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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PAUL NEMIT JR. and TIMOTHY I. AUMAN

Appeal 2015-000586
Application 13/367,444
Technology Center 3700

Before CHARLES N. GREENHUT, ERIC C. JESCHKE, and PAUL J. KORNICZKY, *Administrative Patent Judges*.

GREENHUT, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from a rejection of claims 1, 2, 4–9, 11, 13, and 15–20. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

CLAIMED SUBJECT MATTER

The claims are directed to a screw compressor having a volume ratio adjustment mechanism. Claim 1, reproduced below, is illustrative of the claimed subject matter:

> 1 A screw compressor having an adjustable volume ratio, comprising:
>
> a power source;
>
> a motor connected to the power source;
>
> a control panel that controls the power source and the motor;
>
> a housing having a cavity, the housing in fluid communication with an inlet end and in fluid communication with an outlet end;
>
> rotors positioned in the housing cavity, the rotors having lobes and an interlobe region between the lobes compressing a refrigerant gas received from the inlet end and discharged to the outlet end;
>
> a drive shaft connected to the motor rotating the rotors;
>
> a penetration in the housing, the penetration including at least one aperture, the at least one aperture providing a flow path from the interlobe region through the penetration to the outlet end;
>
> a member selectively positioned within the penetration, the member having a first end and a second end, the member selectively movable from outside the housing without compressor disassembly between a first position, in which the member blocks one or more apertures of the at least one aperture providing a minimum discharge volume with no flow path from the interlobe region to the outlet end to a second position, in which a flow path is provided from the interlobe region through the at least one aperture providing a maximum discharge volume, the compressed gas being discharged from the interlobe region through the at least one aperture to the outlet end; and
>
> wherein the selective position of the member within the penetration determines a volume ratio of the compressor.

REJECTIONS

Claims 1, 2, 9, 11, 13, 16, and 17 are rejected under 35 U.S.C. § 102(b) as being anticipated by Kountz (US 4,351,160, iss. Sept. 28, 1982).

Claim 4 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Kountz and Touchet (US 3,990,139, iss. Nov. 9, 1976).

Claims 5 and 6 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kountz and Pizzuto (US 4,159,012, iss. June 26, 1979).

Claim 7 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Kountz and Shu (US 2005/0151107 A1, pub. July 14, 2005).

Claims 8 and 18–20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kountz and Greene (US 2003/0223882 A1, pub. Dec. 4, 2003).

Claim 15 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Kountz and Cho (US 6,672,084 B2, iss. Jan. 6, 2004).

OPINION

This case turns on the Examiner's finding of a "housing" having boundaries defined by the line appended to Figure 3 of Kountz. *See* Ans. 13. The inventor, recognized as an expert, declared that a plausible explanation for Kountz's Figure 3 is that a compressor having such a structure may appear to have a housing as inferred by the Examiner when illustrated in partial cross section (*see* Decl. Fig. 31) but actually may have a housing that encases the valve control rod (Kountz 44) and its actuating motor (Kountz 46). The Examiner acknowledges this evidence but does not actually address it, instead referring back to portions of Kountz. *See* Ans. 16. The fact that Kountz did not expressly state that Figure 3 is not a partial cross

section is not dispositive because Kountz also did not indicate that Figure 3 depicts the entirety of the housing. Further, we agree with Appellants that a schematic illustration (such as Koontz, Fig. 1), without more, would generally not be considered indicative of the structural relationship between Kountz's motor 46 and the compressor's housing structure. App. Br. 6–7. Ultimately, Appellants' supposition as to Kountz's housing structure is just as likely to be correct as the Examiner's. "The familiar rule that any doubt which exists should be resolved in favor of the applicant is here applicable." *In re Kirschbraun*, 44 F.2d 675, 677 (CCPA 1930).

> [T]he precise language of 35 U.S.C. § 102 that '(a) person shall be entitled to a patent unless,' concerning novelty and unobviousness, clearly places a burden of proof on the Patent Office which requires it to produce the factual basis for its rejection of an application under sections 102 and 103.

In re Warner, 379 F.2d 1011, 1016 (CCPA 1967). A preponderance of the evidence, as opposed to mere speculation, must show nonpatentability before the PTO may reject the claims of a patent application. *In re Caveney*, 761 F.2d 671, 674 (Fed. Cir. 1985). As the Examiner has not shown anticipation by a preponderance of the evidence, and has not remedied this deficiency in any of the other rejections, we are constrained to reverse the Examiner's rejections.

DECISION

The Examiner's rejections are reversed.

REVERSED