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BSH Home Appliances Corporation 100 Bosch Boulevard NEW BERN, NC 28562			ROHRHOFF, DANIEL J	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GERHARD STEGERWALD

Appeal 2014-005048
Application 13/108,173¹
Technology Center 3600

Before STEFAN STAICOVICI, LEE L. STEPINA, and
FREDERCK C. LANEY, *Administrative Patent Judges*.

STAICOVICI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Gerhard Stegerwald (Appellant) appeals under 35 U.S.C. § 134(a) from the Examiner's final decision rejecting claims 1–3, 5, 6, 8–14, 16–34, 36, and 45–52.² We have jurisdiction over this appeal under 35 U.S.C. § 6(b).

¹ According to Appellant, the real party in interest is BSH Home Appliances Corporation. Appeal Br. 3 (filed Aug. 5, 2013).

² Claims 4, 7, 15, and 35 are canceled, and claims 37–44 are withdrawn. *See* Final Act. 2 (transmitted Mar. 14, 2013).

SUMMARY OF DECISION

We REVERSE.

INVENTION

Appellant's invention relates to "a household appliance or a work top including an attachment device for a deployable or adjustable laundry hanger device." Spec. ¶ 1.

Claims 1, 34, 36, and 52 are independent. Claim 1 is illustrative of the claimed invention and reads as follows:

1. A domestic household laundry appliance comprising:
a housing having a door for accessing an interior of the housing; and
an attachment device integrally formed in a planar panel surface of one of the housing and a worktop on the housing, the attachment device being flush with the planar panel surface of the one of the housing and the worktop; and
a laundry hanging device secured in and supported by the attachment device, the laundry hanging device being one of pivotable and rotatable about the attachment device.

REJECTIONS

The following rejections are before us for review:

- I. The Examiner rejected claims 1–3, 5, 6, 8–14, 16, 17, 19–21, 24–29, 31, 33, 34, 36, 45–48, and 51 under 35 U.S.C. § 103(a) as being unpatentable over Borah (US 2,230,793, iss. Feb. 4, 1941) and McKelvey (US 337,604, iss. Mar. 9, 1886).
- II. The Examiner rejected claim 18 under 35 U.S.C. § 103(a) as being unpatentable over Borah, McKelvey, and Thiot (US 4,094,414, iss. June 13, 1978).

- III. The Examiner rejected claims 22, 23, 32, and 52 under 35 U.S.C. § 103(a) as being unpatentable over Borah, McKelvey, and Helot (US 2010/0064543 A1, pub. Mar. 18, 2010).
- IV. The Examiner rejected claim 30 under 35 U.S.C. § 103(a) as being unpatentable over Borah, McKelvey, and Furman (US 5,899,167, iss. May 4, 1999).
- V. The Examiner rejected claim 49 under 35 U.S.C. § 103(a) as being unpatentable over Borah, McKelvey, and Sabounjian (US 2007/0221598 A1, pub. Sept. 27, 2007).

ANALYSIS

Rejection I

Each of independent claims 1, 34, and 36, requires *inter alia*, an attachment device that is “integrally formed” in and “flush” with a planar panel surface, and a hanging device “being one of pivotable and rotatable about the attachment device.” *See* Appeal Br. 27, 32, and 33 (Claims App.).

The Examiner finds that Borah discloses most of the limitations of independent claims 1, 34, and 36, but fails to disclose the limitations recited above. *See* Final Act. 3. Nonetheless, the Examiner finds that “McKelvey teaches an attachment device (c & c') integrally formed in a planar panel surface (A) . . . the attachment device being flush with the planar panel surface of the housing; and a laundry hanging device (d) being one of pivotable and rotatable about the attachment device.” *Id.* The Examiner concludes that it would have been obvious to a person of ordinary skill in the art “to replace the attachment device and laundry hanging device of Borah

with the attachment device and laundry hanging device of McKelvey, because this arrangement would have replaced one known attachment device and laundry hanging device with another known attachment device and laundry hanging device.” *Id.*

“[W]hen a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result.” *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 416 (2007). In this case, the Examiner’s substitution of McKelvey’s sockets c, c’ for Borah’s openings in walls 11, 12 would not have yielded a predictable result, as the Examiner asserts. Borah’s openings for accommodating tubular hanging devices 28, 31 are made in planar walls 11, 12, whereas McKelvey’s sockets c, c’ for accommodating balls (e) of laundry hanging rods (d) are made in casting A. *Compare* Borah, Fig. 4, with McKelvey, Fig. 1. Hence, we agree with Appellant that in contrast to Borah’s openings, which are made in a single planar surface, i.e., either of walls 11, 12, McKelvey’s sockets c, c’ are made in two planar surfaces, i.e., top and side planes of casting A. *See* Appeal Br. 15–16; *see also* McKelvey, Figs. 2, 4, and 5.

As McKelvey’s sockets c, c’ require top and side planes, Appellant is correct in that the Examiner’s rejection does not adequately explain how a person of ordinary skill in the art would provide McKelvey’s sockets c, c’ in Borah’s planar walls 11, 12 in order to accommodate McKelvey’s laundry hanging device (d, e). *See* Appeal Br. 16. As such, we do not agree with the Examiner’s position that “replacing the attachment device of Borah with the attachment device of McKelvey” is “[a] simple substitution of one type of

opening for another to accommodate the end of the laundry hanging device of McKelvey.” Ans. 3. The Examiner’s conclusion that the substitution of McKelvey’s sockets c, c’ for Borah’s openings in walls 11, 12 would have merely provided an alternate attachment and laundry-hanging device says essentially that the substitution would have been obvious merely because McKelvey’s sockets c, c’ were known to accommodate laundry-hanging devices (d, e). Accordingly, we agree with Appellant that the Examiner’s reasoning to replace the attachment device and laundry-hanging device of Borah with the attachment device and laundry-hanging device of McKelvey lacks rational underpinnings. *See* Appeal Br. 16.

In conclusion, for the foregoing reasons, we do not sustain the rejection under 35 U.S.C. § 103(a) of claims 1–3, 5, 6, 8–14, 16, 17, 19–21, 24–29, 31, 33, 34, 36, 45–48, and 51 as unpatentable over Borah and McKelvey.

Rejections II–V

Independent claim 52, similar to claim 1, requires an attachment device that is “integrally formed” in and “flush” with a planar panel surface, and a hanging device pivotable and rotatable about the attachment device. *See* Appeal Br. 34–35 (Claims App.). As do claims 18, 22, 23, 30, 32, and 49 because each depend, either directly or indirectly, from claim 1. *Id.* at 29–32, 34. The Examiner’s use of the teachings of Thiot, Helot, Furman, and Sabounjian, respectively, does not cure the deficiencies in Rejection I, as discussed *supra*. *See* Final Act. 11–15.

Therefore, for the same reasons as discussed above, we also do not sustain the rejections under 35 U.S.C. § 103(a) of claim 18 as unpatentable over Borah, McKelvey, and Thiot; of claims 22, 23, 32, and 52 as unpatentable over Borah, McKelvey, and Helot; of claim 30 as unpatentable over Borah, McKelvey, and Furman; and of claim 49 as unpatentable over Borah, McKelvey, and Sabounjian.

SUMMARY

The Examiner's decision to reject claims 1–3, 5, 6, 8–14, 16–34, 36, and 45–52 is reversed.

REVERSED