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| BSH Home Appliances Corporation<br>100 Bosch Boulevard<br>NEW BERN, NC 28562 |             |                      | MASINICK, JONATHAN PETER |                  |
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* DANIEL METZ and VOLKMAR UEBELE

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Appeal 2014-002549  
Application 12/598,492<sup>1</sup>  
Technology Center 3600

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Before JOHN C. KERINS, STEFAN STAICOVICI, and LEE L. STEPINA,  
*Administrative Patent Judges.*

STAICOVICI, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Daniel Metz and Volkmar Uebele (Appellants) seek our review under 35 U.S.C. § 134 of the Examiner's decision rejecting claims 15–27, 29, 31–37, and 39–42.<sup>2</sup> We have jurisdiction under 35 U.S.C. § 6(b).

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<sup>1</sup> According to Appellants, the real party in interest is BSH Bosch und Siemens Hausgeräte GmbH. Appeal Br. 3 (filed Sept. 6, 2013).

<sup>2</sup> Claims 1–14 and 28 have been canceled. Appeal Br. 14, 16. Claim 30 is indicated as allowed and claim 38 has been withdrawn from consideration. *Id.* at 3.

## SUMMARY OF DECISION

We REVERSE.

### INVENTION

Appellants' invention "relates to a fastening device for . . . a range hood housing of a range hood, to a base surface." Spec. 1, ll. 3–4.

Claims 15 and 42 are independent. Claim 15 is illustrative of the claimed invention and reads as follows:

15. A fastening device for fastening a range hood housing of a range hood to a base surface, the fastening device comprising:
  - a mandrel adapted to be fastened to the base surface;
  - a disk rotatably mounted to the mandrel via a friction-locked connection, the disk being rotatable about an axis of rotation when mounted, the disk having an outer lateral area defining a ring shaped circumferential surface with a knurled section, the circumferential surface being eccentrically oriented relative to the axis of rotation of the disk such that a longitudinal centerline of the knurled section of the disk is offset from and parallel to the axis of rotation; and
  - a positionally adjustable receiving groove formed, at least in part, by the outer lateral area of the disk and being configured to receive at least a section of the range hood housing, wherein the positionally adjustable receiving groove is adjustable, when mounted, between a first position and a second position via the friction-locked connection between the mandrel and the disk so as to alter a vertical and/or horizontal position of the range hood housing.

## THE REJECTIONS

The following rejections are before us for review:

- I. The Examiner rejected claims 15–17, 19, 20, 23, 24, 33, 34, and 39–42 under 35 U.S.C. § 103(a) as being unpatentable over Gregory (US 7,213,346 B1, iss. May 8, 2007).<sup>3</sup>
- II. The Examiner rejected claim 18 under 35 U.S.C. § 103(a) as being unpatentable over Gregory and Nelson (US 4,065,216, iss. Dec. 27, 1977).
- III. The Examiner rejected claims 21 and 22 under 35 U.S.C. § 103(a) as being unpatentable over Gregory and Nicklas (US 4,981,156, iss. Jan. 1, 1991).
- IV. The Examiner rejected claims 25–27, 29, 31, 32, and 35–37 under 35 U.S.C. § 103(a) as being unpatentable over Gregory and Davidson (US 3,342,082, iss. Sept. 19, 1967).

## ANALYSIS

### *Rejection I*

Independent claims 15 and 42 each recites, in relevant part, “the disk having an outer lateral area defining a ring shaped circumferential surface with a knurled section.” Appeal Br. 14, 19. The Examiner finds that Gregory discloses a disk 200 “having an outer lateral area (206 with 208) defining a ring shaped circumferential surface.” Non-Final Act. 2 (mailed Apr. 30, 2013). The Examiner acknowledges that “Gregory fails to disclose

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<sup>3</sup> Although claim 33 is not listed in the heading of the rejection, nevertheless, the Examiner discusses claim 33 in the body of the rejection and thus, we understand claim 33 to be included in the rejection, and we consider the Examiner’s omission as a mere typographical error.

knurls on the circumferential surface,” but states that because other portions 204 and 404a of Gregory’s disk have knurls, “[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to provide knurls on the ring shaped circumferential surface (206 and 208), since it has been held that rearranging parts of an invention involves only routine skill in the art.” *Id.* at 3 (citing, *In re Japikse*, 86 USPQ 70 (CCPA 1950)). The Examiner’s position is that such an arrangement would serve “the purpose of providing a better frictional surface to prevent unwanted sliding of the panel (range hood) within the groove.” *Id.*

Appellants argue that it is improper to rely on *In re Japikse*, because the Examiner’s “justification for obviousness (providing an increased frictional fit . . . is facially a modification of the operation of Gregory’s device,” and as such, “the proposed modification in the Office Action is not a mere rearrangement of parts.” Appeal Br. 6–7; *see also* Reply Br. 5–6. Appellants argue that moreover, there is no “evidence that friction would be increased,” and further, “there is also no evidence that adding knurls would have provided a benefit under any use.” Appeal Br. 7. Appellants argue that rather, “the frictional forces cannot act through the axis of rotation because necessarily they are always tangential to the surface of the cam contacting the board and therefore cannot reduce the torque that causes unwanted rotation as taught by Gregory.” Reply Br. 4 (filed Dec. 4, 2013).

Although the Examiner states that reliance on *In re Japikse* is to “further explain the rationale” for modifying Gregory’s disk 206, 208 (*see* Ans. 4–5), nevertheless, we agree with Appellants that there is no evidence

that adding knurls to Gregory's surfaces 206, 208 of cam 200, as the Examiner proposes, would serve "the purpose of providing a better frictional surface to prevent unwanted sliding of the panel (range hood) within the groove." *See* Appeal Br. 7. Even though we appreciate that providing knurls on a surface may provide a better friction surface, for example, when the surface is gripped by a hand, nonetheless, the Examiner does not explain how providing knurls specifically on the surface of Gregory's cam member 200 would provide a better frictional surface "to prevent unwanted sliding of the panel within the groove and unwanted rotation of the disk (cam member 200)." *See* Ans. 5. Gregory already addresses unwanted torque rotation by disclosing that "[s]ubstantial horizontal alignment of the contact point and the rotation axis reduces or substantially eliminates torque on the cam member arising from the supported weight of the second board," (Gregory, col. 4, ll. 14–18), and thus it is not apparent why it would be desirable to a person of ordinary skill in the art to increase friction of the cam member, as no torque would be present. Moreover, because the contact in Gregory is a "point of contact between the eccentrically curved engagement portion **206** and the bottom edge of board **30**" (Gregory, col. 3, ll. 57–59), such point of contact whether between the bottom of board 30 and a point on surface 206, or between the bottom of board 30 and a point on a knurled surface on surface 206 would still be only at that point of contact. Thus, Appellants are correct that "the frictional forces cannot act through the axis of rotation because necessarily they are always tangential to the surface of the cam contacting the board and therefore cannot reduce the torque that causes unwanted rotation as taught by Gregory." Reply Br. 4. As such, the Examiner's reasoning to modify the cam member 200 of Gregory by

knurling the circumferential surface lacks rational underpinnings. Without a persuasive articulated rationale based on rational underpinnings for modifying the reference as proposed, the Examiner's rejection appears to be the result of hindsight analysis. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (“[R]ejections on obviousness grounds [require] some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”) (cited with approval in *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007)). Finally, as to the Examiner's reliance on *In re Harza* and *In re St. Regis Paper Co. v. Bemis*,<sup>4</sup> for the proposition that a duplication of parts is generally within the level of skill in the art, is misplaced, as the Examiner is not proposing to duplicate Gregory's grip segment 204, but rather is proposing to add knurls on a different segment (cam 200) that has a different function, which for the reasons discussed *supra*, lacks rational underpinnings. *See* Ans. 4.

Therefore, for the foregoing reasons, we do not sustain the rejection under 35 U.S.C. § 103(a) of claims 15–17, 19, 20, 23, 24, 33, 34, and 39–42 as unpatentable over Gregory.

#### *Rejections II–IV*

The Examiner's use of the disclosures of Nelson, Nicklas, or Davidson in various combinations does not remedy the deficiency of Gregory as described *supra*. *See* Non-Final Act. 6–10. Accordingly, for the foregoing reasons, we likewise do not sustain Rejections II–IV.

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<sup>4</sup> *In re Harza*, 274 F.2d 669 (CCPA 1960) and *St. Regis Paper Co. v. Bemis*, 193 USPQ 8 (7<sup>th</sup> Cir. 1977).

Appeal 2014-002549  
Application 12/598,492

SUMMARY

The decision of the Examiner to reject claims 15–27, 29, 31–37, and 39–42 is reversed.

REVERSED