft with a structural component of said aircraft, said connecting device comprising at least one fitting having a movable part mounting structure and a structural component connecting part so as to be configured to connect said movable part with said structural component, said structural component connecting part of said fitting including at least one arm extending outwardly in a direction away from said movable part mounting structure and having an aperture therethrough, an inner diameter of said aperture defining a bearing surface configured to receive at least one bearing, and glue securing said movable part mounting structure of

said fitting to said movable part, said fitting being made of a synthetic composite material according to a resin transfer molding method and including a carbon fabric as a reinforcement element, said composite material being a same material as that from which said movable part is made, said movable part being selected from the group consisting of a spoiler, a landing flap and a control surface.

OPINION

Claim 15 requires “said fitting including at least one arm extending outwardly in a direction away from said movable part mounting structure and having an aperture therethrough . . .” wherein “said fitting [is] made of a synthetic composite material . . .” and “said composite material being a same material as that from which said movable part is made”

In order to meet these limitations of claim 15, the Examiner finds “[t]he structural component connecting part . . . is part 13b (which is where the arm is). Although Hirahara et al doesn't have a number to shown [sic] the aperture on the arm, it is clearly shown in figure 1” Ans. 5.

Appellants argue that “the spar in Hirahara does not include the fittings or hinges, but only components 13a and 13b There is nothing at all in Hirahara to suggest that the unnamed hinges . . . are made of a composite material.” App. Br. 22.

Appellants' argument is persuasive. Hirahara describes element 13b as a web which together with flanges 13a form a spar 13 having a U-shaped cross section. Hirahara, c. 5, ll. 24-26. Hirahara does not label or describe the elements labeled “H” by Appellants in their reproduction of Figure 2. App. Br. 20. While it appears from Figures 1 and 2, that these elements

(hereinafter referred to as “fittings”) comprise arms having an aperture as required by claim 15, there is insufficient evidence to conclude that they constitute part of the spar 13 and no indication of the material from which they are made. Accordingly, the Examiner’s determination that as part of spar 13, the fittings are made from a composite material is speculative. Neither Padden nor Koppelman¹ remedy the deficiencies discussed *supra*. For these reasons, we do not sustain the Examiner’s rejection of claim 15 and claims 19-23, 26, 35 and 36 which depend therefrom.

Independent claim 27 similarly requires a fitting including “at least one arm extending outwardly in a direction away from said movable part mounting structure and having an aperture therethrough . . .” wherein “said fitting [is] made of a same composite material as said movable part.” Thus, we do not sustain the rejection of claim 27 and claim 33 which depends therefrom.

Claim 30 requires “said fitting being made of a synthetic composite material . . .” and “said fitting and said movable part have substantially a same thermal expansion coefficient . . .” As discussed above, the record does not support the Examiner’s determination that Hirahara’s fitting is made of a synthetic composite material. Moreover, Hirahara does not describe the thermal expansion coefficient of its fittings. Accordingly, we do not sustain the Examiner’s rejection of claim 30 and claims 32 and 34 which depend therefrom.

¹ Claim 20.

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DECISION

We reverse the Examiner's rejection of claims 15, 19-23, 26, 27, 30 and 32-36 under 35 U.S.C. § 103(a).

REVERSED

Klh