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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* DAVID J. KINZER and FRANK TORNYAI

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Appeal 2015-000311  
Application 13/229,379  
Technology Center 2800

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Before BRADLEY R. GARRIS, ROMULO H. DELMENDO, and  
LILAN REN, *Administrative Patent Judges*.

DELMENDO, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

The Appellants request rehearing (as to claim 10 only)<sup>1</sup> of our Decision on Appeal entered September 23, 2016, in which we affirmed the Examiner’s final decision to reject claims 1–8, 10–15, and 17–20 under 35 U.S.C. § 103(a) as unpatentable over various prior art references including Cassarly et al. (US 2007/0024971 A1, pub. Feb. 1, 2007; hereinafter “Cassarly”). For the reasons given below, the Appellants’ arguments fail to

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<sup>1</sup> Request for Rehearing filed November 17, 2016 (hereinafter “Request” or “Req. Reh’g”).

establish that we misapprehended or overlooked any point that would justify a different outcome for claim 10.<sup>2</sup>

Claim 10, which depends from claim 1, reads (Appeal Brief filed March 14, 2014 at 18):

10. A lighting fixture as claimed in claim 1,<sup>[3]</sup> wherein a sidewall of the reflective tube is longitudinally curved.

In their Request, the Appellants point out that we cited to Cassarly's disclosure in paragraph 268—a paragraph not cited by the Examiner (Req. Reh'g 1). In addition, the Appellants contend that “this portion of Cassarly is taken out of context and is irrelevant because it is not referring to the

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<sup>2</sup> See 37 C.F.R. § 41.52(a)(1).

<sup>[3]</sup> Claim 1 reads (*id.* at 17):

1. A lighting fixture comprising:  
a light source including an array of LEDs;  
a collimating optic positioned to collimate light from at least one of the LEDs; and  
a light-mixing assembly positioned to receive light from the collimating optic, the light-mixing assembly comprising a reflective tube having a converging section and a diverging section,  
wherein the reflective tube includes an inlet end adjacent the light source and the collimating optic and an outlet end opposite the inlet end,  
wherein the reflective tube further includes an interior reflective surface that converges along the converging section and the interior reflective surface diverges along the diverging section,  
wherein the converging section of the reflective tube is closer to the inlet end than the diverging section,  
wherein the reflective tube includes a waist between the converging section and the diverging section, the waist being a narrowest portion of the reflective tube, and  
wherein the waist is closer to the inlet end of the reflective tube than the outlet end of the reflective tube.

*longitudinal* shape of the sidewall, but rather is referring to the *circumferential* or cross sectional shape of the sidewall” (*id.*).

The Appellants’ arguments do not compel a different outcome for claim 10. In support of a finding that Cassarly discloses the limitations recited in claim 10, the Examiner specifically referred to Cassarly’s Figures 20A and 20C (Examiner’s Answer entered July 31, 2014 at 9–10). A person having ordinary skill in the art would not have considered Cassarly’s Figures 20A and 20C in isolation but rather in light of Cassarly’s written description pertinent to these figures. We cited to Cassarly’s paragraph 268 to expound further on what the Examiner had already made explicit—i.e., that Cassarly’s Figures 20A and 20C describe light mixers with narrowing cross sections in the middle or waist section. Indeed, the Examiner specifically cited to Cassarly’s paragraph 268 in the context of finding that Cassarly teaches a waist or central portion (Final Act. 3). Therefore, our citation to that paragraph could not have been prejudicial.

Turning to the merits, we reiterate the finding already made by the Examiner (Ans. 9–10), and repeated in our Decision on Appeal, that Cassarly’s Figure 20A discloses, or would have suggested, a sidewall that is longitudinally curved, as required by claim 10. Specifically, we do not discern any sharp angles on the sides of the depicted mixer that would support the Appellants’ bare assertion—unaccompanied by any expert declaration (Appeal Br. 10)—that the sides of the mixer are made up of three longitudinally straight sections. To the contrary, the longitudinal sidewall depicted in Cassarly’s Figure 20A appears to be curved as no sharp angles are discernible in the contour of the sidewall. Cassarly teaches that “the mixer **260** [of Figure 20A] *narrows toward the center thereof*” (¶ 266)

(emphasis added) and “at the midway location are curved side portions corresponding to portions of the narrowed circular cross-section of the mixer shown in FIG. 20A” (¶ 268). Absent any discernible sharp angles on the sides of Cassarly’s mixer shown in Figure 20A, a person having ordinary skill in the art would have drawn a reasonable inference from Cassarly’s disclosure as a whole that the mixer shown in Figure 20A includes a sidewall that is longitudinally curved, as required by claim 10.

Moreover, Cassarly teaches that Figure 20A is merely “a perspective view of one embodiment of a rippled mixer having circular input and output faces and a narrow region therebetween” (¶ 82). In this regard, we have not been directed to any disclosure in Cassarly indicating that the figure is drawn to scale. As found by the Examiner (Ans. 7–8), Cassarly would have suggested variations of the disclosed embodiments in terms of, *e.g.*, shapes, angles, dimensions, and/or number of features (¶¶ 376, 378). Therefore, even if the Appellants are correct that the phrase “curved side portions corresponding to portions of the narrowed circular cross-section of the mixer” in Cassarly’s paragraph 268 refers to the contour of the cross section rather than the longitudinal sidewall of the mixer, the provision of curved longitudinal sidewalls in view of Cassarly’s Figure 20A would have been well within the level of ordinary skill in the art as a matter of obvious design choice.

For these reasons, we deny the Appellants’ request to modify our Decision as to claim 10.

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).

DENIED