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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TROY L. HEWITT and GARY D. HODAPP

Appeal 2014-008647
Application 13/071,726
Technology Center 3600

Before ANTON S. FETTING, CYNTHIA L. MURPHY, and
AMEE A. SHAH, *Administrative Patent Judges*.

MURPHY, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellants¹ appeal under 35 U.S.C. § 134 from the Examiner's rejections of claims 1–20. We have jurisdiction over this appeal under 35 U.S.C. § 6(b).

We AFFIRM.

¹ The Appellants identify the real party in interest as “Hewitt Machine & Manufacturing, Inc.” (Appeal Br. 1.)

STATEMENT OF THE CASE

The Appellants' invention "relates to on-board boat lift structures that are typically attached to a bottom substantially horizontal platform of a pontoon boat." (Spec. 1, lines 13–14.)

Illustrative Claim

1. An onboard boat lift comprising:
 - a plurality of support legs, each support leg having a length;
 - a plurality of first mounting brackets attachable to a substantially horizontal lower deck material of a boat, each first mounting bracket pivotally mounting one of the support legs, the support legs pivoting about a pivot axis between a generally horizontal stowed position adjacent the lower deck material of the boat on which it is mounted, and a substantially upright support position wherein the pivot axis is at an acute angle relative to the substantially horizontal lower deck material; and
 - a plurality of power actuators, each of the plurality of power actuators being configured for moving each support leg of the plurality of legs between the generally horizontal stowed position and the substantially upright support position, each power actuator of the plurality of power actuators having an extendable and retractable rod, a first end of each power actuator of the plurality of power actuators being pivotally mounted to the lower deck material of a boat, and a second end of each power actuator of the plurality of power actuators being pivotally mounted to a side of one support leg of the plurality of support legs on an exterior thereof.

References

Schlender	US 2,659,555	Nov. 17, 1953
Hodapp	US 5,558,034	Sept. 24, 1996
Stimson	US 5,570,754	Nov. 5, 1996
Krause	US 7,628,564 B2	Dec. 8, 2009

Rejections

I. The Examiner rejects claims 1–20 under 35 U.S.C. § 103(a) as unpatentable over Hodapp, Krause, and Schlender. (Final Action 2, 4.)

II. The Examiner rejects claims 1–20 under 35 U.S.C. § 103(a) as unpatentable over Hodapp, Stimson, and Schlender. (Final Action 4, 6.)

ANALYSIS

Claims 1 and 13 are the independent claims on appeal, with the rest of the claims on appeal (i.e., claims 2–12 and 14–20) depending therefrom. (Appeal Br., Claims App.) Independent claims 1 and 13 are each directed to a “boat lift” comprising “a plurality of support legs” and “a plurality of power actuators” that move the support legs between “stowed” and “support” positions. (*Id.*)

Independent Claim 1

Independent claim 1 recites that the support legs pivot “about a pivot axis” that is “at an acute angle” relative to the substantially horizontal “lower deck material of the boat.” (Appeal Br., Claims App.)

The Examiner finds that Hodapp discloses a boat lift comprising support legs 36 that pivot between stowed and support positions. (*See* Final Action 2; *see also* Hodapp Fig. 1.) And the Examiner determines that it would have been obvious, in view of the teachings of Schlender, to make the pivot axis of Hodapp’s support legs 36 “cant from the horizontal” to provide “enhanced lateral stability.” (Final Action 3.)

The Appellants argue that Schlender relates to an airliner rather than a boat, and thus is not analogous art. (*See* Appeal Br. 10–12, 15–16.) We are not persuaded by this argument because a reference is analogous art if it “is

reasonably pertinent to the particular problem with which the inventor is involved.” *In re Bigio* 381 F.3d 1320, 1325 (Fed. Cir. 2004). The Appellants are involved with a problem pertaining to base stability (*see* Spec. 4, lines 5–9); and Schlender is likewise involved with this problem (*see* Schlender col. 2, lines 25–27). As such, we agree with the Examiner that “Schlender solves a similar problem in improving lateral stability by providing a sufficiently wide base.” (Answer 3.) Insofar as the Appellants argue that it would not have been obvious to incorporate this improvement into Hodapp’s boat lift (*see e.g.*, Appeal Br. 11–12), we are not persuaded by this argument.

Independent claim 1 additionally requires an end of each power actuator to be “pivotally mounted to a side of one support leg of the plurality of support legs on an exterior thereof.” (Appeal Br., Claims App.)

The Examiner finds that, in Hodapp’s boat lift, power actuators 74 move support legs 36 between stowed and support positions. (*See* Final Action 3; *see also* Hodapp Fig. 1.) And the Examiner determines that it would have been obvious, in view of the teachings of Kraus, to pivotally mount Hodapp’s power actuators 74 in the claimed manner. (*See* Final Action 3.) According to the Examiner, Kraus teaches an actuator pivotally mounted to the “exposed” surface of an “open” channel member of a support leg. (*See* Answer 3.)

The Appellants argue that the claim term “exterior” is not equivalent to “exposed” (Reply Br. 4) and so Kraus does not teach pivotally mounting an actuator as required by independent claim 1 (*see* Appeal Br. 8–9). We are not persuaded by this argument because we give the claim term “exterior” its “broadest reasonable interpretation consistent with the

[S]pecification.” *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed.Cir.2004). When we do so, the exposed (i.e., outside) surfaces of an open channel member qualify as an exterior side of a leg-like member.² As such, the Appellants do not persuasively challenge the Examiner’s finding that Kraus teaches pivotally mounting an actuator to the exterior of a support leg; and they do not adequately address why, in view of this teaching by Kraus, it would not have been obvious to mount Hodapp’s actuators 74 in the claimed manner. (*See* Reply Br. 3–4).

The Examiner additionally and alternatively determines that it would have been obvious, in view of the teachings of Stimson, to pivotally mount Hodapp’s power actuators 74 in the claimed manner. (*See* Final Action 6.) According to the Examiner, Stimson teaches that an actuator can be pivotally mounted, via a bracket, to the exterior side of a leg-like strut. (*See id.* at 5.)

The Appellants argue that “[i]t is improper to combine a reference that floats on water [i.e., Hodapp] with a vehicle used to pull cargo [i.e., Stimson].” (Appeal Br. 16.) We are not persuaded by this argument because, as discussed above, a reference is analogous art if it “is reasonably pertinent to the particular problem with which the inventor is involved.”

² A dictionary definition of the word “exterior” is “the outer surface or part, outside,” (<http://www.dictionary.com/exterior>, last visited December 2, 2016.) As for the Specification, it draws a distinction between the outside of the support leg (i.e., formed by exposed surfaces) and its enclosed interior cavity (i.e., formed by non-exposed surfaces). For example, the Specification discusses “perforations in the exterior of the leg” that allow invasive species “to become entrapped within the interior cavity of the leg through the perforations” (Spec. 1, lines 25–26) and discusses the need to avoid “openings or access to the interior of the legs” (*id.* at 5, line 10).

Bigio 381 F.3d at 1325. The Appellants are involved with movement of support legs between stowed and support positions via a power actuator (*see* Spec. 5, lines 7–17) and Stimson pertains to using a power actuator to move leg-like struts between stowed and support positions (*see* Stimson, col. 10, lines 5–17).

The Appellants also argue that Stimson’s power actuator is “coupled to the wheel strut utilizing a bracket” and, therefore, “is not attached to the exterior of the support leg as claimed.” (Appeal Br. 14.) In other words, according to the Appellants, independent claim 1 requires “a direct connection between the actuators and the legs.” (Reply Br. 8.) We are not persuaded by this argument because the Appellants do not point to, and we do not find, limitations (either expressly recited in the claim language or couched in the Specification) requiring such a direct connection. (*See e.g.*, Spec. 5, lines 1–6, 24–28.) As such, the Appellants do not persuasively challenge the Examiner’s finding that Stimson teaches that an actuator can be pivotally mounted to the exterior of a leg-like structure; and the Appellants do not adequately address why, in view of this teaching by Stimson, it would not have been obvious to mount Hodapp’s actuators 74 in the claimed manner. (*See* Appeal Br. 14–15; *see also* Reply Br. 7–8.)

The Appellants further argue that the “claimed invention addresses a long felt need in the onboard lift art.” (Appeal Br. 12.) We are not persuaded by this argument because “[e]stablishing long-felt need requires objective evidence that an art-recognized problem existed in the art for a long period of time without solution.” *Ex Parte Jellá*, 90 USPQ2d 1009, 1019 (BPAI 2008). Here, “no affidavit, declaration or other evidence has

been provided in the record to substantiate or support [this] argument.”
(Answer 4.)

In view of the foregoing, we are not persuaded by the Appellants’ position that the Examiner errs in determining that the boat lift recited in independent claim 1 would have been obvious over the prior art. Thus, we sustain the Examiner’s rejection of independent claim 1 under 35 U.S.C. § 103(a) as unpatentable over Hodapp, Krause, and Schlender (Rejection I); and we sustain the Examiner’s rejection of independent claim 1 under 35 U.S.C. § 103(a) as unpatentable over Hodapp, Stimson, and Schlender (Rejection II).

Dependent Claims 2–10 and 12

The Appellants do not argue dependent claims 2–10 and 12 separately from independent claim 1 (*see* Appeal Br. 12, 16) and so they fall therewith.

Thus, we sustain the Examiner’s rejection of dependent claims 2–10 and 12 under 35 U.S.C. § 103(a) as unpatentable over Hodapp, Krause, and Schlender (Rejection I); and we sustain the Examiner’s rejection of dependent claims 2–10 and 12 under 35 U.S.C. § 103(a) as unpatentable over Hodapp, Stimson, and Schlender (Rejection II).

Dependent Claim 11

Dependent claim 11 requires a “foot” to be “spring biased into an extended engaging position for contacting a bottom surface of a body of water.” (Appeal Br., Claims App.)

The Examiner finds that Hodapp’s boat lift includes pivotally mounted foot portions 58. (*See* Final Action 4–5; *see also* Hodapp Fig. 1.) And the Examiner determines that “the particular type of foot pad chosen,

whether spring biased or not, would have been a matter of design expedient to one of ordinary skill in the art.” (Final Action 4.)

The Appellants argue that the prior art references do not “disclose a spring biased foot.” (Appeal Br. 13.) We are not persuaded by this arguments because the Examiner “need not seek out precise teachings directed to the specific subject matter of the challenged claim” as “the inferences and creative steps that a person of ordinary skill in the art would employ” can be taken into account. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 419 (2007).

Here, the prior art may not contain a precise teaching of a spring-biased foot for the support leg of a boat lift. However, Hodapp discloses that a support leg 36 can have a pivotally mounted foot 58 and Hodapp’s foot 58 is shown in an extended engaging position for contacting the bottom surface of the body of water. (*See* Hodapp Fig. 1.) Also, the Examiner finds that “[s]pring biased feet for support legs are well known in the art” (Final Action 4) and the Appellants do not persuasively challenge this finding (*see* Appeal Br. 12–13, 16–17; *see also* Reply Br. 6). The Appellants do not adequately address why one of ordinary skill in the art, armed with this knowledge, would not have inferred that spring-biasing Hodapp’s foot 58 into its illustrated position would be a creative step worth considering.

Thus, we sustain the Examiner’s rejection of dependent claim 11 under 35 U.S.C. § 103(a) as unpatentable over Hodapp, Krause, and Schlender (Rejection I); and we sustain the Examiner’s rejection of dependent 11 under 35 U.S.C. § 103(a) as unpatentable over Hodapp, Stimson, and Schlender (Rejection II).

Independent Claim 13

The Appellants argue only that the Examiner errs in rejecting independent claim 13 for the same reasons discussed above in our analysis of independent claim 1. (*See* Appeal Br. 13–14.) As the Appellants do not establish that the Examiner errs in the rejection of independent claim 1, we are not persuaded by these arguments.

Thus, we sustain the Examiner’s rejection of independent claim 13 under 35 U.S.C. § 103(a) as unpatentable over Hodapp, Krause, and Schlender (Rejection I); and we sustain the Examiner’s rejection of independent 13 under 35 U.S.C. § 103(a) as unpatentable over Hodapp, Stimson, and Schlender (Rejection II).

Dependent Claims 14–20

The Appellants do not argue dependent claims 14–20 separately from independent claim 13 (*see* Appeal Br. 12, 16) and so they fall therewith.

Thus, we sustain the Examiner’s rejection of dependent claims 14–20 under 35 U.S.C. § 103(a) as unpatentable over Hodapp, Krause, and Schlender (Rejection I); and we sustain the Examiner’s rejection of dependent claims 14–20 under 35 U.S.C. § 103(a) as unpatentable over Hodapp, Stimson, and Schlender (Rejection II).

DECISION

We AFFIRM the Examiner’s rejections of claims 1–20.

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