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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte WALTER L. CONNOLLY and MARK R. EMBURY

Appeal 2011-009689
Application 11/853,249
Technology Center 3700

Before LORA M.GREEN, JEFFREY N. FREDMAN, and
ULRIKE W. JENKS, *Administrative Patent Judges*.

JENKS, *Administrative Patent Judge*

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 involving claims directed to an aseptic connector. The Examiner has rejected the claims as anticipated and for obviousness. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

STATEMENT OF THE CASE

The Specification is directed to attaching valves and pipes to vessels
(Spec. 1.)

[A]n aseptic connector which has a body, an axially extending opening in the body, a seat surrounding the opening for receiving the connecting flange of a fitting, and a clamp for pressing the flange into the seat. The seat has a radially extending sealing surface with an annular outer portion and a raised inner lip that is conically inclined and slants inwardly and upwardly from the annular portion toward the opening.

(Spec. 1-2.) The “important features and advantages, with the tapered lip on the sealing surface providing a definitive seal at the bore which makes aseptic operation possible even in the presence of pressure surges.”

(Spec. 5.)

Claims 1-5, 7-11, and 16-21 are on appeal, and can be found in the Claims Appendix of the Appeal Brief (Appendix A). Claims 1, 8, and 16 are independent claims. Claim 1 is representative of the claims on appeal, and reads as follows (emphasis added):

1. An aseptic connector for use with a fitting having a radially extending connecting flange and an axially extending passageway which opens through the flange, comprising a body, an axially extending opening in the body, a seat surrounding the opening for receiving the flange with the passageway in the fitting communicating with the opening in the body, the seat having a radially extending sealing surface with a substantially flat outer portion disposed in a radial plane and a *conically inclined sealing lip* extending from the outer portion to the opening, and a clamp for pressing the flange into the seat toward the sealing surface.

Claim 8 recites, in pertinent part, “a seat surrounding the opening and having a radially extending sealing surface with an annular outer portion and a raised sealing lip immediately adjacent to the opening,” and claim 16 recites a “a seat surrounding the opening having a radially extending sealing surface with a substantially flat outer portion disposed in a radial plane and a raised lip immediately adjacent to the opening.”

The Examiner has rejected the claims as follows:

- I. claims 1-3, 5, 8, 9, and 11 under 35 U.S.C. § 102(b) as being anticipated by Hoobyar;¹
- II. claims 4 and 10 under 35 U.S.C. § 103(a) as unpatentable over Hoobyar;
- III. claims 7, 16, 17, and 19-21 under 35 U.S.C. § 103(a) as unpatentable over Hoobyar in view of Newberg;² and
- IV. claim 18 under 35 U.S.C. § 103(a) as unpatentable over Hoobyar in view of Newberg and further in view of Starliper.³

I.

The Issue

The Examiner takes the position that Hoobyar disclosed an aseptic

¹ Luther T. Hoobyar et al., US 2006/0060812 A1, published Mar. 23, 2006.

² Douglas A. Newberg, US 2004/0021121A1, published Feb. 05, 2004.

³ Christopher F. Starliper, US 1,151,131, issued Aug. 24, 1915.

connector where “[t]he seat has a radially extending sealing surface (see figure 1) with a substantially flat outer portion disposed in a radial plane and a conically inclined sealing lip 19 extending from the outer portion to the opening.” (Ans. 3.) “Since Hoobyar did not have such a portion labeled, the Examiner used the most closely related feature, which is the inlet cone since the inlet cone helps form the sealing lip where it intercepts the plane formed by the face (21 in Hoobyar) that the valve presses against.” (*Id.* at 8.)

Appellants assert that “[t]he inlet cone 19 characterized by the Examiner as a ‘sealing lip’ is on the opposite side of the connector body from the seat. It is not part of the sealing surface, and it is not a sealing lip.” (App. Br. 5.) In Hoobyar, “[s]ealing between the valve and the seat is provided by a gasket 36. There is no sealing lip as in applicant's invention.” (*Id.* at 4.)

The issue is: Has the Examiner set out a prima facie case that Hoobyar disclosed a “conically inclined sealing lip,” a “raised sealing lip,” or a “raised lip” as required by the independent claims?

Finding of Fact

1. The Specification provides that:

The sealing surface has a substantially flat, annular outer portion 19 which lies in a radial plane and an axially extending inner lip portion 21 between the outer portion and the opening. In the embodiment illustrated, the surface of the lip is conically inclined at an angle Θ which, in one presently preferred embodiment, is on the order of 10 degrees relative to the plane

of the annular outer portion. When the connector is oriented with the seat facing up . . . the lip is raised relative to the outer annular portion, with the surface of the lip slanting inwardly and upwardly from the inner edge of the annular outer portion toward the opening.

(Spec. 3.)

2. The Specification provides that “the lip extends or protrudes from the surface of the annular portion.” (Spec. 3.)

3. The Specification provides that the “sealing lip 21 is pressed into the gasket to ensure a liquid-tight seal between the fitting and the connector.”

(Spec. 4.)

4. The Specification provides that “[o]n the side of the body opposite the inlet cone, a seat 16 is provided for receiving the connecting flange of a fitting such as a valve, a pipe, or a sampling system which is to be connected to the container.” (Spec. 4.)

Principle of Law

In order for a prior art reference to serve as an anticipatory reference, it must disclose every limitation of the claimed invention, either explicitly or inherently. *See In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997). To anticipate, every element and limitation of the claimed invention must be found in a single prior art reference, arranged as in the claim. *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383 (Fed. Cir. 2001).

Analysis

We are not persuaded by the Examiner's claim interpretation that the "conically inclined sealing lip" reads on an inclined inlet surface opposite of the sealing surface. "Claims are interpreted with an eye toward giving effect to all terms in a claim." *Bicon Inc. v. Straumann Co.*, 441 F.3d 945, 950 (Fed. Cir. 2006). The Examiner finds that Hoobyar's "seat has a radially extending sealing surface (see figure 1) with a substantially flat outer portion disposed in a radial plane and a conically inclined sealing lip 19 extending from the outer portion to the opening." (Ans. 3.) The Examiner finds that the conical incline (19) of Hoobyar's figure 1, reads on the "conically inclined sealing lip" as recited in claim 1. However, the conical incline (19) is part of the inlet cone and is on the opposite side of the seat that makes contact with the connector. We find that the Examiner's interpretation of the sealing lip is not reasonable in view of all the claim terms. To interpret Hoobyar's conical incline (19) to be a sealing lip would negate the limitation that the conically inclined lip is part of the seat that receives the connector (FF 4). Here, Hoobyar's "conically inclined sealing lip 19 extending from the outer portion to the opening" would not make contact with the connector as required by the "seat" limitation recited in claim 1.

Furthermore, the Specification provides that the lip or sealing lip is raised in relation to the seat that receives the connector (FFs 1-4), and the lip is in contact with and pressed into the gasket (FF 3). We find that Hoobyar does not have raised lip that is in contact with a gasket. Contrary to the

Examiner's assertion, we find that Hoobyar does not have a conically inclined surface that is on the same plane as the seat that receives the connector (FFs 1, 4). "[A]bsence from the reference of any claimed element negates anticipation." *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571 (Fed. Cir. 1986).

The preponderance of evidence on this record fails to support Examiner's finding that Hoobyar discloses Appellants' claimed invention. The rejection of claims 1-3, 5, 8, 9, and 11 under 35 U.S.C. § 102(b) as being anticipated by Hoobyar is reversed.

II.-IV.

Issue

The Examiner takes the position that "[w]hile Hoobyar substantially discloses the apparatus as claimed, it does not disclose the angle of inclination of the lip" (Ans. 4), "does not disclose a collar that bears against the coupling flange and a clamp to draw the collar down upon the couple flange" (*Id.* at 5), and "it does not disclose the collar as addressed in claim 7, so it cannot disclose a second gasket between the clamping flanges of Hoobyar and Newburg" (*Id.* at 6).

The issues are: Has the Examiner established by a preponderance of the evidence of record that Hoobyar, Hoobyar in view of Newberg, or Hoobyar in view of Newberg and further in view of Starliper set out a prima facie case of obviousness?

Principles of Law

“In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness. Only if that burden is met, does the burden of coming forward with evidence or argument shift to the applicant.” *In re Rijckaert*, 9 F.3d 1531, 1532 (Fed. Cir. 1993).

Analysis

Appellants assert that the “Examiner is referring to the side wall or inclination of inlet cone 19 [in Hoobyar] which is not a sealing lip and has no relevance whatsoever to the inclination of a sealing lip.” (App. Br. 6.) After considering the evidence and arguments of record, we agree with Appellants. As discussed above (I), Hoobyar does not disclose a conical sealing lip. The independent claims require a “seat having a radially extending sealing surface with a substantially flat outer portion disposed in a radial plane and a conically inclined sealing lip extending from the outer portion to the opening,” “a seat surrounding the opening and having a radially extending sealing surface with an annular outer portion and a raised sealing lip immediately adjacent to the opening,” or “a seat surrounding the opening having a radially extending sealing surface with a substantially flat outer portion disposed in a radial plane and a raised lip immediately adjacent to the opening.” The rejections with respect to Hoobyar, or any combination

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thereof, are reversed because the combination of references does not account for the limitations of the “conically inclined sealing lip,” “raised sealing lip,” or “raised lip” as required in the independent claims. Because the combination of references does not account for all the claim limitations the Examiner has not met their burden of setting out a prima facie case. We reverse the rejection of claims 4, 7, 10, 16-18 and 19-21 under 35 U.S.C. § 103(a).

SUMMARY

The rejection under 35 U.S.C. § 102(b) of claims 1-3, 5, 8, 9, and 11 is reversed.

The rejection under 35 U.S.C. § 103(a) of claims 4 and 10 as unpatentable over Hoobyar is reversed.

The rejection under 35 U.S.C. § 103(a) of claims 7, 16, 17, and 19-21 as unpatentable over Hoobyar in view of Newberg is reversed.

The rejection under 35 U.S.C. § 103(a) of claim 18 as unpatentable over Hoobyar in view of Newberg and further in view of Starliper is reversed.

REVERSED

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