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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PETER PREBLO

Appeal 2012-007497
Application 12/528,504¹
Technology Center 3700

Before MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI, and
SCOTT C. MOORE, *Administrative Patent Judges*.

MOORE, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ Appellant states that the real party in interest is AMSC WINDTEC GMBH.
Appeal Br. 1.

STATEMENT OF THE CASE

Appellant timely appeals under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 21–32 and 35–42² of Appellant's Patent Application Number 12/528,504. Appeal Br. 1. Claims 1–20, 33, and 34 have been cancelled. *Id.* at 1, 39–41. We have jurisdiction under 35 U.S.C. § 6.

The claimed invention pertains to “a cable suspension arrangement for a wind energy converter, a corresponding mounting method and a corresponding spacer plate.” Spec. 26:3–4.

Claim 21, which is reprinted below, is illustrative of the claimed subject matter.

21. A cable suspension arrangement of a wind energy converter including a tower and a nacelle provided on the tower, the arrangement comprising:
- a plurality of spacer plates, each including a suspension hole and a plurality of cable through-holes, the plurality of cable through-holes configured to receive a plurality of cables suspended from the nacelle;
 - a suspension device attached to the nacelle and led through the suspension holes; and
 - a fastener configured to fix the spacer plates at different positions on the suspension device such that they can at least not lower their respective position.

Appeal Br. 39.

² Appellant indicates on Page 1 of its Appeal Brief that claims 21–42 are pending and on appeal. However, Appellant later clarifies that claims 33 and 34 have been cancelled, and the Examiner also makes clear that claims 33 and 34 have been cancelled. Appeal Br. 40; Ans. 3.

The Examiner relies on the following prior art references in rejecting the claims on appeal:

Kirkegaard	U.S. 6,713,891 B2	Mar. 30, 2004
Araki	JP 2005137097A.	May 26, 2005
Ano	JP 2006246549 A	Sept. 14, 2006
Kinoshita	JP 2008298051 A	Dec. 11, 2008
Kennedy	CA 2 475 261 A1	Jan. 16, 2006

Ans. 4.

Appellant asks us to review the following rejections:

- 1) The rejection under 35 U.S.C. § 102(b) of claims 21, 25, and 28–30 as being anticipated by Araki;
- 2) The rejection under 35 U.S.C. § 102(b) of claims 21, 22, 25, and 28 as being anticipated by Ano;
- 3) The rejection under 35 U.S.C. § 102(a) of claims 21–23 and 32 as being anticipated by Kinoshita;
- 4) The rejection under 35 U.S.C. § 102(b) of claims 21, 25, 26, 32, and 35–38 as being anticipated by Kirkegaard;
- 5) The rejection under 35 U.S.C. § 102(a) of claims 39–41 as being anticipated by Kennedy;
- 6) The rejection under 35 U.S.C. § 103(a) of claim 24 as being unpatentable over Kinoshita in view of admitted prior art;
- 7) The rejection under 35 U.S.C. § 103 (a) of claim 27 as being unpatentable over Kirkegaard;
- 8) The rejection under 35 U.S.C. § 103(a) of claim 31 as being unpatentable over the combination of Kinoshita in view of Kennedy; and

- 9) The rejection under 35 U.S.C. 103(a) of claim 42 as being unpatentable over Kennedy.

See Appeal Br. 2–3; Ans. 4–11.

We AFFIRM-IN-PART.

ANALYSIS

Appellant’s Argument Concerning Machine Translations

Before addressing the substance of the Examiner’s rejections, Appellant points out that the Examiner is citing three Japanese-language prior art references (Araki, Ano, and Kinoshita), and argues that the Examiner relies on unintelligible machine translations of such low quality that they “make[] meaningful Board review impossible.” Appeal Br. 3–4. We note that the record on appeal only contains machine translations of two of these references (Araki and Ano). Although the Japanese-language Kinoshita reference contains an English-language abstract, the record does not contain a full translation of the Kinoshita reference.

The Examiner is permitted to rely on machine translations. *See* MPEP § 1207.02 1200–21 (Rev. 9, August 2012). To the extent Appellant disputes the adequacy or accuracy of the Examiner’s machine translations, Appellant could have provided its own translations. But Appellant elected not to do so. Under these circumstances, we are not persuaded that the Examiner erred in relying on machine translations of the Araki and Ano prior art references. Thus, we proceed to analyze Appellant’s arguments regarding the substance of the Examiner’s rejections.

*Rejection of Claims 21, 25, and
28–30 as Anticipated by Araki*

Claim 21

The Examiner finds that the structure depicted in Figure 4 of Araki corresponds to the “spacer plates” of claim 21. *See* Ans. 13, *citing* Araki³ Fig. 4. Even though this structure is made of separate components, the Examiner finds that the “entire structure and substructure is bolted together such that it is integral,” and determines that it constitutes a spacer plate within the meaning of claim 21. Ans. 14. Appellant argues that this structure does not constitute a spacer plate because it is “a framework made by bolting together metal pieces to form an octagonal perimeter braced by two crossbars.” Appeal Br. 5. In other words, Appellant argues that the claim term “plate” should be construed to exclude a structure that is assembled from two or more components.

During prosecution, claims are given their “broadest reasonable interpretation consistent with the specification.” *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (citations omitted). The “broadest reasonable interpretation” standard does not prejudice patent applicants, who have the ability to correct errors in claim language and to adjust the scope of claim protection as needed during prosecution by amending the claims. *In re Yamamoto*, 740 F.2d 1569, 1571–72 (Fed. Cir. 1984).

³ Citations to paragraphs in the Araki and Ano references refer to the machine translations of those references. Citations to figures in the Araki, Ano, and Kinoshita references refer to the original, untranslated references.

Appellant fails to offer any evidence to support its argument that the broadest reasonable interpretation of the claim term spacer plate would exclude any structure assembled from multiple components. There is no contention that Appellant acted as a lexicographer by including a specific definition of spacer plate in the specification. There is also no contention that the prosecution history of Appellant's application contains a disclaimer that limits the scope of this claim term. In addition, Appellant does not cite any dictionary definitions or other extrinsic evidence in support of its position.

Appellant argues that “[o]ne can see by immediate visual inspection that the structure shown in *Araki* does not look anything like a spacer *plate*.” Appeal Br. 7. But Appellant does explain—much less cite evidence to show—what one of ordinary skill would expect a spacer plate to look like. Appellant also argues that Figure 4 of *Araki* does not look like the spacer plates disclosed in Appellant's specification. But it would also be improper to limit the definition of spacer plate to the particular embodiments disclosed in Appellant's specification. In view of Appellant's failure to offer any evidence that the Examiner's interpretation of claim 21 is so broad as to be unreasonable, we are not persuaded that the Examiner erred in finding that *Araki* discloses a spacer plate of the type required by claim 21.

Appellant also argues that *Araki* fails to teach spacer plates that each include “a suspension hole,” as required by claim 21. Appeal Br. 7. The Examiner finds that guidance sleeve 33, depicted in Figure 5 of *Araki*, corresponds to the suspension hole of claim 21. *See* Ans. 15; *Araki* ¶ 19. Appellant argues that this guidance sleeve is not a hole because it is made by “bolt[ing] two metal pieces [together] in such a way that the pieces define a

gap.” Appeal Br. 8. In other words, Appellant contends that a “gap” between two separate structures cannot be a “hole” within the meaning of claim 21. But Appellant does not allege that the specification requires such a narrow construction, does not identify any prosecution disclaimer that limits the scope of this claim term, and does not offer any dictionary definitions or other extrinsic evidence that one of ordinary skill in the art would interpret this claim term so narrowly. Thus, we are not persuaded that the Examiner erred in finding that Araki discloses a suspension hole of the type required by claim 21.

Appellant further argues that Araki fails to teach “a plurality of cable through holes,” as required by claim 21. Appeal Br. 8. The Examiner finds that ring-like clamping structure 40 meets the plurality of cable through holes limitation. Ans. 15. Appellant responds by once again asking us to construe the term “hole” narrowly, so as to exclude what Appellant calls the “passageways” within ring-like clamping structure 40. Appeal Br. 9. This is essentially the same argument that Appellant made previously—that the claim term “hole” does not read on a void between two separate structures. Appellant once again does not allege that the specification requires such a narrow construction, does not identify any prosecution disclaimer that limits the scope of this claim term, and does not offer any dictionary definitions or other extrinsic evidence that one of ordinary skill in the art would construe this claim term so narrowly. Thus, we are not persuaded that the Examiner erred in determining that Araki teaches a plurality of cable through holes.

For the foregoing reasons, we sustain the Examiner’s rejection of claim 21 as anticipated by Araki.

Claims 25, 28, and 30

Appellant does not make any separate patentability arguments with respect to claims 25, 28, and 30, all of which depend from claim 21. Thus, we also sustain the Examiner’s rejection of claims 25, 28, and 30 as anticipated by Araki.

Claim 29

Appellant argues that claim 29 is not anticipated by Araki because Araki “does not disclose a guide that is both ‘inserted into the suspension holes’ and ‘configured to guide an upward motion of the spacer plates along the suspension device,’” as set forth in claim 29. Appeal Br. 9. The Examiner finds that spacer 50, depicted in Figure 5 of Araki, meets this claim limitation. Ans. 15. Appellant argues that Figure 5 discloses that “frame 30 is clamped to the wire 20” and therefore “cannot move upward or downward along the wire 20.” Appeal Br. 10 (emphasis omitted). Appellant also asserts that Araki does not contain any disclosure of wire 20 of Araki performing as a guide. *Id.* But nothing in Figure 5 indicates that the structure identified by the Examiner is clamped to wire 20. To the contrary, as the Examiner points out, wire 20 is separated from structure 30 by spacer 50. Ans. 15; *see also* Araki ¶ 28. Appellant’s contention that wire 20 does not act as a guide is also undermined by the fact that Araki refers to structure 33—which surrounds wire 20—as a “guidance sleeve.” Araki ¶ 19. For the foregoing reasons, Appellant’s arguments are not persuasive. Thus, we sustain the Examiner’s rejection of claim 29 as anticipated by Araki.

*Rejection of Claims 21, 22, 25, and
28 as Anticipated by Ano*

Claim 21

Appellant makes four arguments in response to the Examiner's determination that Ano anticipates claim 21. *First*, Appellant argues that the Examiner erred in finding that support 15 of Ano—a multi-part structure—meets the “spacer plate” claim limitation. Appeal Br. 11. In support of this position, Appellant repeats its argument that the claim term “spacer plate” does not encompass “a framework made by bolting together metal pieces.” *Id.* This argument is not persuasive for the reasons set forth above.

Second, Appellant argues that the Examiner erred in finding that the spaces through which cables 5(a) pass meet the “cable through-holes” limitation of claim 21. Appellant argues that these spaces are “the result of clamping a U-bolt to a side of” the support that the Examiner finds is a “spacer plate.” Appeal Br. 13. Thus, Appellant argues, these holes are not “*in* a spacer plate” as required by claim 21. *Id.* (emphasis in original). But the Examiner makes clear in the Answer that the U-bolts are part of the structure that corresponds to the spacer plate claim limitation. Ans. 19. In the Reply Brief, Appellant reiterates the argument that the claim term “hole” should be construed narrowly so as to not encompass voids between two structures attached to one another. Reply Br. 19. This argument is not persuasive for the reasons discussed above. Thus, we are not persuaded by Appellant's arguments that the Examiner erred in finding that Ano meets the “cable through-holes” claim limitation.

Third, Appellant argues that the Examiner erred in finding that the Ano reference discloses “a plurality of spacer plates.” Appeal Br. 14. Appellant asserts that the Examiner erroneously assumes that each level of the support structure depicted in Figure 1 includes the structure that the Examiner finds is a spacer plate, even though the Ano reference contains no such teaching. *Id.* In response, the Examiner points to paragraph 42 of Ano, and finds that this paragraph teaches that the spacer plates are “fitted loosely into the height positions B–E of . . . **each floor** 11 in the tower at the support wire 12.” Ans. 19, *citing* Ano ¶ 42 (emphasis in original). Appellant’s Reply Brief does not dispute the accuracy of the Examiner’s finding regarding the teachings of paragraph 42 of Ano. Thus, we are not persuaded by Appellant’s argument that Ano does not disclose “a plurality” of spacer plates.

Forth, Appellant argues that Ano does not teach “a fastener configured to fix the spacer plates at different positions on the suspension device such that they can at least not lower their respective position,” as required by claim 21. Appeal Br. 15. Appellant contends that the structure identified by the Examiner as corresponding to the claimed fastener—bolt 18—does not fix the position of structure 15 (i.e., the spacer plate) on support wire 12 (i.e., the suspension device). *Id.* In response, the Examiner finds that paragraph 36 of Ano teaches that bolt 18 “pinch[es]” the hole within structure 15 to support wire 12, and that fastener 18 thereby prevents the spacer plates from lowering. Ans. 21, *citing* Ano ¶ 36. Appellant’s Reply Brief does not dispute the correctness of the Examiner’s finding regarding paragraph 36 of Ano. Thus, we are not persuaded by Appellant’s

argument that Ano does not teach a fastener of the type required by claim 21.

For the foregoing reasons, we sustain the Examiner's rejection of claim 21 as anticipated by Ano.

Claims 22 and 25

Appellant does not make any separate patentability arguments with respect to claims 22 and 25, both of which depend from claim 21. Thus, we also sustain the Examiner's rejection of claims 22 and 25 as anticipated by Ano.

Claim 28

Claim 28 further requires that the fastener of claim 21 include "clamping fasteners." Appeal Br. 40. Appellant asserts that bolt 18 of Ano is not a clamping fastener of the type required by claim 28. *Id.* at 16. In response, the Examiner reiterates the finding that bolt 18 of Ano clamps the framed structure together so that it "pinch[es]" the suspension device. Ans. 21, *citing* Ano ¶ 36. Appellant's Reply does not dispute the Examiner's finding that fastener 18 causes the framed structure to pinch to support wire 12. Thus, we are not persuaded that Ano does not teach "clamping fasteners" of the type required by claim 28. We, therefore, sustain the Examiner's rejection of claim 28 as anticipated by Ano.

Rejection of Claims 21–23 and 32 as Anticipated by Kinoshita

Appellant raises two separate arguments in response to the Examiner's determination that Kinoshita anticipates claim 21. *First,*

Appellant argues that cable bobbin 110 is not a “suspension device” of the type required by claim 21. Appeal Br. 17. *Second*, Appellant argues that Kinoshita does not teach “a fastener configured to fix the spacer plates at different positions on the suspension device” as required by claim 21. *Id.* The Examiner disagrees with Appellant’s assertions, and finds that cable bobbin 110 is a suspension device of the type required by claim 21. Ans. 21.

As discussed above, the record does not contain an English-language translation of the Kinoshita reference. The record only contains an English translation of the Kinoshita abstract. It appears that the Examiner (who twice cites to specific paragraphs of a Kinoshita translation, *see* Ans. 2223) and Appellant (who implies that a machine translation of Kinoshita exists, *see* Appeal Br. 3–4) are in possession of a translation of the entire Kinoshita reference. But we must decide this dispute on the basis of the record, which does not contain such a translation.

The English-language abstract of the Kinoshita reference does not contain teachings sufficient to support the Examiner’s anticipation rejection of claim 21. For example, the Examiner finds that bobbin 110 of Kinoshita meets the claim limitation “a suspension device attached to the nacelle and led through the suspension holes.” Ans. 7–8. But the Kinoshita abstract does not indicate whether bobbin 110 is either attached to the nacelle, or “led through” the suspension holes. We therefore determine—based on the evidence of record—that the Examiner’s finding that Kinoshita teaches all elements of claim 21 lacks adequate evidentiary support. Thus, we do not sustain the Examiner’s rejection of claim 21 as anticipated by Kinoshita.

Claims 22, 23, and 32 depend from claim 21, and therefore incorporate all limitations of claim 21. Thus, we also do not sustain the Examiner's rejection of claims 22, 23, and 32 as anticipated by Kinoshita.

*Rejection of Claims 21, 25, 26, 32, and
35–38 as Anticipated by Kirkegaard*

Claim 21

Appellant argues that the Examiner made three errors in determining that claim 21 is anticipated by Kirkegaard. *First*, Appellant argues that the spacer plates of Kirkegaard do not each have “a suspension *hole* and a plurality of cable through-*holes*.” Appeal Br. 23 (emphasis in original). The Examiner finds that Kirkegaard's opening 38 in Figure 8 meets the “suspension hole” limitation of claim 21, and that slots 35 and 36 meet the “cable through-*holes*” limitation of this claim. Ans. 24. Appellant argues that these structures are not holes because they are not fully closed. Appeal Br. 20–23. In response, the Examiner notes that claim terms “must be ‘given their broadest reasonable interpretation consistent with the specification’” during patent prosecution, and determines that structures 35, 36, and 38 constitute holes because “they go through the thickness of the plate.” Ans. 24 (citations omitted). The Examiner also notes that Appellant's own specification describes opening 38 of Kirkegaard as a “hole.” Ans. 25, *citing* Spec. 5:23–25. In reply, Appellant asserts that the specification merely repeats what the Kirkegaard reference says about opening 38, and that Appellant should not be held to this statement. Reply Br. 14. Appellant's arguments are not persuasive.

The proper construction of a claim term begins with its plain and ordinary meaning. The Examiner’s claim construction position is consistent with the plain and ordinary meaning as reflected in dictionary definitions, which define the term “hole” in a manner that embraces not only apertures, but also hollow areas, gaps, and cavities.⁴ The Examiner’s position is also consistent with Appellant’s own specification, which refers to opening 38 of Kirkegaard as a hole. Appellant does not offer any evidence that one of ordinary skill in the art would have interpreted the claim term “hole” to exclude openings that are not fully closed. Thus, we are not persuaded that the Examiner erred in finding that Kirkegaard teaches a “suspension hole” and “cable through-holes.”

Second, Appellant argues that Kirkegaard does not teach “a fastener configured to fix the spacer plates at different positions on the suspension device,” as required by claim 21. Appeal Br. 23. The Examiner finds that this claim limitation is met by Kirkegaard’s slot adjacent to hole 38, which attaches the spacer plates to wire 7. Ans. 26 (citations omitted). Appellant acknowledges that Kirkegaard teaches that “[t]he cable spacing device is suspended down along a wire,” but argues that since “the entire sentence is in the passive voice, one simply cannot tell from the sentence alone exactly what is doing the suspending.” Appeal Br. 24, *citing* Kirkegaard 9:42–44.

⁴ See, e.g., “hole,” *The Penguin English Dictionary* (2007), available at <http://search.credoreference.com/content/entry/penguineng/hole1/0> (last visited on Oct. 23, 2014) (“a hollow in something solid; a pit or cavity. . . . a gap or opening right through something”); “hole,” *Chambers 21st Century Dictionary* (2001), available at <http://search.credoreference.com/content/entry/chambdict/hole/0> (last visited Oct. 23, 2014) (“a hollow area or cavity in something solid an aperture or gap in or through something”).

Appellant then speculates that the cable spacing devices of Kirkegaard are not suspended from wire 7, but are instead “suspended . . . by being cantilevered from the wall” of the tower. Appeal Br. 25. Appellant’s argument is not persuasive.

A few lines after the allegedly vague sentence, Kirkegaard makes clear that cable spacing device is suspended “onto” wire 7. Ans. 26, *citing* Kirkegaard 9:46–49. Appellant’s cantilever argument is also inconsistent with the plain and ordinary meaning of the word “suspend” in the Kirkegaard reference—a word that generally refers to a hanging-type attachment.⁵ Thus, we are not persuaded by Appellant’s argument that Kirkegaard does not teach a fastener configured to fix spacer plates at different positions on a suspension device.

Third, Appellant argues that Kirkegaard does not teach a suspension device that is “attached to the nacelle,” as required by claim 21. Appeal Br. 27. This argument is not persuasive. As the Examiner notes, Kirkegaard teaches that a ladder is mounted to the nacelle, and that wire 7 is attached to this ladder by cable suspension 5. Ans. 29, *citing* Kirkegaard 7:7–17. Thus, “cable suspension 5 [from which wire 7 extends] is fastened to the ladder 3 *and accordingly also fastened to the nacelle.*” Kirkegaard 7:9–11 (emphasis added). Appellant does not offer any evidence that one of ordinary skill in the art would interpret the term “attached” in claim 21 to exclude such an

⁵ See, e.g., “suspend,” *The Penguin English Dictionary* (2007), available at <http://search.credoreference.com/content/entry/penguineng/suspend/0> (last visited Oct. 23, 2014) (“to hang (something), *esp* so that it is free on all sides except at the point of support”).

indirect manner of attachment. Thus, we are not persuaded that Kirkegaard does not teach a suspension device that is “attached to the nacelle.”

For the foregoing reasons, we sustain the Examiner’s rejection of claim 21 as anticipated by Kirkegaard.

Claims 25 and 26

Appellant does not make any separate patentability arguments with respect to claims 25 and 26, both of which depend from claim 21. Thus, we also sustain the Examiner’s rejection of claims 25 and 26 as anticipated by Kirkegaard.

Claim 32

Appellant argues that the Examiner erred in finding that Kirkegaard anticipates claim 32 because the spacer plates of Kirkegaard are “snow-flake” shaped, and not “a circular shape” as required by claim 32. Appeal Br. 27. In response, the Examiner points out that Kirkegaard discloses that the spacer plates may have “a polygonal or circular circumference.” Ans. 29, *citing* Kirkegaard 9:44. Appellant argues in reply that it is “completely unclear what it means to have a polygonal circumference or a circular circumference.” Reply Br. 17. This argument is not persuasive.

The plain and ordinary meaning of the term “circumference” is the external boundary of an object.⁶ Thus, a spacer plate with a “circular circumference” would have a circular shape as required by claim 32.

⁶ See, e.g., “circumference,” *The Penguin English Dictionary* (2007), available at <http://search.credoreference.com/content/entry/penguineng/Circumference/0> (last visited Oct. 23, 2014) (“the external boundary or surface of a figure or object”).

Appellant offers no evidence that one of ordinary skill in the art would have understood the term “circular circumference” in Kirkegaard to have a different meaning. Thus, we sustain the Examiner’s rejection of claim 32 as anticipated by Kirkegaard.

Claims 35

Appellant asserts that the Examiner erred in finding that Kirkegaard anticipates claim 35 because Kirkegaard does not teach the step of “fixing the cable suspension arrangement on the main frame of the nacelle.” Appeal Br. 28–29. This is essentially identical to the third argument that Appellant made with respect to claim 21: that the suspension device is not attached to the nacelle, but is instead attached to a ladder (a ladder that is attached to the nacelle). This argument is unpersuasive.

As the Examiner points out, Kirkegaard teaches that cable suspension 5, from which wire 7 extends, is “fastened to the nacelle.” Ans. 29, Kirkegaard 7:9–11. Appellant does not offer any evidence that one of ordinary skill in the art would interpret the term “fixing” in claim 35 to exclude the manner of attachment taught in Kirkegaard. Thus, we sustain the Examiner’s rejection of claim 35 as anticipated by Kirkegaard.

Claim 37

Appellant argues that the Examiner erred in finding that Kirkegaard anticipates claim 37 because Kirkegaard does not disclose the step of “attaching a suspension device to the tower,” as set forth in claim 37. Appeal Br. 30. In particular, Appellant argues that wire 7 “hangs down the middle of the tower,” and is not attached to the tower. *Id.* In response, the Examiner clarifies that the “suspension device” claim limitation is met by

the combination of cable suspension 5 and cable 7 of Kirkegaard. Ans. 30. The Examiner then finds that cable suspension 5 is secured to the tower, as required by claim 37. *Id.* (citations omitted). Appellant’s Reply Brief does not dispute the Examiner’s finding that these components are attached to the tower. Thus, we are not persuaded that the Examiner erred, and we sustain the Examiner’s rejection of claim 37 as anticipated by Kirkegaard.

Claims 36 and 38

Appellant does not make any separate patentability arguments with respect to claims 36 and 36, both of which depend from claim 35. Thus, we also sustain the Examiner’s rejection of claims 36 and 38 as anticipated by Kirkegaard.

*Rejection of Claims 39–41
as Anticipated by Kennedy*

Claim 39

Appellant asserts that the Examiner erred in determining that claim 39 is anticipated by the Kennedy reference because Kennedy does not teach “cable through-holes having rounded edges at a lower and upper surface,” as required by claim 39. Appeal Br. 30. The Examiner finds, based on Figure 20 of Kennedy, that “the edges of wire hole 2 are rounded at the passage 4.” Ans. 8, 30. Appellant argues that Figure 20 only depicts the upper surface of the spacer plate, and that Kennedy thus does not teach rounded edges at both an upper and lower surface. Appeal Br. 31. We are persuaded by Appellant’s argument.

Appellant is correct in asserting that Figure 20 of Kennedy only depicts the upper surface of a spacer plate. The Examiner cites no evidence

that the lower surface of this spacer plate also contains rounded edges of the type required by claim 39. Thus, we do not sustain the Examiner's rejection of claim 39 as anticipated by Kennedy.

Claims 40 and 41

Claims 40 and 41 depend from claim 39, and therefore require cable through-holes having rounded edges at both an upper surface and a lower surface. Thus, we also do not sustain the Examiner's rejection of claims 40 and 41 as anticipated by Kennedy.

*Rejection of Claim 24 as Obvious and Unpatentable
over Kinoshita in view of admitted prior art*

Claim 24 depends from claim 22, which, in turn, depends from claim 21. As discussed above, we do not sustain the Examiner's rejection of claim 21 as anticipated by Kinoshita because the Examiner's findings are not supported by sufficient record evidence.

The Examiner's rejection of claim 24 relies on the Examiner's finding that Kinoshita teaches all limitations of claim 21. The Examiner does not find that any other prior art reference teaches any of the limitations of claim 21. Thus, we also do not sustain the Examiner's rejection of claim 24 as obvious and unpatentable over Kinoshita in view of admitted prior art.

*Rejection of Claim 27 as Obvious and
Unpatentable over Kirkegaard*

Claim 27 depends from claim 21, and thus incorporates the requirement for "a suspension device attached to the nacelle and led through the suspension holes." Appeal Brief 39. Claim 27 further requires that the

suspension device be “rod-like.” *Id.* Appellant argues that the Examiner erred in determining that claim 27 is obvious and unpatentable over Kirkegaard because, *inter alia*, the Examiner fails to set forth a sufficient rationale for modifying the structure of Kirkegaard that is found to meet the “suspension device” claim limitation so as to include a rigid rod in place of wire 7. *Id.* at 34–35. The Examiner’s stated rationale for making this modification is that it would reduce twisting and movement of the cable wires. Ans. 32. Appellant’s argument is persuasive.

As discussed above, the Examiner asserts that cable suspension 5 and wire 7 of Kirkegaard together meet the “suspension device” limitation of claim 21. The cables that pass through cable suspension 5—and which are also attached to the nacelle—extend downward around the vertical axis of the tower, and are attached to the outer wall of the tower (which does not rotate) by fastening device 10. *Id.* at 7:30–33. Thus, whenever the nacelle rotates in the horizontal plane, the cables attached to the nacelle necessarily twist about the vertical axis of the tower. Replacing wire 7 with a rigid rod would not change this. If the nacelle of Kirkegaard rotates 180 degrees in the clockwise direction, the cables within the tower—which are attached to both the rotating nacelle and the fixed wall of the tower—would necessarily twist 180 degrees about the vertical axis of the tower regardless of whether the spacing plates are attached to cable suspension 5 via a wire or a rigid rod. For the foregoing reasons, we determine that the Examiner has failed to articulate a rational underpinning to support the legal conclusion of obviousness. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (citation omitted). Thus, we do not sustain the Examiner’s rejection of claim 27 as obvious and unpatentable over Kirkegaard.

*Rejection of Claim 31 as Obvious and
Unpatentable over Kinoshita in view of Kennedy*

Claim 31 depends from claim 21. As discussed above, we do not sustain the Examiner's rejection of claim 21 as anticipated by Kinoshita because the Examiner's findings are not supported by sufficient record evidence.

The Examiner's rejection of claim 31 relies on the Examiner's finding that Kinoshita teaches all limitations of claim 21. The Examiner does not find that any other prior art references teach any of the limitations of claim 21. Thus, we also do not sustain the Examiner's rejection of claim 31 as obvious and unpatentable over Kinoshita in view of Kennedy.

*Rejection of Claim 42 as Obvious
and Unpatentable over Kennedy*

Claim 42 depends from claim 40, which, in turn, depends from independent claim 39. Appeal Br. 41. The Examiner's rejection of claim 42 relies on the Examiner's finding that Kennedy teaches all limitations of claim 39. For the reasons discussed above, we are persuaded by Appellant's argument that Kennedy does not teach all limitations of claim 39. Thus, we do not sustain the Examiner's rejection of claim 42 as unpatentable over Kennedy.

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DECISION

For the foregoing reasons, we AFFIRM the Examiner's decision to reject claims 21, 22, 25, 26, 28–30, 32, and 35–38. We REVERSE the Examiner's decision to reject claims 23, 24, 27, 31, and 39–42.

No time period for taking action in connection with this appeal may be extended under 37 C.F.R. § 1.135(a)(1)(iv)(2010).

AFFIRMED-IN-PART

llw