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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ANDERS WILHELMSON

Appeal 2015-000625
Application 12/529,149
Technology Center 3700

Before: CHARLES N. GREENHUT, THOMAS F. SMEGAL, and
BRENT M. DOUGAL, *Administrative Patent Judges*.

GREENHUT, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from a rejection of claims 1–7, 9, 15–24 and 26. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

CLAIMED SUBJECT MATTER

The claims are directed to a single-use toilet in the form of a bag.

Claim 1, reproduced below, is illustrative of the claimed subject matter:

1 A single-use toilet intended to be used for urination and defecation and for storing and hygienization of excrements therein after use of the toilet, comprising:

a bag (1) of a size sufficient to be used for relieving oneself, including through defecation, and for storing excrements in an interior thereof, wherein the bag (1) is sealable after use so as to retain said excrements in an interior of the bag upon sealing the bag, wherein the bag (1) contains an amount of 2 to 4 grams of urea (8), in the interior thereof, where the excrements will be accommodated during said use, so as to enable hygienization of the contents of the sealed bag after said use of the bag as the toilet, said hygienization being caused by way of said amount of urea contacting said excrements and thereby being broken down into ammonia in an amount sufficient to act as a biocide and prevent anaerobic activity within the sealed bag, wherein the bag (1) is made from an essentially gas-tight, biodegradable material (5, 6, 7) that is impermeable to fluid during a period which is sufficient to effect said hygienization and to make the contents of the bag no longer harmful before the wall material of the bag breaks open, and wherein the bag (1) and contents of the bag are suitable for use as fertilizers after said use of the bag as the toilet and said hygienization.

REFERENCES

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

Renn	US 3,772,712	Nov. 20, 1973
Yum	US 4,938,748	Jul. 3, 1990
Sherrod	US 6,783,826 B2	Aug. 31, 2004
Litwiller	US 7,490,367	Feb. 17, 2009
Howell	US 2003/0159207 A1	Aug. 28, 2003
Adriano	US 2004/0010844 A1	Jan. 22, 2004
Sell	US 2009/0044325 A1	Feb. 19, 2009

REJECTIONS

Claim 1–7¹, 9, 15-24, and 26 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

Claims 16, 17, 18, and 21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Howell, Yum, and Renn

Claims 19 and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Howell, Yum, Renn, and Litwiller.

Claims 1, 2, 4, 7, 9, 15, 22 and 23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Renn, Yum, and Howell.

Claim 3 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Renn, Yum, Howell, and Adriano.

Claims 24 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Renn, Yum, Howell, and Litwiller.

Claim 5 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Renn, Yum, and Howell.

Claims 6 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Renn, Yum, Howell, and Sherrod.

Claim 26 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Renn, Yum, Howell and Sell.

OPINION

We agree with the basis for the § 112, first paragraph rejection, to which all pending claims are subject, as articulated by the Examiner:

¹ The Examiner apparently inadvertently included cancelled claim 8 in the rejections.

The claim requires the bag and the contents of the bag are suitable for use as a fertilizer. The specification [4:7–14, cited by Appellants at App. Br. 13] only recites the contents of the bag being suitable for a fertilizer not the bag. Therefore the specification has failed to provide support for the bag being used as a fertilizer.

Ans. 10. The Examiner's position in this regard stands uncontroverted. The purpose of the written description requirement is to prevent an applicant from claiming that which the applicant did not invent. Appellant does not apprise of any disclosure demonstrating possession of a bag suitable for use as fertilizer as recited in each of the independent claims before us. We therefore sustain the § 112, first paragraph rejection.

In each prior-art rejection, regardless of the order of the references cited, Howell, Yum and Renn are relied on by the Examiner for the same disclosures. Howell is cited regarding those features relating to the physical configuration of the recited bag. Renn is cited regarding the application of a bag in a single use toilet and incorporating a bacteristat into the bag. Yum is cited to demonstrate it was known to include urea as a biocide in bags containing excrement. In this case, the issues raised concerning the prior art rejections are the same regardless of the ordering of the references cited by the Examiner. *See e.g., In re Bush* 296 F.2d 491, 496 (C.C.P.A. 1961).

Appellant argues, regarding each of the independent claims that the Examiner relies on different references for the sealing and hygenization aspects of the claims. App. Br. 14, 22, 26, 28, 33. Appellant contends there would be no benefit to hygenization of Howell's disposable bag since it will not come into contact with anyone. The Examiner correctly points out that Renn is also a disposable bag and Renn additionally provides for some form of hygenization. Ans. 10. The Examiner further explains, and we agree,

that hygenization would provide an additional and beneficial safeguard should the bag rupture. Ans. 14, 17, 20. Furthermore, even disposable bags are subject to handling. There is no requirement that a particular combination or subcombination be described in a single prior-art reference to support a rejection under § 103(a). The Examiner reasonably determined that, even considering the disposability of the Howell bag, one skilled in the art would reasonably have expected a successful and predictable benefit by the inclusion of a biocide such as urea. Final Act. 4, 6–7

Appellant argues the structural and functional differences between Yum’s body-attached bag and disposable ones. App. Br. 15. The Examiner correctly found that even in light of these difference, the bags share sufficient similarities in both structure and function so as to reasonably be considered relevant to the present determination of obviousness. Ans. 10.

Appellant also argues “secondary factor[s]” such as success in the marketplace and praise of others. App. Br.16. However, these factual considerations are not supported by any evidence properly entered into the record before us. Appellant is in the best position to enter evidence of these considerations for the Examiner’s consideration and this has not been done.

Appellant argues that the broad encompassing range of Yum, 1 milligram to 25 grams, is not sufficient to meet the specific claim requirement of 2 to 4 grams. App. Br. 17. Appellant also points out that this quantity is not in the Yum bag itself. App. Br. 18–20, 24–25, 29–31. Even considering the “bag” according to the claims more narrowly than the Examiner did, i.e., meaning Yum’s urea delivery device, along with its urea supply, is outside the bag, Yum, discusses diffusion into the bag in great detail (cols. 8–9). This demonstrates a definite concern with the amount of urea that is ultimately transferred to the interior of the bag. It is only in the

interior of Yum's bag that the urea can produce the biocidal result Yum desires. Although Yum does not appear to provide a specific numerical range for urea within the bag at any point in time (App. Br. 19), Yum teaches that it should be selected based on the particular biocide chosen, the average urinal output and the microbiological potency. Col. 8, ll. 63–65. From this discussion it is clear that Yum considers the optimization of the quantity of biocide necessary for the intended hygenization as something that can be left to the skilled artisan.

“The law is replete with cases in which the difference between the claimed invention and the prior art is some range or other variable within the claims. . . . In such a situation, the applicant must show that the particular range is *critical*, generally by showing that the claimed range achieves unexpected results relative to the prior art range.” *In re Woodruff*, 919 F.2d 1575, 1578 (Fed. Cir.1990). Appellant has not entered any factual evidence to demonstrate why the amount of urea contained in the claimed toilet produces unexpected results, is otherwise critical, or is not the product of routine optimization of a known result-effective variable.

Appellant's argument, regarding the mechanism effecting hygienization (App. Br. 20–22, 26–28, 31–33), is based on Yum alone as opposed to Yum in combination with the Renn and Howell. When incorporated into the Renn or Howell bags the urea would contact excrement in the same way provided for by Appellant and necessarily produce the same results—ammonia. Ans. 13.

For the foregoing reasons, and on the record before us, the Examiner has persuasively demonstrated that the independent claims for which Appellant seeks review extend to cover what is obvious, making them unpatentable under § 103. *KSR Int'l. v. Teleflex*, 127 S. Ct. 1727, 1742

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(2007). As Appellant's arguments concerning the remaining claims and rejections are predicated only on dependency, we sustain the rejections of these claims as well.

DECISION

The Examiner's rejections are 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