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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HANS MAILANDER

Appeal 2011-010977
Application 11/667,718
Technology Center 1700

Before TERRY J. OWENS, RICHARD TORCZON, and GEORGE C. BEST, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 13-24, which are all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

The Invention

The Appellant claims a washing items support assembly for a dishwasher and claims a dishwasher comprising the washing items support assembly. Claim 13 is illustrative:

> 13. A washing items support assembly for a dishwasher, the washing items support assembly comprising:
>
> a first container region configured to receive pieces of cutlery disposed thereon in a generally horizontal disposition; and
>
> a second container region for washing items having at least one washing items holder, the at least one washing items holder having a support surface for supporting a washing item at an inclination to the horizontal, the first container region and the second container region lying essentially in a horizontal plane.

The References

Matteson	US 5,345,959	Sep. 13, 1994
Schroeder	US 6,109,455	Aug. 29, 2000
Miilu	US 2004/0108283 A1	Jun. 10, 2004
Gobbi	EP 1 127 532 A2	Aug. 29, 2001

The Rejections

The claims stand rejected as follows: claims 13, 15, 17 and 21-24 under 35 U.S.C. § 102(b) over Gobbi, claims 13-16, 18 and 19 under 35 U.S.C. § 102(b) over Miilu, claim 21 under 35 U.S.C. § 103 over Miilu in view of Matteson, and claims 13 and 20 under 35 U.S.C. § 102(b) over Schroder.

OPINION

We affirm the rejections except for the rejection of claims 22-24 over Gobbi which we reverse.

Rejection of claims 13, 15, 17, and 21-24 under 35 U.S.C. § 102(b) over Gobbi

Claims 13, 15, 17, and 21

Among claims 13, 15, 17, and 21the Appellant argues only independent claim 13 and dependent claim 17 (Br. 6-8). We therefore limit our discussion to those claims. Claims 15 and 21 stand or fall with claim 13 from which they depend. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2007).

Claim 13

The Appellant argues that "there is neither any mention, nor depiction of a first container region configured to receive pieces of cutlery anywhere in Gobbi disposed thereon in a generally horizontal configuration" (Br. 6) and that "the present specification supports an interpretation where the phrase 'configured to' denotes an actual state of configuration that fundamentally ties receiving pieces of cutlery to the physical characteristics of the first container region" (Reply Br. 3).

The Appellant does not clarify what is meant by "an actual state of configuration that fundamentally ties receiving pieces of cutlery to the physical characteristics of the first container region" or point to any disclosure in the Appellant's Specification which supports that interpretation of the claim term "configured to". The Appellant appears to be arguing that "configured to" requires the Appellant's exemplified cutlery insert (20) having first cutlery containers (21) and cutlery holders (22) (Spec. 6:8-9; Figs. 1, 2). The Specification, however, does not limit "configured to" to

that exemplified embodiment. Hence, the Appellant is improperly reading a limitation from the Specification into the claims. *See In re Prater*, 415 F.2d 1393, 1405 (CCPA 1969).

"'[D]uring examination proceedings, claims are given their broadest reasonable interpretation consistent with the specification.'" *In re Translogic Tech. Inc.*, 504 F.3d 1249, 1256 (Fed. Cir. 2007) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)). The Appellant's Specification does not limit the claim term "configured to" to any meaning other than its ordinary meaning. The ordinary meaning of "configure" is "to give a configuration to",[1] where "configuration" means "**1 a** : relative arrangement of parts **b** (1) : something (as a figure, contour, pattern, or apparatus) produced by such arrangement".[2] The wires on the left side of the base of Gobbi's upper basket (Fig. 1) appear to be arranged in a pattern which is capable of receiving pieces of cutlery disposed thereon in a generally horizontal disposition as required by the Appellant's claim 1.

Claim 17

Claim 17, which depends from claim 13, requires that "the second container region has a greater height than the first container region and a loading side of the washing items support assembly on which a washing item is supported lies in one plane."

The Appellant argues that Gobbi does not disclose a loading side of a washing items support assembly (Br. 8).

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[1] WEBSTER'S NEW COLLEGIATE DICTIONARY 237 (G. & C. Merriam 1973).
[2] *Supra*, n.1.

The side of Gobbi's upper basket (Fig. 1) which corresponds to the Appellant's loading side can be any side from which washing items can be loaded into the basket, i.e., the front, right or left side.

Claims 22-24

Claim 22 requires "at least one removable crockery basket".

The Examiner argues that Gobbi's "basket could be removable merely by disassembling a portion of the machine, removing the basket, and reassembling the machine" (Ans. 8).

The Appellant argues that "[d]isassembling a portion of the machine does not equate to the claimed feature of a 'removable crockery basket'" (Reply Br. 4).

"'[D]uring examination proceedings, claims are given their broadest reasonable interpretation consistent with the specification.'" *Translogic Tech. Inc.*, 504 F.3d at 1256 (quoting *Hyatt*, 211 F.3d at 1372).

The Appellant's Specification discloses that the basket is rendered removable by disengaging fastening means (52), the exemplified fastening means (52) being rotatably mounted wheels (Spec. 7:22-29; Fig.1). The Examiner has not explained how the broadest reasonable interpretation of the Appellant's claim term "removable" in view of that disclosure includes disassembling a portion of the machine.

Hence, we reverse the rejection of claim 22 and its dependent claims 23 and 24.

Rejection of claims 13-16, 18, and 19
under 35 U.S.C. § 102(b) over Miilu

The Appellant argues only claim 13, which is the sole independent claim among claims 13-16, 18, and 19, and claim 14 (Br. 8-10). Hence, we

limit our discussion to claims 13 and 14. Claims 15, 16, 18, and 19 stand or fall with claim 13 from which they depend. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2007).

Claim 13

The Appellant argues that Miilu does not disclose a first container region configured to receive pieces of cutlery disposed thereon in a generally horizontal disposition (Br. 8-9).

That region is the region to the left of the center of Miilu's upper basket (Fig. 1).

Claim 14

Claim 14, which depends from claim 13, requires that "the first container region is provided with cutlery containers in the form of cutlery holders and cutlery supports for receiving individual pieces of cutlery."

The Appellant argues that Miilu discloses only a single tine (36) and does not disclose how a single tine can receive individual pieces of cutlery (Br. 9-10).

Miilu uses a pair of tines (36) onto which is mounted a rack clip (20) having a pair of resilient tabs (24) adapted to retain or restrain an article to be washed in the rack (16) (¶¶ 0008, 0026-28). Miilu's illustration of the rack clip (20) indicates that it is capable of receiving individual pieces of cutlery (Figs. 1, 3).

Rejection of claim 21 under 35 U.S.C. § 103
over Miilu in view of Matteson

Claim 21, which depends from claim 13, requires that "the first container region includes first cutlery containers and the first cutlery

containers and the at least one washing items holder are designed integrally and are formed from a plastic in a coarse-meshed manner."

The Appellant argues that "Matteson does not disclose a first container region including first cutlery containers and the first cutlery containers and the at least one washing items holder are designed integrally" (Br. 13).

For those claim requirements the Examiner relies upon Miilu (Ans. 10). Matteson is relied upon by the Examiner only for a disclosure of a molded plastic dishwasher rack (col. 1, ll. 13-17) (Ans. 10).

Rejection of claims 13 and 20 under
35 U.S.C. § 102(b) over Schroder

The Appellant argues that Schroeder does not disclose regions of a washing items support assembly but, rather, discloses removable inserts for temporary installation in a wire crockery basket (Br. 11-12).

That argument does not distinguish the Appellant's washing items support assembly over that of Schroeder because the Appellant's washing items support assembly can be releasable inserts (Spec. 5:4-11; 7:3-6).

For the above reasons we are persuaded of reversible error only in the rejection of claims 22-24 over Gobbi.

DECISION/ORDER

The rejection of claims 13, 15, 17, and 21-24 under 35 U.S.C. § 102(b) over Gobbi is affirmed as to claims 13, 15, 17, and 21 and reversed as to claims 22-24. The rejections of claims 13-16, 18, and 19 under 35 U.S.C. § 102(b) over Miilu, claim 21 under 35 U.S.C. § 103 over Miilu in view of Matteson, and claims 13 and 20 under 35 U.S.C. § 102(b) over Schroder are affirmed.

It is ordered that the Examiner's decision is affirmed-in-part.

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

AFFIRMED-IN-PART

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