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GABLE & GOTWALS 100 WEST FIFTH STREET, 10TH FLOOR TULSA, OK 74103			SAFAVI, MICHAEL	
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* JOHN A. SIMONSEN, VIDAR SKJORESTAD, and  
BIRGER ERSDAL

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Appeal 2014-009703  
Application 12/092,336  
Technology Center 3600

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Before EDWARD A. BROWN, AMANDA F. WIEKER, and  
SEAN P. O'HANLON, *Administrative Patent Judges*.

O'HANLON, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

John A. Simonsen et al. (Appellants)<sup>1</sup> appeal under 35 U.S.C. § 134  
from the Examiner's July 15, 2013 Final decision ("Final Act.") rejecting

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<sup>1</sup> According to Appellants, the real parties in interest are John A. Simonsen, Birger Ersdal, Vidar Skjorestad, and Jurisdiction Bergensis AS. Br. 2. References to the Appeal Brief ("Br.") are to the replacement brief filed on February 12, 2014.

claims 24–29, 32, and 35–46.<sup>2</sup> We have jurisdiction over this appeal under 35 U.S.C. § 6(b).

#### SUMMARY OF DECISION

We AFFIRM.

#### SUMMARY OF INVENTION

Appellants’ claimed invention “relates to a tie rod for connecting opposite sections of a casting formwork.” Spec. 1:4–5. Claim 24, reproduced below from page 8 (Claims App.) of the Appeal Brief, is the sole independent claim and is representative of the claimed subject matter:

24. A tie rod (1) for joining opposite sides sections (23a, 23b) of a formwork (21) for retaining a casting material, said tie rod (1) comprising:

a mid portion (3) arranged to be disposed between the side sections (23a, 23b) of the formwork (21) when in use and further arranged to remain in non-releasable engagement with the casting material after said casting material has hardened;

two rod end portions (5a, 5b) contiguous with said mid portion (3), said end portions (5a, 5b) arranged to protrude through the side sections (23a, 23b) and having a rest (9) for a wedge device (11) for securing the side sections (23a, 23b) of the casting formwork (21), and

at least one abutment surface (7) located between said mid portion (3) and either rod end portion (5a, 5b), said abutment arranged to rest supportingly on an internal side surface (23c) of the side sections (23a, 23b),

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<sup>2</sup> Claims 1–23, 30, 31, and 34 are canceled (Br. 8, 10 (Claims App.)), and claim 33 is not rejected (Final Act. 6). We note that Appellants did not include pending dependent claims 43–46 in the Claims Appendix of the Appeal Brief, although Appellants request review of the rejections of these claims. *See* Br. 5, 12 (Claims App.).

wherein said tie rod (1) includes, at least one said mid portion (3), an outer surface of a non-corrosive material, said outer surface arranged to be in direct, watertight contact with the casting material after said material has hardened.

### REJECTIONS

Claims 24–29, 32, and 35–46 are rejected under 35 U.S.C. § 102(b) as being anticipated by Keith (US 6,854,229 B2, iss. Feb. 15, 2005).

Claims 24–29, 32, and 35–46 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Jost (WO 96/15335<sup>3</sup>, pub. May 23, 1996) and Keith.

### ANALYSIS

#### *Anticipation Rejection*

The Examiner finds that Keith discloses all of the elements of independent claim 24. Final Act. 2–3 (citing Keith, 3:45–49, Figs. 2, 4C). Appellants traverse, arguing that because Keith includes a sleeve tie through which a casting form tie is inserted, with the sleeve tie remaining in contact with the casting material and the ends of the form tie arranged to protrude through side sections of the formwork, Keith fails to disclose that a single body satisfies all of the recitations of claim 24. Br. 3–5. According to Appellants, “the claim language requires a single body to carry out the limitations listed.” *Id.* at 5. Similarly, Appellants further contend that Keith fails to disclose two rod ends being contiguous with the mid portion. *Id.* at 4.

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<sup>3</sup> We note that although the Final Action mistakenly references WO 96/15335<sup>5</sup> (Final Act. 4), the error is harmless as Appellants make arguments regarding the Jost reference (Br. 6–7).

We are not persuaded by Appellants' arguments. Appellants offer no persuasive evidence or technical reasoning to refute the Examiner's findings. For example, while Appellants argue that Keith falls short because it fails to disclose a "single body" having both a mid portion arranged to be in non-releasable engagement with the casting material and two end portions arranged to protrude through formwork side walls (Br. 4), no such limitation is required by claim 24. Br. 8 (Claims App.). Limitations not appearing in the claims cannot be relied upon for patentability. *In re Self*, 671 F.2d 1344, 1348 (CCPA 1982).

Rather, claim 24 merely requires that two rod end portions be "contiguous" with the mid portion. Br. 8 (Claims App.). The Examiner proposes the following dictionary definitions of "contiguous": touching, in contact; in close proximity, near; and physically adjacent, neighboring. Ans. 6 (citing Random House Dictionary, Collins English Dictionary). Appellants do not challenge the Examiner's proposed definitions, do not offer a contrary meaning, and do not direct us to any indication in the Specification that the claim term "contiguous" was used outside of its ordinary meaning (nor do we find any). In fact, the term "contiguous" does not appear in the Specification. If a divergent specialized usage were intended, such a meaning was required to be clearly explained in the Specification. *See Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). Appellants, therefore, have failed to apprise us of any error in the dictionary definitions proposed by the Examiner. We further note that such definitions of "contiguous" are consistent with Appellants' disclosed embodiments providing the recited tie rod mid portion and end portions as

two separate bodies. *See, e.g.*, Spec. 10:9–17 (disclosing that stem 2 passes through and is joined to mid portion 3).

As Keith’s casting form tie 28 and sleeve tie 10 are in contact or close proximity to each other (*see, e.g.*, Keith 6:25–27, 8:54–55, Figs. 4A, 5A) such that suitable tools, such as a hammer or chisel, are required to separate them (*id.* at 7:7–11), they are contiguous, as required by claim 24. Accordingly, we sustain the Examiner’s rejection of claim 24, as well as of its dependent claims 25–29, 32, and 35–46, as being anticipated by Keith.

#### *Obviousness Rejection*

The Examiner finds that Jost discloses the invention substantially as claimed in independent claim 24, except for the mid portion of the tie rod being formed of a non-corrosive material with fiber reinforcement. Final Act. 4 (citing Jost, Figs. 1, 2). The Examiner relies on Keith to teach the use of such a material, reasoning that it would have been obvious for a skilled artisan to form Jost’s tie rod Keith’s material. *Id.* at 4–5 (citing Keith, 8:65–9:7). Appellants traverse, arguing that “Jost fails to disclose two end portions and a mid portion being contiguous.” Br. 6.

Appellants’ argument is substantially similar to the argument made with respect to the anticipation rejection over Keith, and is unpersuasive for substantially the same reasons set forth above. Namely, because Jost discloses spacer 16 formed of “at least two parts (18, 20) which can be slid into each other” (Jost, Abstract), the spacer parts—and, therefore, mid and end portions thereof—are contiguous, as claimed. Accordingly, we sustain the Examiner’s rejection of claim 24, as well as of its dependent claims 25–29, 32, and 35–46, as being unpatentable over Jost and Keith.

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Application 12/092,336

DECISION

The Examiner's decision to reject claims 24–29, 32, and 35–46 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)(1)(iv).

AFFIRMED