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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MORAD M SAMII and ARUNKUMAR MADANAGOPAL

Appeal 2015-000040[1,2]
Application 13/447,759
Technology Center 3700

Before PHILIP J. HOFFMANN, JAMES L. WORTH, and
BRUCE T. WIEDER, *Administrative Patent Judges*.

HOFFMANN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1–9, 16, and 17. We have jurisdiction under 35 U.S.C. § 6(b).

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[1] Our decision references Appellants' Specification ("Spec.," filed Apr. 16, 2012), Appeal Brief ("Appeal Br.," filed Apr. 29, 2014), and Reply Brief ("Reply Br.," filed Aug. 19, 2014), as well as the Final Office Action ("Final Action," mailed Feb. 14, 2014) and the Examiner's Answer ("Answer," mailed July 7, 2014).

[2] According to Appellants, "[t]he real party in interest is Hewlett-Packard Development Company, LP. . . (hereinafter 'HPDC'). HPDC . . . is a . . . wholly-owned affiliate of Hewlett-Packard Company . . . . The general or managing partner of HPDC is HPQ Holdings, LLC." Appeal Br. 3.

We REVERSE.

According to Appellants, the invention is directed to "an efficient packaging assembly . . . that enables ease in accessing the stacks of imaging media or imaging material, while also reducing waste generated from transporting the imaging media from origination to a consumption and use destination point." Spec. 3, ll. 2–6. Claims 1 and 6 are the only independent claims. *See* Appeal Br., Claims App. We reproduce claim 1, below, as representative of the appealed claims.

> 1. A packaging assembly, comprising:
>
> a master carton that retains a plurality of stacks comprising imaging material; and
>
> a separation access band having a first end and a second end that separates the plurality of stacks from one another, the separation access band comprising a plurality of folds forming a plurality of pockets, wherein each pocket separates a stack within the master carton.

Appeal Br., Claims App.

REJECTIONS AND PRIOR ART

The Examiner rejects claims 1, 5, and 6 under 35 U.S.C. § 102(b) as anticipated by Potter (US 3,399,762, iss. Sept. 3, 1968).

The Examiner rejects claims 2–4, 7–9, 16, and 17 under 35 U.S.C. § 103(a) as unpatentable over Potter and Burniski (US 3,589,505, iss. June 29, 1971).

See Final Action 2–6; *see* Answer 2.

ANALYSIS

With respect to the anticipation rejection of independent claims 1 and 6, Appellants argue that the rejection is in error because "Potter fails to teach a separation access band that separates a plurality of stacks from one another wherein each pocket of the separation access band separates a stack within the master carton." Appeal Br. 13–14; *see also id.* at 13–17; *see also* Reply Br. 5–7. Based on our review of the record, because we cannot ascertain on which features the Examiner relies to reject the claim, we determine that the Examiner fails to establish that Potter discloses the claimed separation band.

Examination "shall be complete with respect . . . to the patentability of the invention as claimed." 37 C.F.R. § 1.104(a)(1). "When a reference is complex . . ., the particular part relied on must be designated *as nearly as practicable*. The pertinence of each reference, if not apparent, must be *clearly explained* and each rejected claim specified." 37 C.F.R. § 1.104(c)(2) (emphases added). Based on our review of the record, it is unclear how the Examiner is applying the teachings and disclosures of the prior art references to reject the currently pending claims.

For example, Potter's Figure 2 includes reference numbers 18, 20, 22, 24, and 26 identifying layers in which reams of paper are disposed. *See* Potter Fig. 2, col. 2, ll. 34–41. To complicate matters, Potter identifies the two reams of paper in bottom layer 18 as reams 28, the six reams of paper in intervening layers 22, 24, and 26 as reams 32, and the two reams of paper in top layer 20 as reams 30. *See id.* at col. 2, ll. 41–44. When explaining how Potter discloses the claimed stacks of paper, the Examiner refers, for example, to "first side-by-side stacks 28/26" and "second side-by-side stacks

24/22/20." Thus, the Examiner appears to define the "first stacks" by both a pair of paper reams and a layer in which another pair of paper reams are disposed, and to define the "second stacks" by both a pair of paper reams as well as two layers, each of which holds a pair of paper reams. Nonetheless, it appears that, based on the foregoing, the Examiner finds that Potter teaches at least four stacks—a pair of first stacks and a pair of second stacks. Elsewhere, however, the Examiner refers only to "two stacks: a first stack formed from articles 28/26 and a second stack formed from articles 24/22/20." Final Action 2.

Based on the above and other statements throughout the record, it is not clear to us which particular reams of paper the Examiner finds belong to any particular stack, or even how many stacks are shown in Potter. So, it is not clear to us whether i) the Examiner determines that Potter shows multiple side-by-side stacks placed in a single pocket formed by Potter's lifting strip or tape and whether such is permissible to teach all the limitations of claim 1, or ii) the Examiner determines that Potter shows a single stack, made up of side-by-side piles of paper reams, placed in each pocket formed by Potter's lifting strip or tape.

As a result, we determine that the Examiner does not establish that Potter teaches the limitations of independent claims 1 and 6, and, thus, we are constrained to reverse the anticipation rejection. Further, we are constrained to reverse the Examiner's anticipation and obviousness rejections of claims 2–5, 7–9, 16, and 17 that depend from the independent claims.

DECISION

We REVERSE the Examiner's anticipation and obviousness rejections of claim 1–9, 16, and 17.

REVERSED