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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ALAN ANTHUAN TRAN and BAO TRAN

Appeal 2012-000571
Application 11/765,991
Technology Center 1700

Before RICHARD TORCZON, LINDA M. GAUDETTE, and
MARK NAGUMO, *Administrative Patent Judges*.

GAUDETTE, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's decision¹ finally rejecting claims 1-10, 26, and 28-35.² We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

The invention relates to an energy device which includes a solar concentrator, a solar cell positioned to receive concentrated solar energy from the concentrator, and a cooling pipe for removing heat from the solar cell. (Spec. 3, 1st

¹ Final Office Action mailed Dec. 21, 2010

² Appeal Brief filed May 10, 2011 ("App. Br.")

para.) The energy device can be used to provide solar heated water or purified water for human consumption. (*Id.* at 4.) Claim 1 is representative of the invention and is reproduced below from the Claims Appendix to the Appeal Brief (emphasis added):

1. An energy device, comprising:
 - a. first and second solar concentrators that concentrate sun light on predetermined spots, wherein portions of the first and second solar concentrators spatially overlap each other and the first and second solar concentrators' centers are not aligned;
 - b. first and second solar cells positioned on the predetermined spots to receive concentrated solar energy from the solar concentrators and wherein the solar cells are non-overlappingly positioned along a sun facing direction, wherein the first solar cell positioned at a first focus point receives solar energy in a first spectrum, wherein *the second solar cell positioned at a second focus point receives solar energy in a second spectrum different from the first spectrum*; and
 - c. a water heater pipe thermally coupled to the solar cells to remove heat from the solar cells.

The Examiner maintains the following grounds of rejection under 35 U.S.C. §103(a):

1. claims 1-3, 7, 21, and 26 are rejected as unpatentable over Gattone (US 3,018,313) in view of Fujisaki (US 2005/0016581 A1) (Ans. ³ 5-7);
2. claim 4 is rejected as unpatentable over Gattone and Fujisaki, further in view of Fornage (US 2007/0221267 A1) (Ans. 7-8);
3. claim 5 is rejected as unpatentable over Gattone and Fujisaki, further in view of Walukiewicz (US 2004/0118451 A1) (Ans. 8-9);
4. claims 6 and 8-10 are rejected as unpatentable over Gattone and Fujisaki, further in view of Matan (US 2005/0057214 A1) (Ans. 9-11);

³ Examiner's Answer mailed Jul. 7, 2011.

5. claims 28-30 are rejected as unpatentable over Gattone and Fujisaki, further in view of Gross (US 2005/0034752 A1) (Ans. 11-13);

6. claims 31, 33, and 35 are rejected as unpatentable over Gattone and Fujisaki, further in view of Phillips (US 5,926,319) (Ans. 13-14); and

7. claims 32 and 34 are rejected as unpatentable over Gattone, Fujisaki and Phillips, further in view of Nakajima (US 2007/0034245 A1) (Ans. 14-16).

Appellants raise arguments directed to limitations common to the independent claims, i.e., claims 1 and 31. (*Compare* App. Br. 6-10 *with id.* at 15-19.) We decide the following issue in favor of Appellants and, therefore, reverse the Examiner's decision to reject claims 1-10, 26, and 28-35: did the Examiner reversibly err in finding Gattone discloses or suggests a first solar cell positioned at a first focus point for receiving solar energy in a first spectrum, and a second solar cell positioned at a second focus point for receiving solar energy in a second spectrum different from the first spectrum, as recited in claims 1 and 31?

The Examiner finds Gattone discloses first and second solar cells which are "structurally indistinguishable from Appellant's claimed first and second solar cells" (Ans. 17-18) and, therefore, further finds the first and second solar cells of Gattone must be "capable of performing the claimed function (receiving solar energy in different spectrums)." (*Id.* at 18.)

The Examiner's findings, even if correct, are insufficient to establish that Gattone's first and second solar cells are *positioned* such that the cells receive solar energy in different spectrums as required by claims 1 and 31.

Appellants direct us to Figs. 4, 6, 7, and 9, and Specification page 8, second full paragraph through page 10, line 2 (App. Br. 3-4, 8-9, and 16-17) which describes the different positioning of first and second solar cells 20, 21, whereby the cells receive solar energy in respective, distinct first and second spectrums.

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The Examiner has not explained how Gattone's solar cells are positioned in a manner whereby a first solar cell 10 receives solar energy in a first spectrum, and a second solar cell (any of the other solar cells 10) receives solar energy in a second spectrum different from the first spectrum as required by appealed claims 1 and 31. Nor has the Examiner identified an arrangement of Gattone's solar cells which corresponds to the arrangements shown and described in Appellants' Application. Thus, the Examiner has not established a prima facie case that limitation (b) is described or suggested by Gattone. The Examiner does not rely on the other references as evidence of the obviousness of limitation (b).

Because the Examiner's findings are insufficient to support a prima facie case of obviousness, the Examiner's decision to reject claims 1-10, 26, and 28-35 is:

REVERSED

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