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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte XAVIER BOLAND

Appeal 2014-009118
Application 12/666,901
Technology Center 3600

Before: ANNETTE R. REIMERS, THOMAS F. SMEGAL, and GORDON D. KINDER, *Administrative Patent Judges*.

KINDER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellant[1] appeals under 35 U.S.C. § 134 from a rejection of claims 1, 3, 4, and 6–16. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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[1] Appellant identifies the real party in interest as Federal-Mogul Corporation. Appeal Br. 3.

CLAIMED SUBJECT MATTER

The claims are directed to a windscreen wiper device. Claim 1, the only independent claim, is reproduced below and illustrates the claimed subject matter:

> 1. A windscreen wiper device comprising an elastic, elongated carrier element, as well as a two piece elongated wiper blade including an upper holding part and an elongated lower wiping part of a flexible material which can be placed in abutment with a windscreen to be wiped, wherein said upper holding part includes at least one longitudinal groove, in which groove a longitudinal strip of the carrier element is disposed, which windscreen wiper device comprises a connecting device for an oscillating arm, wherein said longitudinal groove has a closed circumference along its length and wherein said connecting device is welded, soldered or glued to only said upper holding part of said wiper blade.

REFERENCES

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

Lee	US 2004/0181894 A1	Sept. 23, 2004
Nacamuli	US 2006/0037167 A1	Feb. 23, 2006
Jollec	US 2010/0275403 A1	Nov. 4, 2010
Cerdan	FR 2,891,227	Sept. 23, 2005

REJECTIONS

The Examiner made the following rejections:

Claims 1, 3, and 4 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cerdan and Lee.

Claim 6–8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cerdan, Lee, and Jollec.

Claims 9–12 and 16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Cerdan, Lee, and Nacamuli.

Claim 13–15 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Cerdan, Lee, Nacamuli, and Jollec.

OPINION

Claims 1, 3, and 4.

Appellant argues claims 1 and 3 together. Appeal Br. 7–12. We select claim 1 as representative, and claim 3 stands or falls with claim 1. 37 C.F.R. § 41.37(c)(1)(iv)

In seeking reversal of the rejection of claim 1, Appellant argues that Cerdan does not teach welding, soldering, or gluing between the connecting device 8 and the holding part 2 shown in Cerdan, Figure 1. Appeal Br. 8. Appellant further argues that Cerdan does not teach any sort of bonding connection between the holding part 2 and a connecting device 8. *Id.* Appellant further contends that "the welding connection taught in Lee involves neither a connecting device nor a wiper blade, the very two components which claim 1 recites as being 'welded, soldered or glued' together." *Id.* Appellant adds that even if welding is suggested, it would only suggest welding the two halves of Cerdan's connecting device to each other, not to the wiper blade. Appeal Br. 12. Because neither reference

teaches welding together the very parts claimed in Claim 1, Appellant argues, the rejection of claim 1 should be reversed.[2]

In the Examiner's Answer, it is conceded that Lee does not specifically disclose the method of how the central connection device 11 (Cerdan Fig. 2) is attached to the holding part 3. Ans. 3–4. However, Lee does specifically teach that welding two members together in the windscreen wiper art is known in order to make a more secure connection. Ans. 4, citing Lee ¶ 14.

One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *See In re Keller*, 642 F.2d 413, 426 (CCPA 1981); *In re Merck & Co.*, Inc., 800 F.2d 1091, 1097 (Fed. Cir. 1986). Appellant's first argument does not address the combination asserted by the Examiner to be obvious, but instead attacks the references separately. For this reason it is not persuasive of Examiner error. Appellant's reply makes the same argument, and likewise does not persuade us of error. Reply 4–5.

Appellant also argues that combining Cerdan with Lee can only be the result of hindsight reconstruction because "neither Cerdan nor Lee teaches a direct bonding connection between . . . the connecting device and the wiper blade, and it is not readily apparent from either of these references that such bonding connection like welding would even be desirable." Appeal Br. 11.

[2] Appellants also argue the Examiner is mistaken in asserting that Lee teaches welding "a connecting device" to "an upper holding part of a two piece wiper blade." Reply 3. We do not reach this issue in light of the Examiner's broader finding that Lee teaches welding two members together in the windscreen art to make a more secure connection. Ans. 4.

Appellant makes the same argument in abbreviated form in his Reply. Reply 4–5. The Examiner responds:

> it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the appellant's disclosure, such a reconstruction is proper. *See In re McLaughlin*, 443 F.2d 1392 (CCPA 1971).

Ans. 4. After pointing out that Cerdan shows securing the connecting device to the upper holding part with teeth and that Lee teaches a welded connection of parts in a wiper blade for a more secure connection (Ans. 4–5), the Examiner concludes that "substituting the frictional teeth connection between the connecting device and the upper holding part of Cerdan with the more secure welded connection of Lee would have been obvious to one of ordinary skill in the art at the time of the invention without any knowledge gleaned only from the appellant's disclosure." Ans. 5.

"[A] person of ordinary skill is also a person of ordinary creativity, not an automaton." *KSR Int'l. v. Teleflex*, 550 U.S. 398, 421 (2007). The Court explained:

> When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or in another. If a person of ordinary skill in the art can implement a predictable variation, and would see the benefit of doing so, § 103 likely bars its patentability. Moreover,, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual

> application is beyond that person's skill.

Id. at 401. The operative question in this "functional approach" is thus "whether the improvement is more than the predictable use of prior art elements according to their established functions." *Id.*

We agree with the Examiner that welding the connection device of Cerdan to the upper holding part is an obvious implementation of a technique (welding) that improved Lee's wiper blade to improve the wiper blade of Cerdan. Appellant does not argue that the result is unpredictable or that it required any unusually high level of skill to accomplish. Accordingly, we are not persuaded that the Examiner erroneously used hindsight in rejecting claim 1.

Appellant argues that claim 4 is patentable over the cited art because it recites "that the connecting device is connected to a longitudinal horizontal side of the holding part that faces toward a windscreen to be wiped, i.e., a lower surface of the holding part." Appeal Br. 13. He argues that Cerdan teaches holding the sides and not the bottom of the wiper blade and that therefore Cerdan "lacks any teachings of a connection between the connecting device and a lower surface of the holding part as recited in claim 4." *Id*. The Examiner responds that Cerdan discloses a connecting device 8 that "wraps around the underside of the upper holding part in figure 1." Ans. 5. Appellant's Reply does not address the Examiner's Answer on this point. Because welding is known in the art and the pieces of Cerdan wrap around to the underside of the blade, we agree with the Examiner that it would have been obvious to weld those services together. Accordingly, we are not persuaded the Examiner erred in his rejection of claim 4.

Claims 6–8.

Claim 6 depends from claim 1 adding that the "connecting device is welded or soldered to said wiper blade through an ultrasonic welding or soldering operation." Appeal Br. 21 (Claims App.). Appellant argues that while Jollec may teach ultrasonic welding, it does not render this claim obvious because Jollec teaches ultrasonic welding of longitudinal strips to the connecting device rather than the wiper blade. Appeal Br. 13–14. The Examiner answers that "Lee teaches welding the connection between the connection device and the wiper blade of Cerdan to make it more secure. Jollec teaches making the weld through the process of ultrasonic welding [0012]." Answer 5. For further support the Examiner refers to Kotlarski (US pub. 2001/000-4783) for its showing that ultrasonic welding is a reliable and economical way to weld the connection device to a wiper support element, citing paragraph 9. Answer 5. As with Appellant's argument about the combination of Cerdan and Lee, we find that the use of an old fastening technique in place of that shown in Cerdan would of been obvious at the time of the invention because it was likely to improve the Cerdan device the same way it improved the Jollec device, and such a substitution is well within the ordinary skill of the art. *See KSR, supra.*

Claim 7 depends from claim 1 adding that a polymer material is used as a soldering material in the ultrasonic weld. *See* Appeal Br. 21 (Claims App.). Appellant argues that Jollec would not render the proposed combination obvious for the same reasons argued in connection with claim 6. Appeal Br. 14. We do not find that reasoning persuasive for the same reasons it was not persuasive in connection with claim 6.

Claim 8 is argued patentable for the same reasons that claims 1 and 7 were argued patentable. *Id.* We do not find those arguments persuasive for the same reasons that they were not persuasive in connection with claims 1 and 7.

Claims 9–12 and 16.

Appellant makes no separate argument for claim 9, relying on the arguments made in connection with claim 1. *Id.* at 15. We therefore affirm the rejection of claim 9 for the same reasons as claim 1.

Appellant argues that claim 10 was improperly rejected because the reference relied on, Nacamuli, shows end caps that are merely in contact with the wiper, and such contact is not the claimed "connection." Appeal Br. 15. Appellant also argues that the end caps in Nacamuli are attached to the carrier 7 by means of openings (unnumbered) in the ends of the carrier and therefore are not connected to the holding part 6. *Id.*

During examination of a patent application, pending claims are given their broadest reasonable construction consistent with the Specification. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004); *In re Prater*, 415 F.2d 1393, 1404-05 (CCPA 1969). "It is the applicants' burden to precisely define the invention, not the PTO's." *In re Morris*, 127 F.3d 1048, 1056 (Fed. Cir. 1997). Here, Appellant has given no special meaning to the word "connect". Spec. *passim*. The end caps ("connecting pieces") 7 are described as preferably being welded, soldered or glued to the holding part. Spec. 6. Such an expressed preference is not a sufficient to displace

the ordinary meaning of "connect".[3] Nacamuli shows tips (end caps) that surround and engage the ends of his wiper blades. Nacamuli, Figs. 13, 14; ¶ 49. We agree with the Examiner that the end caps of Nacamuli are "connected" to the holding part 6 of Nacamuli. Nor do we find any support in Nacamuli for Appellant's claim that the holes in the ends of the carrier 7 are associated with connecting end caps 35 to Nacamuli's wiper blade, and even if the end caps do latch onto the holes in the carrier 7, such an arrangement would still meet the claim terms because the carrier 7 is, in turn, carried by the holding part 6 of Nacamuli. Accordingly, we have not been persuaded the Examiner erred in rejection claim 10.

Appellant contends the rejection of claim 11 should be reversed for the same reasons as claim 10. Appeal Br. 16. For the same reasons as stated above in connection with claim 10, we are not persuaded that the Examiner erred in rejecting claim 11.

Appellant argues that claim 12's recitation that the end caps are "welded, soldered or glued to said wiper blade" patentability distinguishes over the art cited. Appeal Br. 16; *see also id.* at 21 (Claims App.). Specifically (and in contradiction to its argument in connection with claim 10) Appellant argues "Nacamuli lacks any teachings of the connection between the connecting pieces in the wiper blade, much less a welded, soldered or glued connection." Appeal Br. 16. The Examiner responds that Lee teaches the welded connections in combination with Cerdan, and that welding the endcaps of Nacamuli would have been obvious. Ans. 6. As

[3] Connect: 1: to join or fasten together usually by something intervening; 2: to place or establish in relationship. https://www.merriam-webster.com/dictionary/connect

discussed above, we agree that the use of welding taught by Lee is an obvious method to improve the device of Cerdan. For the same reasons, welding the end caps of Nacamuli would have been obvious, and we are not persuaded the Examiner erred in rejecting claim 12.

Appellant argues claim 16 is allowable for the same reasons as claim 1. Appeal Br. 16. We therefore affirm the rejection of claim 16 for the same reasons we affirm the rejection of claim 1.

DECISION

For the above reasons, the Examiner's rejection of claims 1, 3, 4, and 6–16 is affirmed.

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

AFFIRMED