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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL
AND APPEAL BOARD

Ex parte ERIC STILES, THOMAS HIMMER,
JAMES E. HERBISON, and ANJA TECHEL

Appeal 2011-011602
Application 12/008,354
Technology Center 1700

Before CHARLES F. WARREN, LINDA M. GAUDETTE, and
MICHAEL P. COLAIANNI, *Administrative Patent Judges*.

COLAIANNI, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

This is in response to a Request, filed January 28, 2013, for rehearing of our Decision, dated November 27, 2012.

Appellants argue that the Board misapprehended the claims and the applied prior art (Req. 1). Specifically, Appellants argue that the Board's reliance on the Examiner's finding that Nowotny's coating is disclosed by Appellants as being a preferred coating head structure to find that the prior art teaches the recited apparatus structure improperly reads preferred embodiments into the claims (*id.* at 2). Appellants argue that Nowotny's and Lin's coating heads are coaxial and do not satisfy the claim requirement that the separate powder nozzle is at an angle to the laser beam. *Id.*

Contrary to Appellants' arguments, we adhere to our reasoning on page 5 of the Decision. Our reliance on Appellants' disclosure that Nowotny's coating head arrangement is a preferred coating head structure for use with the claimed process is not an impermissible reading of limitations into the claims. Rather, we are interpreting the claims using the broadest reasonable interpretation in light of the Specification. In so doing, we find that "an apparatus which delivers a laser beam on one axis with a separate nozzle which delivers a composition for producing the coating on the substrate at a second angle to the one axis of the laser beam" recited in the claims includes a structure such as Nowotny's or Lin's coating head as disclosed by Appellants. Nowotny's or Lin's coating head has powder providing areas that are separate from the laser providing part of the nozzle. The powder is ejected at an angle that includes a vector perpendicular and parallel to the laser as argued by Appellants (App. Br. 14). Though Appellants conclude that the net contribution of the vectors would have been zero, we are not persuaded as Appellants have no evidence of that other than

mere attorney argument and Appellants disclose that Nowotny's coating head is a suitable structure for practicing the claimed process.

Indeed, Nowotny's Figure 1 shows that powder channel 14 ejects powder at an angle to the laser beam and discloses that the channels 14 taper conically to direct the powder in a small diameter, preferably at its focal point (*see* the lines extending from the powder nozzle 14 hole and the laser beam 7 hole directed toward the workpiece in Figure 1; Nowotny col. 6, ll. 50-57). In other words, Nowotny teaches that the powder emerges from the coating head at an angle relative to the axis of the laser. We see no reason to limit the claim language solely to the Figure 7 coating apparatus embodiment as argued by Appellants.

For the above reasons, we adhere to our decision. Appellants' request for rehearing is granted to the extent that we have considered the arguments, but the request is denied to the extent that the decision will not be modified.

DENIED

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