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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KEITH JAMES HENSEL

Appeal 2014-006258
Application 13/306,946
Technology Center 3700

Before STEFAN STAICOVICI, GEORGE R. HOSKINS, and
AMANDA F. WIEKER, *Administrative Patent Judges*.

HOSKINS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Keith James Hensel (“Appellant”)¹ appeals under 35 U.S.C. § 134 from the Examiner’s decision rejecting claims 15–32 in this application. Claims 1–14 have been canceled. Br. 2, 28 (Claims App.). The Board has jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART and enter a NEW GROUND OF REJECTION pursuant to our authority under 37 C.F.R. § 41.50(b).

¹ The Appeal Brief identifies Breville Pty Limited as the real party in interest. Br. 2.

CLAIMED SUBJECT MATTER

Claim 15 is the sole independent claim on appeal, and it recites:

15. A citrus press device with a motor for rotating a citrus reamer comprising:

a housing containing a motor for driving the reamer;

the arm being hinged to the housing at one end and having a handle at a free end;

the arm supporting for movement toward the reamer, a fruit dome that cooperates with the reamer;

the reamer having primary ribs, each rib having an apex, the apex comprising an elevated projection;

the elevated projections spaced from and surrounding a central pin that acts as a spacer between the reamer and the dome.

Br. 28 (Claims App.).

REJECTIONS ON APPEAL

Claim 31 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

Claims 15–17 and 31 stand rejected under 35 U.S.C. § 103(a) as unpatentable over De Zarate (US 4,706,559, iss. Nov. 17, 1987), Reinecke (US Des. 139,794, iss. Dec. 19, 1944), and Jakovicz (US 2,306,884, iss. Dec. 29, 1942).

Claims 18–22 stand rejected under 35 U.S.C. § 103(a) as unpatentable over De Zarate, Reinecke, Jakovicz, and Ruck (US Des. 366,992, iss. Feb. 13, 1996).

Claims 23 and 27 stand rejected under 35 U.S.C. § 103(a) as unpatentable over De Zarate, Reinecke, Jakovicz, and Egana (US 6,155,164, iss. Dec. 5, 2000).

Claim 24 stands rejected under 35 U.S.C. § 103(a) as unpatentable over De Zarate, Reinecke, Jakovicz, Egana, and Matsumoto (US 4,530,277, iss. July 23, 1985).

Claim 25 stands rejected under 35 U.S.C. § 103(a) as unpatentable over De Zarate, Reinecke, Jakovicz, and Matsumoto.

Claim 26 stands rejected under 35 U.S.C. § 103(a) as unpatentable over De Zarate, Reinecke, Jakovicz, and Elliott (US 1,933,621, iss. Nov. 7, 1933).

Claim 28 stands rejected under 35 U.S.C. § 103(a) as unpatentable over De Zarate, Reinecke, Jakovicz, and Hubrich (US 3,566,939, iss. Mar. 2, 1971).

Claim 29 stands rejected under 35 U.S.C. § 103(a) as unpatentable over De Zarate, Reinecke, Jakovicz, and Easley (US 438,069, iss. Oct. 7, 1890).

Claim 30 stands rejected under 35 U.S.C. § 103(a) as unpatentable over De Zarate, Reinecke, Jakovicz, and Crowe (US 1,995,670, iss. Mar. 26, 1935).

Claim 32 stands rejected under 35 U.S.C. § 103(a) as unpatentable over De Zarate, Reinecke, Jakovicz, and Preston (US Des. 89,652, iss. Apr. 18, 1933).

ANALYSIS

A. *Indefiniteness—Claim 31*

In rejecting claim 31 as indefinite, the Examiner determines “it [is] unclear if [Appellant] intends to claim parts of the device, or the method steps associated with the device” where the claim recites “a switch that is depressed *when* a main shaft of the motor is depressed.” Final Act. 2. Appellant does not address the § 112 rejection in the Appeal Brief. *See, e.g.*, Br. 26. We, therefore, summarily sustain the rejection of claim 31 as indefinite.

*B. Obviousness over De Zarate, Reinecke, and Jakovicz—
Claims 15–17 and 31*

In rejecting independent claim 15, the Examiner finds De Zarate discloses a motor-driven rotating reamer (extractor head 25) and a cooperating fruit dome (cap 33) for pressing a citrus. Final Act. 3 (citing De Zarate, Fig. 1). The Examiner also finds De Zarate has, as claimed, a central pin (protuberance 26) that acts as a spacer between reamer 25 and dome 33. *Id.* The Examiner finds De Zarate’s reamer 25 lacks the claimed “ribs, each rib having an apex . . . comprising an elevated projection.” *Id.*

The Examiner cites Reinecke as disclosing a reamer having ribs, with each rib having an apex comprising an elevated projection. *Id.* (citing Reinecke, Figs. 1–3). The Examiner determines it would have been obvious to incorporate Reinecke’s ribs in De Zarate’s reamer 25, “thereby yielding a protuberance (i.e. central pin) surrounded by ribs and at a higher elevation than the ribs.” *Id.* at 4. The stated reasoning for this combination is to provide De Zarate’s reamer 25 “with portions formed to grip the fruit section and *prevent undue slipping during use of the device* (col. 4, ln. 50–70 of Jakovicz).” *Id.* (emphasis added).² The Examiner further cites Jakovicz as “show[ing] surrounding the central axis of the reamer with ribs (as seen in Jakovicz’s Figure 2).” Ans. 12, 15.

Appellant argues the Examiner’s proffered reason for modifying De Zarate—prevention of undue slipping during use of reamer 25—is not a rational underpinning for the modification. Br. 12, 15–17. Appellant contends Reinecke “is a design patent that provides little or no teaching in

² We, like the Examiner and Appellant, cite to Jakovicz by specifying one of the four columns therein, and corresponding line numbers.

regards to any operation of the reamer.” *Id.* at 16. Appellant further contends De Zarate’s device extracts juice from a fruit section by pressing the fruit section between dome 33 and rotating reamer 25, whereas Jakovicz discloses “a fruit press juicer, which *does not suggest inclusion of a rotating reamer.*” *Id.* at 12. Based on this difference in operation, Appellant contends Jakovicz’s teaching of “rib-like parts being formed to grip the cut edge of the fruit section and prevent undue slipping thereof” (Jakovicz, 4:65–67) fails to provide a rational basis for modifying De Zarate’s rotating reamer 25 to include the claimed ribs. Br. 12, 15–16.

We are persuaded that prevention of undue slipping between De Zarate’s rotating reamer 25 and the fruit section during use, in light of Reinecke and Jakovicz, is not a rational basis for modifying De Zarate’s reamer to include ribs. Reinecke discloses six ribs on a mound in a “fruit juicer.” Reinecke, claim, Figs. 1–3. Nonetheless, Reinecke does not suggest that the ribs function to prevent undue slipping between Reinecke’s ribbed mound and the fruit section. Indeed, a person of ordinary skill in the art would understand Reinecke functions to extract juice by *relative rotation* between the ribbed mound and the fruit section, in order for the ribs to assist in juice extraction. Accordingly, such relative rotation would involve some slippage between the ribbed mound and the fruit section.

Jakovicz discloses two different kinds of rib structures. The first are radial ribs 19 disposed on top of funnel member 17, which function to support fruit receiving member 20 thereon, and form spaces 21 to permit juice passing through openings 22 in member 20 to flow down to spout 18. Jakovicz, Figs. 2, 4, 5, and 2:14–19, 2:29–34. The second are annular ribs 24 disposed on top of member 20, “to provide a gripping surface for the

pulp of the fruit operated upon so that the fruit section will not slip relatively thereto.” *Id.* at Figs. 1, 7, and 2:38–47. Thus, when reciting “rib-like parts” at column 4, lines 50–70 (cited by the Examiner), Jakovicz is referring to annular ribs 24, not radial ribs 19.

It is not clear how the structure of Jakovicz’s annular ribs 24 would lead a person of ordinary skill in the art to modify De Zarate’s rotating reamer 25 to include Reinecke’s radial ribs to prevent undue slipping between reamer 25 and fruit during use. Jakovicz’s annular ribs 24 grip the outer edges of the fruit section as plunger 27 presses the fruit section into member 20, thereby providing a complete expressing of juice from the fruit section. Jakovicz, 1:15–20, 2:38–56. That is a markedly different juicing operation than De Zarate’s rotating of reamer 25 within the fruit section, as the fruit section is pressed on to reamer 25 by cap 33. De Zarate, 2:11–33. Due to the differences in structure and function between De Zarate and Jakovicz, we determine the Examiner errs in determining it would have been obvious to modify De Zarate’s rotating reamer 25 to include Reinecke’s ribs, in light of Jakovicz, to prevent undue slipping between reamer and fruit during use of De Zarate’s device.

Thus, we do not sustain the Examiner’s rejection of claim 15 as unpatentable over De Zarate, Reinecke, and Jakovicz. The Examiner’s additional consideration of dependent claims 16, 17, and 31 does not cure the deficiency noted as to claim 15. Final Act. 3–4.

Moreover, Appellant argues for the patentability of claim 16 separately from its parent claim 15, on the basis that “the Examiner has failed to identify any suggestion that [Reinecke’s] elevated projections each *comprise a spike*” as recited in claim 16. Br. 13. The Examiner maintains the apical projections

of Reinecke's ribs each comprise a "spike" as recited in claim 16. Ans. 13–14. We are persuaded of Examiner error. The apical projections in Reinecke are too rounded and smooth to be considered a "spike." *See* Reinecke, Figs. 2–3; Spec. Figs. 6(a)–6(b) (illustrating spike projections 245); *Webster's New World Dictionary of American English* (3rd College Ed., © 1988, Ed. Victoria Neufeldt), 1291 (defining "spike" as "1 a long, heavy nail" or "2 a sharp-pointed part or projection . . .").

Appellant also argues for the patentability of claim 31 separately from its parent claim 15, on the basis that the Examiner's findings in support of obviousness fail to consider claim 31 as a whole. Br. 14. The Examiner, due to the indefiniteness rejection of claim 31, states: "For the purposes of examining, examiner looked to the positive structural features of the claim." Final Act. 2; Ans. 14, 15–16. The Examiner then finds De Zarate discloses "multiple switches associated with the activation of the citrus press (switches 3, 34)." Final Act. 3. We are persuaded of Examiner error. Claim 31 recites, in part, "a switch that is depressed when a main shaft of the motor is depressed." Neither of De Zarate's switches 3 or 34 functions in that manner. De Zarate, 2:57–61 and 3:46–48 (switch 3), 2:43–47 and 4:43–46 (switch 34). The Examiner's indefiniteness rejection of claim 31 is not a license to ignore claim language in the obviousness rejection.

For the foregoing reasons, we do not sustain the Examiner's rejection of claims 15–17 and 31 as unpatentable over De Zarate, Reinecke, and Jakovicz.³

³ Appellant also argues for the patentability of claim 17 separately from its parent claim 15. Br. 13. Given the noted deficiency as to claim 15, we need not explain why we are not persuaded by Appellant's argument.

C. *Obviousness over De Zarate, Reinecke, Jakovicz, and Ruck—
Claims 18–22*

The Examiner’s consideration of claims 18–22 in light of De Zarate, Reinecke, Jakovicz, and Ruck does not cure the deficiency noted *supra* as to the common parent independent claim 15. Final Act. 4–5.

Moreover, Appellant argues the Examiner additionally errs “by relying on mere conclusory statements” as to obviousness of the dependent claims, and submits there is no evidence to support the “obvious engineering design choice” rationale set forth by the Examiner. Br. 19–20. The Examiner pertinently finds Ruck’s Figure 4 discloses the “compound profile” recited in claims 18–20 and 22, and the “secondary ribs” recited in claim 21. Final Act. 4. The Examiner determines it would have been obvious to use such structures in De Zarate’s reamer 25, as already modified in view of the other references, for the reason that “Ruck demonstrates[] the particular shape of the ribs on the reamer is a matter of obvious engineering design choice.” *Id.* at 4–5; Ans. 18. We are persuaded of Examiner error. The Examiner’s bare “obvious engineering design choice” rationale for obviousness, in the rejection presently on appeal, amounts to the “mere identification in the prior art of each [claim] element,” without an explanation of the reason(s) motivating a person of ordinary skill in the art to combine the references in the manner claimed. *In re Kahn*, 441 F.3d 977, 986 (Fed. Cir. 2006). Such a rejection does not establish obviousness. *Id.*

For the foregoing reasons, we do not sustain the Examiner’s rejection of claims 18–22 as unpatentable over De Zarate, Reinecke, Jakovicz, and Ruck.

*D. Obviousness over De Zarate, Reinecke, Jakovicz, and Elliott—
Claim 26*

The Examiner’s consideration of claim 26 in light of De Zarate, Reinecke, Jakovicz, and Elliott does not cure the deficiency noted *supra* as to the parent independent claim 15. Final Act. 7.

Moreover, Appellant argues the Examiner additionally errs in finding Elliott discloses the “quadrilateral hinge” recited in claim 26. Br. 21–22. The Examiner finds “Elliott teaches a fruit juice extractor with a quadrilateral hinge design (as seen in Figs.)” Final Act. 7; Ans. 18. We are persuaded of Examiner error. Appellant’s Specification shows and describes a quadrilateral hinge as comprising three arms connected to the juicer housing by four pivoting linkages. Spec. 11:29–34, Figs. 12–14. Elliott discloses nothing of the kind. Elliott, Figs. 1, 2, and 1:50–64. Further, the Examiner does not explain how, even under a broadest reasonable construction, Elliott might be found to disclose a quadrilateral hinge. Final Act. 7; Ans. 18.

For the foregoing reasons, we do not sustain the Examiner’s rejection of claim 26 as unpatentable over De Zarate, Reinecke, Jakovicz, and Elliott.

E. Other Obviousness Rejections

The Examiner’s consideration of claim 23–25,⁴ 27–30, and 32 in light of De Zarate, Reinecke, Jakovicz, and one or more of Egana, Matsumoto, Hubrich, Easley, Crowe, and Preston, does not cure the deficiency noted *supra* as to the parent independent claim 15. Final Act. 5–9. Therefore, we do not sustain the obviousness rejections of these claims.

⁴ Appellant also argues for the patentability of claim 23 separately from its parent claim 15. Br. 20. Given the noted deficiency as to claim 15, we need not explain why we are not persuaded by Appellant’s argument.

F. New Ground of Rejection—35 U.S.C. § 103(a)—Claim 15

We enter a new ground of rejection of claim 15 as being unpatentable, under 35 U.S.C. § 103(a), over De Zarate and Reinecke.

De Zarate discloses a citrus press device comprising housing 1, 16, and 20 containing motor 2 for driving reamer 25. De Zarate, Fig. 1. De Zarate also discloses arm 30 hinged to housing component 16, 20 at one end and having handle 31 at a free end, with arm 30 supporting dome 33 for movement toward reamer 25 for cooperating with reamer 25. *Id.* De Zarate further discloses central pin 26 acting as a spacer between reamer 25 and dome 33. *Id.* Furthermore, although De Zarate’s reamer 25 has “appropriate longitudinal grooves to facilitate squeezing” of the fruit between reamer 25 and dome 33 (see *id.* at 2:13–18, 4:17–24), De Zarate’s reamer 25 does not have, as claimed, “primary ribs, each rib having an apex, the apex comprising an elevated projection” with “the elevated projections spaced from and surrounding” central pin 26.

Reinecke discloses an ornamental design for a “fruit juicer.” Reinecke, claim, Figs. 1–3. Reinecke does not describe, in writing, how its fruit juicer works. Nonetheless, we find a person of ordinary skill in the art would understand the central mound of Reinecke’s fruit juicer is a reamer structure, that operates by relative rotation between the reamer mound and a fruit section pressed down on to the reamer mound. Such relative rotation may be achieved by using the handle at the bottom of Reinecke’s fruit juicer, and/or by twisting the fruit section by hand on top of the reamer mound. We further find a person of ordinary skill in the art would understand the six radial ribs on Reinecke’s reamer mound operate to enhance extraction of juice from the fruit section by the reamer. *See In re Jacoby*, 309 F.2d 513,

516 (CCPA 1962) (“Those skilled in the radiator art must be presumed to know something about radiators apart from what the references disclose.”).

It would have been obvious to a person of ordinary skill in the art at the time of Appellant’s invention to incorporate Reinecke’s radial reamer ribs in De Zarate’s reamer 25, to aid the extraction of juice from the fruit section performed by De Zarate’s reamer 25. A person of ordinary skill in the art would understand both De Zarate and Reinecke concern rotational reamer structures, and Reinecke’s radial ribs would aid the juice extraction performed by De Zarate’s reamer 25, just as they aid the juice extraction performed by Reinecke’s reamer structure. A person of ordinary skill in the art would have known either to retain the “longitudinal grooves” in reamer 25 (De Zarate, 2:13–18, 4:17–24) when adding the ribs to provide two kinds of juice extraction structures and thereby increase extraction efficiency, or to replace the longitudinal grooves with the ribs as the predictable substitution of one element for another known in the field. *See, e.g., KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007) (when 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) (citing *U.S. v. Adams*, 383 U.S. 39, 40 (1966)).

Further, a person of ordinary skill in the art would have known to retain De Zarate’s central pin 26 when adding the ribs, to maintain its function of centering the fruit section on reamer 25. De Zarate, 4:17–23. This would lead to the apical protrusions of Reinecke’s radial ribs, when added to De Zarate’s reamer 25, being “spaced from and surrounding” central pin 26, as recited in claim 15. In this way, the combination of

De Zarate with Reinecke would have predictably led to the invention recited in claim 15.

With respect to claims 16–32, although we decline to reject every claim under our discretionary authority under 37 C.F.R. § 41.50(b), we emphasize that our decision does not mean the remaining claims are patentable. Rather, we merely leave the patentability determination of these claims to the Examiner. *See* MPEP § 1213.02.

DECISION

The Examiner’s rejection of claim 31 as indefinite under 35 U.S.C. § 112, second paragraph, is affirmed.

The Examiner’s various rejections of claims 15–32 as unpatentable under 35 U.S.C. § 103(a) are each reversed.

For the reasons discussed above, we enter a NEW GROUND OF REJECTION of claim 15 pursuant to 37 C.F.R. § 41.50(b). Section 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.” Section 41.50(b) also provides that Appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

- (1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new Evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the prosecution will be remanded to the examiner. . . .
- (2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same Record. . . .

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37 C.F.R. § 41.50(b)(1)–(2). Further guidance on responding to a new ground of rejection can be found in the Manual of Patent Examining Procedure § 1214.01.

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-IN-PART; 37 C.F.R. § 41.50(b)