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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte REN JUDKINS

Appeal 2014-006196
Application 13/348,824
Technology Center 3600

Before JOHN C. KERINS, ANNETTE R. REIMERS, and
JAMES J. MAYBERRY, *Administrative Patent Judges*.

MAYBERRY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Ren Judkins (Appellant) seeks our review under 35 U.S.C. § 134 of the Examiner's rejections of claims 1–14. We have jurisdiction under 35 U.S.C. § 6(b). We conducted an oral hearing on this appeal on October 4, 2016, and a transcript of that hearing has been placed into the record (“Tr.”).

We AFFIRM.

CLAIMED SUBJECT MATTER

The claims are directed to roller shades and a method for making roller shades. *See* Appeal Br. 9–11, Claims App. Claims 1 and 10,

reproduced below, are independent and illustrative of the claimed subject matter:

1. A method of making a roller shade having a selected width comprising:
 - providing a stack of pleated material having a selected length and a plurality of pleats;
 - cutting the stack of pleated material to create a smaller stack of pleated material having a length corresponding to the selected width of the roller shade; and
 - attaching without use of a non-pleated backing layer the smaller stack of pleated material to a roller having a longitudinal axis so that the plurality of pleats are parallel to the longitudinal axis of the roller.

10. A roller shade comprising
 - a roller and
 - a panel of window covering material attached to the roller, the window covering material having a series of spaced apart micro tabs, each having a width less than one-half inch and a series of pleats one pleat located between each adjacent pair of micro tabs, such that the window covering material can be folded along the pleats to form a stack and
 - wherein the panel of window covering material is not attached to a non-pleated backing layer.

Appeal Br. 9, 10–11, Claims App.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Luboshez	US 3,443,860	May 13, 1969
Colson	US 5,043,038	Aug. 27, 1991
Levy	US 5,566,734	Oct. 22, 1996

REJECTIONS

I. Claims 1–14 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

II. Claims 1–6 and 8–14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Colson and Levy.

III. Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Colson, Levy, and Luboshez.

ANALYSIS

Rejection I

The Examiner rejects claims 1–14 for failing to comply with the written description requirement of 35 U.S.C. § 112, first paragraph, as the Examiner finds that the Specification fails to convey to a person having ordinary skill in the art that the inventor was in possession of the subject matter of the claims. Final Act. 2. Specifically, the Examiner finds that the Specification provides no basis for the negative limitation of “without use of a non-pleated backing layer” in claim 1 and the negative limitation “wherein the panel of window covering material is not attached to a non-pleated backing layer” in claim 10. *Id.*

In response to this rejection, Appellant argues that the Specification describes the invention recited in the claims with reference to the drawings and that Figures 1–6 of the Specification “clearly show that there is no non-pleated or other backing layer with the pleated material from which the window covering is formed.” Appeal Br. 5; *see also* Reply Br. 1–2 (“Because the drawings in the present application show that there is no

backing layer the negative limitations in the claims are supported by the original disclosure.”).

Appellant’s argument does not inform us of Examiner error. “[T]he test for sufficiency [of the written description] is whether the disclosure of the application relied upon reasonably conveys to those skilled in the art that the inventor had possession of the claimed subject matter as of the filing date.” *Ariad Pharms., Inc. v. Eli Lilly and Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010). “Negative claim limitations are adequately supported when the specification describes a reason to exclude the relevant limitation.”

Santarus, Inc. v. Par Pharma., Inc., 694 F.3d 1344, 1351(2012). We find that the Specification provides no express reason for excluding a non-pleated backing layer from the pleated window covering material. Similarly, we find no other evidence in the record that persuades us that an artisan of ordinary skill would have understood from the Specification that the inventor was in possession of the claimed windows shades, with the pleated window covering material not having a non-pleated backing layer.¹

At oral hearing, Appellant’s counsel argued that the window covering material would not stack, as required in the claims, if the material included a non-pleated backing layer. *See* Tr. 5–7. Counsel, however, does not identify any evidence in the record, such as language in the Specification, supporting affidavits, or teachings in the prior art,² to support this argument.

¹ As we will discuss *infra*, in connection with our analysis of Rejection II, Appellant relies on these negative limitations to distinguish the claimed invention from the prior art of record.

² Indeed, Levy’s Figure 4 appears to show window covering material with pleats and a backing layer folded as in a stack. *See* Levy, Fig. 4 (showing covering 47 with accordion-style folds 54); *id.* at 4:4–9 (describing covering 47 as including backing layer 53).

Without such evidence, we cannot determine from the record whether the “stacking” limitations of claims 1 and 10, and the associated disclosure in the Specification, would convey to an artisan of ordinary skill that the recited pleating material of claim 1 or the recited window covering material of claim 10 could not form stacks if these materials included a non-pleated backing layer. *See In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974) (providing that attorney argument “cannot take the place of evidence”).

For the reasons above, we sustain the Examiner’s rejection of claims 1–14 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

Rejection II

Independent claim 1 recites, in relevant part, the step of “attaching without use of a non-pleated backing layer the smaller stack of pleated material to a roller having a longitudinal axis so that the plurality of pleats are parallel to the longitudinal axis of the roller.” Appeal Br. 9, Claims App. Similarly, independent claim 10 recites, in relevant part, “a roller and a panel of window covering material attached to the roller . . . wherein the panel of window covering material is not attached to a non-pleated backing layer.” *Id.* at 10–11, Claims App. The Examiner finds that Colson discloses much of the subject matter of claims 1 and 10, but “Colson does not disclose that the pleated material is attached to a roller, as claimed, but rather that the pleated material is attached to a top slat.” Final Act. 3. The Examiner further finds that Levy discloses a shade with pleated material that is attached to a top slat or, alternatively, to a roller. *Id.* at 3–4. The Examiner concludes that “[t]o one having ordinary skill in the art it would have been

obvious to have provided the shade of Colson with a roller, as taught by [Levy], as a desired methodology of attaching the pleated material.” *Id.* at 4.

Appellant argues that Levy teaches that a non-pleated backing layer is associated with the window covering material attached to Levy’s roller, contrary to the requirements of claims 1 and 10. Appeal Br. 6. Appellant further argues that the Examiner’s proposed modification of the teaching of Levy to remove the backing layer is contrary to Levy’s teachings. *Id.* at 7. As Appellant explains, Levy discloses that the backing layer must be used to permanently retain the pleats and, based on this teaching, the Examiner fails to explain adequately why an artisan of ordinary skill would have had reason to modify Levy as proposed by the Examiner. Reply Br. 3. We agree.

We recognize that “[r]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). Here, the Examiner fails to articulate a persuasive reason, supported by a rational underpinning, why a person having ordinary skill in the art would remove the backing layer of Levy’s window covering material, given the teaching that the backing is needed to ensure that the pleats are permanently retained in the material.

For the reason above, we do not sustain the Examiner’s rejection of claims 1–6 and 8–14 under 35 U.S.C. § 103(a) as being unpatentable over Colson and Levy.

Rejection III

Claim 7 depends from claim 1. Appeal Br. 10, Claims App. In rejecting claim 7, the Examiner relies on the same reasoning for combining Colson and Levy as provided for claim 1. *See* Final Act. 4 (rejecting claim 7 over Colson and Levy “as applied to claim[] 1”). As we discussed above in connection with our analysis of Rejection II, we determine that the Examiner’s reasoning is insufficient to support the obviousness rejection. Accordingly, we do not sustain the rejection of claim 7 under 35 U.S.C. § 103(a) as being unpatentable over Colson, Levy, and Luboshez.

DECISION

We affirm the Examiner’s rejection of claims 1–14 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

We reverse the Examiner’s rejection of claims 1–6 and 8–14 under 35 U.S.C. § 103(a) as being unpatentable over Colson and Levy.

We reverse the Examiner’s rejection of claim 7 under 35 U.S.C. § 103(a) as being unpatentable over Colson, Levy, and Luboshez.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED