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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/181,130	07/28/2008	Thomas Haertl	037068.60558US	1360
23911	7590	02/26/2013	EXAMINER	
CROWELL, I. & MORING I.I.P			BURCH, MELODY M	
INTELLECTUAL PROPERTY GROUP			ART UNIT	
P.O. BOX 14300			PAPER NUMBER	
WASHINGTON, DC 20044-4300			3657	
			NOTIFICATION DATE	
			DELIVERY MODE	
			02/26/2013	
			ELECTRONIC	

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte THOMAS HAERTL and JOSEF TREIPL

Appeal 2011-005491
Application 12/181,130
Technology Center 3600

Before: JENNIFER D. BAHR, BENJAMIN D. M. WOOD, and
MITCHELL G. WEATHERLY, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Thomas Haertl and Josef Treipl (Appellants) appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1, 3, 6, and 7 under 35 U.S.C. § 103(a) as unpatentable over Baumgartner (US 6,684,985, iss. Feb. 3, 2004) and Oowaki (JP P2003-232328 A, pub. Aug. 22, 2003), and rejecting claims 17, 18, and 20 under 35 U.S.C. § 103(a) as unpatentable over Baumgartner, Oowaki, and Stoka (US 4,494,630, iss. Jan. 22, 1985). The Examiner withdrew the rejection of claims 13-16. Ans. 2. We have jurisdiction under 35 U.S.C. § 6(b). An oral hearing in accordance with 37 C.F.R. § 41.47 was held on February 13, 2013.

We REVERSE.

The Claimed Subject Matter

Claim 1, reproduced below, with emphasis added, is illustrative of the claimed subject matter.

1. A commercial vehicle disc brake for use with a brake disc, comprising:

a caliper, which, in use, straddles the brake disc, the caliper having a housing compartment for housing a brake application device of the disc brake;

a closure cover operatively configured to close-off and bear against in a sealed manner *an opening of the housing compartment that faces the brake disc*, the closure covering including at least one opening through which the brake application device applies the disc brake;

wherein elastically deformable latching tongues are arranged on a peripheral edge region of the closure cover extending from the closure cover in a direction toward the brake disc, said latching tongues corresponding with a positive locking mechanism of the caliper.

OPINION

A dispositive issue presented in this appeal is whether Baumgartner's flange opening 15 sealed off by the covering cap 16 is an opening that faces the brake disc, as required in claim 1. *See* App. Br. 10-11; Ans. 3, 6.

As illustrated in Baumgartner's figure 4, the cover cap 16 seals a flange opening 15 in the flange 11 by which the caliper 10 is connected to a compressed-air cylinder 12. Col. 3, ll. 34-36. Baumgartner's flange 11, and thus the flange opening 15 therein, face the cylinder 12 to be coupled to the caliper 10; the flange and flange opening do not face a brake disc.

The Examiner's finding that Baumgartner's flange opening 15 faces a brake disc ostensibly is predicated on an analogy to the relationship between the back door of the kitchen (KIT), located on the right side of the room layout illustrated on page 6 of the Answer, and the living room (LR) located on the left side of the room layout, i.e., the front of the house. The Examiner considers the back door to be facing the living room (LR) by way of the dining room (DR), and, by analogy, considers Baumgartner's opening 15 to be facing the brake disc by way of an intervening cavity that accommodates the rotary lever 13. Ans. 6. The Examiner's position is untenable. The back door of the kitchen (KIT) in the Examiner's layout faces the rear of the house, not the dining room (DR), and certainly not the living room (LR). Likewise, Baumgartner's flange opening 15 (disposed at the right of the cavity alluded to, as illustrated in figure 4) faces the cylinder 12, not a brake disc disposed to the left of the cavity.

Thus, the Examiner erred in finding that Baumgartner's flange opening 15 faces the brake disc. We do not sustain the rejection of claim 1 and of its dependent claims 3, 6, and 7 as unpatentable over Baumgartner and Oowaki.

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We also do not sustain the Examiner's rejection of dependent claims 17, 18, and 20 as unpatentable over Baumgartner, Oowaki, and Stoka, which is predicated in part on the flawed finding that Baumgartner's flange opening 15 faces the brake disc.

DECISION

The Examiner's decision rejecting claims 1, 3, 6, 7, 17, 18, and 20 is reversed.

REVERSED

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