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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
95/001,480	11/03/2010	7484382	19688-0050RX1	3579
26171	7590	02/25/2013	EXAMINER	
FISH & RICHARDSON P.C. (DC)			ENGLE, PATRICIA LYNN	
P.O. BOX 1022			ART UNIT	PAPER NUMBER
MINNEAPOLIS, MN 55440-1022			3993	
			MAIL DATE	DELIVERY MODE
			02/25/2013	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WHIRLPOOL CORPORATION
Requester, Respondent

v.

LG ELECTRONICS, INC.
Patent Owner, Appellant

Appeal 2012-012469
Reexamination Control No. 95/001,480
Patent 7,484,382 B2
Technology Center 3900

Before JOSIAH C. COCKS, WILLIAM V. SAINDON, and
SCOTT E. KAMHOLZ, *Administrative Patent Judges*.

KAMHOLZ, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This proceeding arose from a request by Respondent Whirlpool Corporation for an *inter partes* reexamination of U. S. Patent 7,484,382 B2 (hereinafter, the '382 patent), entitled "Refrigerator," and issued to LG Electronics, Inc. (Feb. 3, 2009).

Appellant, patent owner LG Electronics, Inc., appeals under 35 U.S.C. §§ 134(b) and 315(a) (2002) from a decision of the primary examiner finally rejecting claims 1-17, 19-47, 49, 51-87, 89, and 91-102. We have jurisdiction under 35 U.S.C. §§ 134(b) and 315 (2002). In addition to the Appeal Brief ("App. Br."), Appellant relies on a Rebuttal Brief ("Reb. Br.") and two declarations of Norman L. Beck ("First Beck Declaration" and "Second Beck Declaration"), in support of patentability. The Respondent relies on its Respondent Brief ("Resp. Br.") and two declarations of Albert V. Karvelis ("First Karvelis Declaration" and "Second Karvelis Declaration") in support of the Examiner's rejections.

We AFFIRM-IN-PART.

THE CLAIMED SUBJECT MATTER

The '382 patent describes refrigerators have ice-making structures (col. 1, ll. 5-10). Claim 1 on appeal reads as follows:

1. A refrigerator comprising:
 - a refrigerator body;
 - a refrigerating compartment formed at a relatively upper portion of the refrigerator body;
 - a freezing compartment formed at a relatively lower portion of the refrigerator body;
 - an ice compartment located within the refrigerating compartment;

an ice maker located within the ice compartment;

an ice transporting mechanism located within the ice compartment and configured to promote movement of ice stored within the ice compartment through an outlet defined in the ice compartment;

a pair of doors configured to open and close the refrigerating compartment, the pair of doors including a first door corresponding to the ice compartment and configured to cover the ice compartment when the first door is in a closed position;

a dispenser positioned on the first door corresponding to the ice compartment;

an ice discharge duct that, when the first door corresponding to the ice compartment is in the closed position, extends at least partially between the ice compartment and the dispenser and defines a passage to discharge ice transported from the ice compartment, the ice discharge duct including:

a first portion being defined as a cavity that penetrates the first door, and

a second portion that is configured to be separated from the first portion when the first door is in an opened position and being configured to interface with the first portion when the first door is in a closed position;

wherein the ice discharge duct is selectively opened and closed such that ice can be transferred to the dispenser positioned on the first door.

App. Br. 39.

REFERENCES

The Examiner relies on the following prior art references:

Money	US 2,412,904	Dec. 17, 1946
Toloczko	US 3,934,691	Jan. 27, 1976

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Haag	US 4,226,489	Oct. 7, 1980
Buchser	US 5,077,985	Jan. 7, 1992
Fisher	US 5,272,888	Dec. 28, 1993
Cur	US 5,375,432	Dec. 27, 1994
Chiapetta	US 6,447,083	Sep. 10, 2002
Najewicz	US 6,735,959 B1	May 18, 2004
Doshiyuki	KR 1997-0001293	Feb. 5, 1997
Lee	KR 1999-0043740	Jun. 15, 1999
Yasuzo	JP 2000-9372A	Jan. 14, 2000
Shin	KR 2001-0029590	Apr. 6, 2001

OTHER EVIDENCE

First Declaration of Norman L. Beck (submitted by Appellant).

Second Declaration of Norman L. Beck (submitted by Appellant).

First Declaration of Albert V. Karvelis (submitted by Respondent).

Second Declaration of Albert V. Karvelis (submitted by Respondent).¹

REJECTIONS

Appellant seeks our review of the following rejections set forth by the Examiner in the Right of Appeal Notice (“RAN”), which was incorporated by reference into the Examiner’s Answer:

Rejections under 35 U.S.C. § 103(a) for obviousness:

1. Claims 1-17, 19-35, 38-47, 49, 51, 52, 56-75, 78-87, 89, 91, 92, and 96-102 over Yazuso and Fisher. RAN 8.²

¹ As the Second Karvelis Declaration includes the entire content of the First Karvelis Declaration, we will make no further reference to the First Karvelis Declaration.

² The Examiner’s statement of rejection lists claims 48, 50, 88, and 90, but these claims are canceled, *see* App. Br. 3, and not on appeal.

2. Claims 36-38 and 76-78 over Yazuso, Fisher and Toloczko.
RAN 19.
3. Claims 36-38 and 76-78 over Yasuzo, Fisher, and Lee. RAN 20.
4. Claims 53, 54, 93, and 94 over Yasuzo, Fisher, and Doshiyuki.
RAN 21.
5. Claims 55 and 95 over Yasuzo, Fisher, Doshiyuki, and Money or
Chiapetta. RAN 22.
6. Claims 1-17 and 19-22 over Yasuzo and Buchser. RAN 23.
7. Claims 1-17 and 19-22 over Yasuzo and Shin. RAN 30.
8. Claims 1-17, 19-35, 38-47, 49, 51, 52, 56-75, 78-87, 89, 91, 92,
and 96-102 over Cur, Fisher, and Haag. RAN 37.³
9. Claims 56-61 and 96-101 over Cur, Fisher, Haag, and Yasuzo.
RAN 50.
10. Claims 36-38 and 76-78 over Cur, Fisher, Haag, and Toloczko.
RAN 51.
11. Claims 36-38 and 76-78 over Cur, Fisher, Haag, and Lee.
RAN 52.
12. Claims 1-17 and 19-22 over Cur, Buchser, and Haag. RAN 53.
13. Claims 1-17 and 19-22 over Cur, Shin, and Haag. RAN 62.

Other Rejections:

14. Claims 25, 27, 28, 30, 35-37, 40, 42-45, 51, 52, 57, 58, 60-62, 65,
67, 68, 76, 77, 82-85, 91, 97, 98, and 100-102 under 35 U.S.C.
§ 112, first paragraph (written description). RAN 3.⁴

³ Although the Examiner's statement of rejection (RAN 37) refers to only claims 1-17 and 19-22, the detailed explanation addresses the remaining listed claims; *see* RAN 45-50.

15. Claims 36, 37, 46, 47, 49, 76, 77, 86, 87, and 89 under 35 U.S.C. § 112, second paragraph (indefiniteness). RAN 7.⁵

ANALYSIS

1. *Obviousness rejections relying on Fisher*

a. *Yasuzo and Fisher*

We focus our analysis on claim 1. The Examiner found that Yasuzo discloses all elements of claim 1 in the claimed arrangement except for “the details of the ice discharge duct.” RAN 8-9. The Examiner found that Fisher discloses an ice discharge duct as recited in claim 1, stating:

Fisher discloses an ice transporting mechanism which includes an ice discharge duct (72, 112,128) that, when the first door (24) corresponding to the ice compartment is in the closed position, extends at least partially between the ice compartment (30) and the dispenser (24) and defines a passage to discharge ice transported from the ice compartment, the ice discharge duct including: a first portion (128) being defined as a cavity that penetrates the first door, and a second portion (72,112) that is configured to be separated from the first portion when the first door is in an opened position and being configured to interface (Fig. 3) with the first portion when the first door is in a closed position; wherein the ice discharge duct is selectively opened and closed (via 114) such that ice can be transferred to the dispenser positioned on the first door.

Id. at 9. The Examiner concluded that it would have been obvious to modify Yasuzo to include Fisher’s ice discharge duct because “there is only a finite

⁴ The Examiner’s statement of rejection lists claims 48, 50, 88, and 90, but these claims are canceled, *see* App. Br. 3, and not on appeal.

⁵ The Examiner’s statement of rejection lists claims 48, 50, 88, and 90, but these claims are canceled, *see* App. Br. 3, and not on appeal.

number of identified, predictable solutions” for transferring ice from an ice maker to a dispenser on the door. *Id.* at 9-10.

Appellant argues that Fisher’s platform chute 72 is a separate structure from separator chute 112 and that the two chutes “are not connected in any manner and, in fact, do not touch.” App. Br. 12. As such, Appellant argues that flapper 114 is closing a separate chute 72, not the two-part chute 112/128, such that there is no two-part chute that meets all the relevant limitations. *Id.* at 11-12.

Respondent argues that “[t]wo (or more) components in combination can satisfy one element of a claimed invention” and that flapper 114 is “the only obstruction between the ice container and [the] ice duct,” such that opening flapper 114 opens duct 112 to allow ice to be transferred from the ice container to the dispenser. Resp. Br. 3. The Second Karvelis Declaration echoes this argument. Second Karvelis Decl. para. 23.

The Examiner, in maintaining the rejection, takes the position that claim 1 neither limits the ice discharge duct “to consist of only one duct” nor requires that the selective opening and closing occur “at any particular location of the [ice] discharge duct.” RAN 77-78.

We agree with Appellant that chute 72 does not form part of Fisher’s two-part ice discharge duct 128/112. They are physically distinct structures. The Examiner’s position that the claim does not limit the ice discharge duct “to consist of only one duct” is inapposite; the claim requires a single ice discharge duct that itself meets all the limitations ascribed to it. No single structure in Fisher meets all of the recited limitations; duct 128/112 meets some limitations, and chute 72 (as opened and closed by flapper 114) meets others, but the combination of these structures does not amount to a single

duct having first and second portions as recited and that is itself also selectively opened and closed such that ice can be transferred. While flapper 114 selectively controls the release of ice into chute 112, the flapper does this not by opening and closing chute 112, but rather by opening and closing chute 72. While we agree in principle with Respondent that two components may be combined to satisfy one element in a claim, Respondent has offered no justification for such a combination in the present case. It instead appears to us that the Examiner and Respondent have simply mapped Fisher's structures onto the claim with hindsight.

For these reasons, we reverse all rejections (nos. 1-5 and 8-11 as listed *supra*) in which Fisher is relied upon for the disclosure of an ice discharge duct having the first portion and second portion recited in the claims and that is selectively opened and closed such that ice can be transferred to the dispenser positioned on the first door.

2. *Obviousness rejections relying on Buchser*

a. *Yasuzo and Buchser (rejection no. 6)*

Appellant argues claims 1-17 and 19-22 as a group. App. Br. 15-17; Reb. Br. 10-12. We select claim 1 as representative.

The Examiner found that Yasuzo discloses all elements of claim 1 in the claimed arrangement except for "the details of the ice discharge duct." RAN 23. The Examiner found that Fisher discloses an ice discharge duct as recited in claim 1, stating:

Buchser et al. discloses an ice transporting mechanism which includes an ice discharge duct (36,64) that, when the first door corresponding to the ice compartment is in the closed position, extends at least partially between the ice compartment (30) and the dispenser (24) and defines a passage to discharge

ice transported from the ice compartment (30), the ice discharge duct (36,64) including: a first portion (64) being defined as a cavity that penetrates the first door, and a second portion (36) that is configured to be separated from the first portion when the first door is in an opened position and being configured to interface (Fig. 3) with the first portion when the first door is in a closed position; wherein the ice discharge duct (36,64) is selectively opened and closed (58) such that ice can be transferred to the dispenser positioned on the first door.

Id. at 23-24. The Examiner concluded that it would have been obvious to modify Yasuzo to include Buchser's ice discharge duct because "there is only a finite number of identified, predictable solutions" for transferring ice from an ice maker to a dispenser on the door. *Id.* at 24.

Appellant argues that because there is merely "open space" and no structure beyond Buchser's closure 58 that can be considered a dispenser, the selective opening and closing of closure 58 does not transfer ice "to the dispenser" as required by claim 1 but rather transfers ice "out of the dispenser." App. Br. 15-17 (emphasis in original). The First Beck Declaration echoes this argument. First Beck Decl. para. 17.

Respondent argues that the broadest reasonable interpretation of "dispenser" is "the area of the refrigerator where ice is dispensed." Resp. Br. 5. Respondent supports this argument by pointing out that "[f]igures 2-7 of the '382 patent show dispenser 29 as the section of the refrigerator door where ice is dispensed" and that the '382 patent "broadly defines the dispenser as allowing 'a user to take water and ice without opening and closing door 7.'" *Id.* at 5-6 (quoting the '382 patent, col. 6, ll. 41-42). Respondent argues that Appellant's "the opening of [Buchser's] closure 58 transfers ice at least to both the ice dispensing apparatus 24 and

the dispenser housing 26.” *Id.* at 6. The Second Karvelis Declaration echoes these arguments. Second Karvelis Decl. paras. 25 and 26.

Appellant argues in response that because claim 1 requires that the dispenser be “positioned on the first door” the dispenser cannot be merely the “area of the refrigerator where ice is dispensed” but rather “a structure for dispensing that is positioned on the first door.” Reb. Br. 2-3, 11. Consequently, Appellant argues, Buchser does not meet the “ice discharge duct” limitation because Buchser’s ice discharge duct is not selectively opened and closed to transfer ice to “a structure for dispensing that is positioned on the first door.” *Id.* at 11. Appellant further argues that Buchser does not meet the “ice discharge duct” limitation even when adopting Respondent’s proposed construction of “dispenser” as being an “area of the refrigerator where ice is dispensed” because “when ice reaches the Buchser closure 58, the ice has already reached the dispenser on the door or at least has reached Respondent’s broader definition of an area on the door of the refrigerator where ice is dispensed.” *Id.*

The Examiner, in maintaining the rejection, takes the position that Buchser’s Fig. 3 shows a dispenser 26/24 that is “equivalent” to dispenser 29 as shown and described in the ’382 patent. RAN 78.

We agree with Respondent that the broadest reasonable interpretation of “dispenser” in the context of the ’382 patent Specification and drawings is “the area of the refrigerator where ice is dispensed.” Reference number 29 is consistently used in the Specification to refer to the dispenser, and that reference number is consistently used in figs. 2-7 to identify the area positioned on the first door where ice is dispensed. The ’382 patent does not state that dispenser 29 designates a particular defined structure; rather, the

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patent at col. 6, lines 41-47 states that the dispenser 29 “is provided with a structure for taking the water and ice from the dispenser” and gives “an operating lever or button” as examples of such structure. This disclosure is consistent with the dispenser being an area in which the operating lever or button is positioned to allow a user to receive ice. As such, we agree with the Examiner that Buchser’s housing 26 and dispensing apparatus 24, which incorporate an area for a user to receive ice, meet the claimed dispenser. We further agree that movement of Buchser’s closure 58 selectively opens and closes ice discharge duct 36/64 such that ice can be transferred to dispenser 26/24.

We are not persuaded by Appellant’s argument to the contrary; the requirement that the dispenser be “positioned on” the first door does not exclude the possibility that the dispenser encompasses a cavity. Indeed, Appellant’s consistent use of reference number 29 in the figures to identify a cavity positioned on the first door belies this argument. We also disagree with Appellant’s contention that ice reaching closure 58 has already reached the dispenser; closure 58 must first open to admit ice to “the area of the refrigerator where ice is dispensed”; until this happens, the ice cannot be dispensed to a user.

For these reasons, we are not persuaded that the Examiner erred in finding that Buchser discloses ice discharge duct as claimed. Because this is the only alleged error in the rejection that Appellant argues, we affirm the rejection of claims 1-17 and 19-22 for obviousness over Yasuzo and Bucher.

b. Cur, Buchser, and Haag (rejection no. 12)

Appellant presents no arguments in response to this rejection other than those directed to Buchser discussed above in section 2(a). App. Br. 17;

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Reb. Br. 12 (“patentee requests reversal of all of the rejections... that involve Buchser.”). We consequently affirm the rejection of claims 1-17 and 19-22 for obviousness over Cur, Buchser, and Haag for reasons similar to those given above in section 2(a).

3. *Obviousness rejections relying on Shin*

a. *Yasuzo and Shin (rejection no. 7)*

Appellant argues claims 1-17 and 19-22 as a group. App. Br. 17-20; Reb. Br. 12-13. We select claim 1 as representative.

This rejection is cumulative to Buchser, and Appellant’s arguments against it are essentially the same (except as to particulars of Shin’s terms and reference numbers) as given against Buchser. *Compare* App. Br. 17-20 *with* App. Br. 15-17, *and* Reb. Br. 12-13 *with* Reb. Br. 10-12. We conclude that Shin’s disclosure mirrors that of Buchser’s insofar as a “dispenser” is concerned. Accordingly, we find Appellant’s arguments unpersuasive for reasons analogous to those given above for the Buchser rejections. We affirm the rejection of claims 1-17 and 19-22 for obviousness over Yasuzo and Shin.

b. *Cur, Shin, and Haag (rejection no. 12)*

Appellant presents no arguments in response to this rejection other than those directed to Shin discussed above in section 3(a). App. Br. 20; Reb. Br. 13 (“patentee requests reversal of all of the rejections... that involve Shin.”). We consequently affirm the rejection of claims 1-17 and 19-22 for obviousness over Cur, Shin, and Haag for reasons similar to those given above in section 3(a).

4. *Written description rejection*

a. *Claims 25-34, 38, 45, and 65-74*

With respect to claims 25, 45, and 65, the Examiner found that the patent Specification “does not state that the outlet defined in the ice compartment is located at a bottom surface of the ice storage bin.” RAN 3.

Appellant argues that Fig. 3 shows that “a portion of ice storage 26 hangs over the second portion of ice discharge duct 28” and that “a person having ordinary skill in the art... would understand... that the outlet is located on or at the bottom surface of the ice storage bin at a position corresponding to the second portion of the ice discharge duct.” App. Br. 35. Appellant cites the Second Beck Declaration, para. 16, in support of this argument, in which Mr. Beck describes Fig. 3 in this manner.

Respondent argues that “no outlet is shown in any of the figures of the ’382 patent” and that “discharge chute 28 is shown in Figure 3 of the ’382 patent extending from the vertical front wall of storage volume 26 and angling downward.” Resp. Br. 16-17. Respondent cites the Second Karvelis Declaration, para. 32, in support of this argument. The Examiner expresses a similar view in maintaining the rejection. RAN 75.

We agree with the Examiner that the Specification does not disclose that the outlet defined in the ice compartment is located at a bottom surface of the ice storage bin. Figure 3 of the patent appears to show the second portion of the ice discharge duct 28 extending from *both* the vertical front wall and the bottom of ice storage 26. While it is reasonable to infer from this that the (unillustrated) outlet is positioned in some location that communicates with the second portion of the ice discharge duct 28, it cannot be determined from this figure, or from any other figure, or from the

description, whether the outlet is located at the bottom surface, the front surface, a side surface, or some combination of these. The Specification is at best ambiguous on this point and consequently insufficient to establish possession. *See Lockwood v. Am. Airlines, Inc.*, 107 F.3d 1565, 1572 (Fed. Cir. 1997) (“it is not a question of whether one skilled in the art *might* be able to construct the patentee’s device from the teachings of the disclosure [but] whether the application necessarily discloses that particular device”) (internal citation and quotation omitted). We therefore affirm the rejection of claims 25, 45, and 65 on this basis.

All claims depending from claim 25 and from claim 65 inherit this defect. We therefore interpret the rejection of claim 25 as implicitly a rejection of claims 26-34 and the rejection of claim 65 as implicitly a rejection of its dependent claims 66-74. We affirm the rejection of claims 26-34 and 66-74 for the reasons given above.

Claim 85 similarly requires that the outlet be “located at a bottom surface of the ice storage bin” and was also rejected by the Examiner as lacking adequate written description support. We affirm the rejection of claim 85 as not complying with the written description requirement for reasons similar to those given above.

b. Claims 27 and 67

We have affirmed the rejection of these claims for failure to comply with the written description requirement, section 4(a) *supra*, and need not address the further basis for this rejection specified by the Examiner (RAN 4).

c. Claims 28, 42-45, 68, and 82-85

We have affirmed the rejection of claims 28, 45, 68, and 85 for failure to comply with the written description requirement, section 4(a) *supra*, and need not address the further basis for this rejection specified by the Examiner for these claims (RAN 4). We confine our review in this section to claims 42-44 and 82-84.

The Examiner found that while the patent Specification “states that the ice-making chamber may be configured to be detachably installed (col. 9, line 34-40),” the Specification “does not state that **a portion** of the ice-making chamber is detachable. There is no support in the patent specification for *only* a portion of the ice-making chamber being detachably installed.” RAN 4 (*italic emphasis added*).

Appellant argues that one having ordinary skill in the art would have understood from a description of the entire ice compartment being detachably installed that at least a portion of it may be detachably installed, because “detachable installation of the entire ice compartment, as described, covers detachable installation of at least a portion of the ice compartment.” App. Br. 28-29. Appellant cites the Second Beck Declaration, para. 10, in support of this argument. Applicant further argues that the Examiner has inappropriately interpreted the rejected claims as requiring that “only” a portion of the ice-making chamber be detachable. *Id.* at 29-30.

Respondent argues in favor of the Examiner’s position that these claims require *separate* detachability of portions of the ice compartment. Resp. Br. 15. The Second Karvelis Declaration echoes these arguments. Second Karvelis Decl. paras. 30 and 31.

We agree with the Examiner that disclosure of detachability of the entire ice compartment does not adequately support claims to the detachability of a portion of the compartment. In the absence of further disclosure, a portion is “detachable” only to the extent that it is a part of a whole that is detachable. Consider, for example, a tire that is disclosed as being detachably installed on the wheel of a car. It would not follow from such a disclosure that, say, the side wall, valve stem, or tread of the tire is detachably installed. So too does it not follow from a disclosure that the ice compartment is detachably installed that the front insulating wall, the outlet, or the storage bin of the ice compartment is detachably installed. We therefore affirm the rejection as to claims 42-44 and 82-84.

d. Claims 30, 35, and 40

We have affirmed the rejection of claim 30 for failure to comply with the written description requirement, section 4(a) *supra*, and need not address it further.

The Examiner found that the patent Specification, while disclosing a dispenser and an operating button or lever, does not disclose “details of the dispensing port, the opening and closing of the dispensing port and how the open and closing of the dispensing port is different than the opening and closing of the ice discharge duct.” RAN 4.⁶

Appellant argues that the ice discharge duct and the dispensing port are disclosed as separate structures and that the patent Specification explains how ice initially stored in ice storage 26 is delivered to the dispenser 29 and discharged to the outside upon a user’s instructions. App. Br. 31. Appellant

⁶ It is not clear to us why the Examiner did not also reject claims 75 and 80 for similar reasons.

further argues, citing the Second Beck Declaration, para. 12 for support, that one having ordinary skill in the art would understand that opening and closing of the ice discharge duct is separate from and different than opening and closing of the dispensing port because “the ice discharge duct and the dispensing port are described as separate structure that are each opened and closed.” *Id.*

Respondent argues that while the '382 patent Specification does disclose that an operating lever or button receives a signal for opening and closing a dispensing port, there is no disclosure that the dispensing port is opened and closed “in response to that signal” or that the dispensing port is “configured” to open and close. Resp. Br. 15-16. The Second Karvelis Declaration echoes this argument. Second Karvelis Decl. para. 34.

We agree with Appellant that the '382 Specification reasonably evidences possession of the subject matter of claims 35 and 40. The Specification explains at col. 6, lines 34-35 that the ice discharge duct is “selectively opened and closed such that the ice can be transferred to a dispenser 29” and explains at col. 6, lines 46-47 that “the dispensing port is opened by the operating lever or button, whereby the water or ice is discharged to the outside.” The patent also explains that the operating lever or button “receives a signal for opening and closing [the] dispensing port” at col. 6, lines 43-44. From these passages it is reasonably understood that both the ice discharge duct and the dispensing port are opened (and closed) and that the dispensing port is opened based on input received by the operating lever or button. We find Appellant’s use of the term “configured” in claims 35 and 40 not to impose any particular structural requirement on

these claims that is not reasonably understood from the cited passages of the Specification. We reverse the rejection as to claims 35 and 40.

e. Claims 36, 37, 76, and 77

The Examiner found that the specification “does not disclose opening and closing of the ice discharge duct [to be] different than opening and closing of the dispensing port,” nor does it disclose “separate opening and closing” of the discharge duct and the dispensing port. RAN 4.

Appellant argues, as for claims 35 and 40, that the duct and the port are each disclosed as opening and closing, so that one having ordinary skill in the art would understand them to be separate operations. App. Br. 30-32; Second Beck Decl. para 12. Indeed, Appellant expressly states (in response to the indefiniteness rejection of claims 36 and 37, discussed below) that “the terms ‘different than’ and ‘separate from’ indicate that opening and closing of the ice discharge duct *cannot be completed by the same action* that results in opening and closing of the dispensing port.” App. Br. 37.

Appellant’s urged construction of the terms “different than” and “separate from” lacks the support of adequate written description. As noted above, the Specification does disclose that both the duct and the port are opened and closed. It does not follow from this, however, that the two openings or closings must be completed by different actions, nor that the openings and closings are completed by the same action. The Specification is consistent with either scenario but does not specify which scenario occurs. It consequently does not support a claim specific to just one scenario. We therefore affirm the rejection of claims 36, 37, 76, and 77.

f. Claims 51 and 91

The Examiner found that the Specification “does not disclose the ice compartment having a width less than half of the width of the refrigerating compartment.” RAN 5. In response to Appellant’s argument that Fig. 5 shows the compartment as being less than half the width of the refrigerating compartment, the Examiner notes that the widths of these components are not “provided in the specification or drawings,” nor does the patent indicate which dimension should be regarded as the “width.” RAN 74. Respondent echoes the Examiner’s position. Resp. Br. 16.

We agree with Appellant that Fig. 5 of the ’382 patent fairly shows that the ice compartment has a width less than half of the width of the refrigerating compartment. One having ordinary skill in the art would have understood that “width” conventionally refers to the side-to-side dimension as one faces the refrigerator. The patent disclosure therefore reasonably conveys to one having ordinary skill in the art that the inventors had possession of the claimed subject matter. *See Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563 (Fed. Cir. 1991). We reverse the rejection of claims 51 and 91.

g. Claims 52, 62, and 102

The Examiner found that:

[T]he specification does not provide support for “the second portion of the ice duct pathway sloping downwardly and interfacing with the first portion of the ice duct or that the first portion of the ice duct has a first sloped surface and the second portion of the ice duct has a second sloped surface and that the second sloped surface corresponds to the first sloped surface. Fig. 3 does indicate that there is a first and second portion of

the ice duct. However, the specification does not provide any details of the first and second portions of the ice duct.

RAN 5-6. Appellant argues that the limitations of these claims are shown in Fig. 3. App. Br. 33-34; Second Beck Decl. para 14. Respondent argues in support of the Examiner's rejection. Resp. Br. 16; Second Karvelis Decl. para. 16.

We agree with Appellant that Fig. 3 reasonably conveys the limitations set forth in claims 52, 62, and 102. Drawings alone may provide written description. *See, e.g., Vas-Cath, Inc. v. Mahurkar*, 935 F.2d at 1565. The Examiner has not explained why Fig. 3 alone fails to support the claims. We reverse the rejection of these claims.

h. Claims 57, 58, 60, 61, 97, 98, 100, and 101

These claims require a fan that variously is configured “to circulate cold air with the ice compartment” (claims 57 and 97), “to deliver cold air to the ice maker such that ice is made in the ice maker” (claims 58 and 98), “to blow cold air within the ice compartment to cause the cold air within the ice compartment to transfer throughout the ice compartment” (claims 60 and 100), and “to blow cold air within the ice compartment across the ice maker” (claims 61 and 101). The Examiner found that the Specification does not disclose any of these functions of the fan. RAN 6.

Appellant argues that disclosures at col. 6, lines 60-62⁷ and col. 9, lines 9-19⁸ reasonably support the claimed limitations. App. Br. 34-35;

⁷ “[A] blow fan 34 may... be installed such that cold air... can be transferred more quickly into the ice-making chamber 20.”

Second Beck Decl. para. 15. The Examiner maintains that the Specification lacks disclosure “of a fan that circulates or transfers air throughout the ice compartment, as claimed.” RAN 75. Respondent presents arguments in support of the Examiner’s rejection. Resp. Br. 16-17; Second Karvelis Decl. para 32.

We agree with Appellant that the cited passages from the Specification support the rejected claims. We think it reasonably follows from these passages that when cold air is “transferred... into” or “delivered into” the ice-making chamber 20 it “circulate[s]... within,” “transfer[s] throughout,” and/or “blow[s]... across.” We reverse the rejection of these claims.

5. Indefiniteness rejection

a. Claims 46, 47, 49, 86, 87, and 89

The Examiner found that recitation of the terms “normal operating orientation” and “normal operation” renders these claims indefinite. RAN 7. Appellant argues that “normal operating orientation” refers to the orientation consistently shown in figs. 1-7, that the Specification specifies the relative positions of the refrigerating compartment and the freezing compartment as “upper” and “lower,” respectively, and that proper transfer of ice from the ice compartment to the dispenser requires such an orientation. App. Br. 36; Second Beck Decl. para 17. Appellant argues that the claim limitation “normal operation” refers to “a typical operating state of the refrigerator” in

⁸ The cited passage states at ll. 17-19: “The cold air... is delivered into the ice-making chamber 20 by means of the blow fan 34 such that ice is made in the icemaker 24.”

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which “the refrigerating compartment maintains refrigerating temperatures.”
App. Br. 36; Second Beck Decl. para 18.

Respondent argues that “there is no common understanding in the art”
of these limitations and that the meaning of “normal” depends on the
consumer. Resp. Br. 17; Second Karvelis Decl. para 43. For example,
Respondent argues, a consumer might “wish to keep the refrigerating
compartment... at freezing.” *Id.*

We agree with Appellant that, in the context of the present disclosure,
one having ordinary skill in the art would understand the meanings of the
disputed limitations as being those advanced by Appellant. We reverse the
rejection of these claims.

b. Claims 36, 37, 76, and 77

As noted above, Appellant argues for construction of “different than”
and “separate from” as indicating that “opening and closing of the ice
discharge duct *cannot be completed by the same action* that results in
opening and closing of the dispensing port.” App. Br. 37. In view of this
proposed construction, we reverse the rejection for indefiniteness, though we
affirm the rejection of these claims for lack of written description for the
reasons given above.

DECISION

The Examiner’s rejections of claims 1-17, 19-22, 25-34, 36, 37, 42-
45, 65-74, 76, 77, and 82-85 are AFFIRMED. The Examiner’s rejections of
claims 23-24, 35, 38-41, 46, 47, 49, 51-64, 75, 78-81, 86, 87, 89, and 91-102
are REVERSED.

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Requests for extensions of time in this *inter partes* reexamination proceeding are governed by 37 C.F.R. §§ 1.956 and 41.77(g).

AFFIRMED-IN-PART

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