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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte FRANK OLDORFF

Appeal 2015-000845
Application 13/933,166
Technology Center 1700

Before BRADLEY R. GARRIS, JULIA HEANEY, and
MONTÉ T. SQUIRE *Administrative Patent Judges*.

HEANEY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ requests review pursuant to 35 U.S.C. § 134(a) of a decision of the Examiner rejecting claims 1–21 of Application 13/933,166. We have jurisdiction under 35 U.S.C. § 6(b). An oral hearing was held on November 10, 2016. We affirm.

BACKGROUND

The subject matter on appeal relates to a device for finishing an engineered wood board, by application of a resin layer to the top and bottom surfaces of the board. App. Br. 2.

¹ Appellant identifies the real party in interest as Flooring Technologies Ltd. App. Br. 2.

Claim 1, reproduced below with disputed features italicized, is illustrative of the subject matter on appeal:

1. A device for finishing an engineered wood board having at least one top and/or bottom decor, comprising:

(A) a first double-sided application device;

(B) a first drying device arranged downstream of the first double-sided application device in a processing direction (V),

(C) a second double-sided application device arranged downstream of the first drying device in the processing direction (V),

(D) a second drying device arranged downstream of the second double-sided application device in the processing direction (V),

(E) at least one third double-sided application device arranged downstream of the second drying device in the processing direction (V),

(F) at least one third drying device arranged downstream of the at least one third double sided application device in the processing direction (V), and

(G) *a short-cycle press comprising a top plate and a bottom plate, wherein: each double-sided application device comprises:*

 a top application device for applying a resin layer to the top of the engineered wood board, and

 a bottom application device for applying a resin layer to the bottom of the engineered wood board, and

each top application device and each bottom application device comprises a mixing vessel, in which the resin to be applied may be mixed with at least one additive.

REFERENCES

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

Oldorff	US 2004/0191547	Sep. 30, 2004
Dorries et al.	US 4,533,590	Aug. 6, 1985
Foucht et al.	US 6,607,619	Aug. 19, 2003
Kato et al.	US 3,982,050	Sept. 21, 1976
Schafer	US 3,982,050	Sep. 8, 1998
Kawana et al.	US 3,982,050	Apr. 6, 1999
Koehler et al.	US 5,178,678	Jan. 12, 1993

THE REJECTIONS

- A. Claims 1, 5, and 7–9 are rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Oldorff, Dorries, and Foucht.
- B. Claims 2 and 3 are rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Oldorff, Dorries, Foucht, and Kato.
- C. Claims 4 and 6 are rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Oldorff, Dorries, Foucht, and Schafer.
- D. Claims 10 and 11 are rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Oldorff, Dorries, Foucht, and Kawana.
- E. Claims 12–15 are rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Oldorff and Foucht.

- F. Claims 16 and 17 are rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Oldorff, Foucht, and Kawana.
- G. Claim 18 is rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Oldorff, Dorries, and Foucht.
- H. Claims 19–21 are rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Oldorff, Foucht, and Koehler.

DISCUSSION

Rejections A, E, and G

Appellant presents the same arguments for patentability of independent claims 1 and 12, which are subject to Rejections A and E, respectively, except for an additional argument which Appellant directs to the limitation of “a short-cycle press” that is only recited in claims 1 and 18. Appellant does not separately argue the dependent claims subject to Rejections A and E, or present distinct argument against Rejection G. Accordingly, we address only claim 1, with the dependent claims standing or falling with the claim from which they depend.

Oldorff discloses a process for finishing an engineered wood board by applying a sealing layer of resin to the upper side and underside of the board, printing a decoration onto the sealing layer, applying a protective layer of resin onto the decoration, and pressing the board at an elevated temperature until the resin layers melt and bond to each other. Oldorff ¶¶ 10–19. Oldorff further describes that resin layers may be applied to the upper side and underside at the same time, and that a plurality of individual resin layers may be applied, with each individual layer being dried before application of

the next. Oldorff claims 3–4. The Examiner finds that Oldorff teaches all of the limitations of claim 1, except for a short-cycle press comprising top and bottom plates and a mixing vessel. Final Act. 3. The Examiner determines it would have been obvious, however, to use a short-cycle press including top and bottom plates as taught by Dorries in Oldorff’s process, and to provide a mixing vessel as part of a resin fluid supply arrangement as taught by Foucht, in order to combine resin and at least one additive for supply to an application device in Oldorff’s process. *Id.*

Appellant argues Oldorff teaches away from a short-cycle press, by disclosing use of a continuous press, in order to reduce production time and costs. App. Br. 6–7. Appellant relies on Oldorff’s discussion of a problem associated with use of a pressing plate. *Id.*, citing Oldorff ¶¶ 8–9.

Appellant’s argument is not persuasive, because the problem alluded to in Oldorff ¶¶ 8–9 does not relate to shortening production time, but rather visual quality of the decorative layer pressed onto the board. Further, Oldorff’s statement that a continuous press is preferable for shortening production time (Oldorff ¶ 35) does not discourage use of a short-cycle press but merely points to an advantage of a continuous press. Even if Appellant had shown that there are manufacturing cost tradeoffs involving use of a short-cycle press, such tradeoff would not necessarily prevent modification of Oldorff’s process to include a short-cycle press. *See Medichem, S.A. v. Rolabo, S.L.*, 437 F.3d 1157, 1165 (Fed. Cir. 2006) (“a given course of action often has simultaneous advantages and disadvantages, and this does not necessarily obviate motivation to combine”).

Appellant further argues that Oldorff only discloses application of two layers to the underside of the board (App. Br. 8, citing Oldorff ¶¶ 31–32), and does not show three application devices or drying devices, as “there

simply is no mention of any structure and one cannot be implied, as there are many different ways of applying such layers.” App. Br. 9. Appellant’s argument is not persuasive because it fails to consider all of the teachings of Oldorff. As the Examiner correctly finds and sets forth at length in the Answer, Oldorff specifically describes a process for applying multiple layers of resin to both sides of a board and clearly suggests application to opposed sides of the board at the same time. Ans. 4–6, citing Oldorff ¶¶ 10–20, 34, 36, claims 3–4. The use of exactly three double-sided applications is not sufficient to warrant patentability because determination of the appropriate number of layers would have been well within the ability of a person of ordinary skill in the art, in order to achieve a durable flooring product. *See* Ans. 6. Further, even though Oldorff does not illustrate structure including at least three double sided application devices or drying devices, Oldorff’s description of its process would have been sufficient to enable a person of ordinary skill to provide the necessary application and drying structure to coat and dry the board as many times as necessary.

Appellant further argues that Foucht does not show a mixing vessel, but merely shows an inline static mixer within a pipe. App. Br. 10–11. According to Appellant, a person of ordinary skill would understand that a static mixer is not a mixing vessel, which “will actively mix components using an agitator.” *Id.* at 10, citing Spec. Fig. 2, ¶ 54. The Examiner responds that claim 1 does not exclude the use of an in-line mixer as taught by Foucht. Ans. 9. Having considered Appellant’s position and reviewed the Specification, we determine that the Specification does not provide a special definition for “mixing vessel,” and therefore apply a broad interpretation. *See In re ICON Health & Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007) (“the PTO must give claims their broadest reasonable

construction consistent with the specification. . . . Therefore, we look to the specification to see if it provides a definition for claim terms, but otherwise apply a broad interpretation.”) Thus, Appellant’s argument is not persuasive of reversible error.

Rejection B

Claims 2 and 3 depend from claim 1 and recite additional limitations relating to storage vessels for the resin and additive which may be mixed in accordance with claim 1. App. Br. 25–26, Claims Appx. Appellant argues the Examiner erred by not considering that claim 2 recites a plurality of storage vessels, and by finding that Kato discloses a storage magazine. App. Br. 14. The Examiner responds, “the routineer in the coating art would readily appreciate some type of storage rack or support to hold plural supplies of coating material to supply to a coating application” and determines that use of a storage magazine alone does not warrant patentability. Ans. 11. Having considered Appellant’s argument, we are not persuaded that the Examiner harmfully erred; Appellant has not presented evidence that inclusion of a storage magazine would have been “uniquely challenging or difficult for one of ordinary skill in the art,” and the Examiner’s reasoning supports the conclusion of obviousness. *See KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 416-19 (2007).

Rejection C

Appellant does not present a distinct argument for patentability of claims 4 and 6, apart from their dependency from claim 1. Accordingly, claims 4 and 6 fall with claim 1.

Rejections D and F

Claims 10 and 11 depend from claim 1 and recite additional limitations relating to the drying devices and mixing vessels; claims 16 and

17 depend from claim 12 and recite the same additional limitations. App. Br. 27, 29, Claims Appx. Appellant additionally argues the Examiner erred by finding that Kawana's drying devices suggest a structure for drying different layers on different sides of a panel (claims 10 and 16), and that Foucht suggests use of different mixing vessels with an agitator in each vessel (claims 11 and 17). App. Br. 15–16, 19; Reply Br. 11–14. Having considered Appellant's arguments, we are not persuaded of reversible error, and sustain the rejections for the reasons given by the Examiner in the Final Action and Answer, which abundantly demonstrate “articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

Rejection H

Independent claim 19 recites double-sided application devices similar to claims 1 and 12, but additionally requires that the first and third application devices are “mounted on rails.” App. Br. 29–30, Claims Appx. Appellants do not separately argue dependent claims 20–21; therefore, we need only consider claim 19. App. Br. 23.

Appellant argues that Koehler does not show application devices on rails, and that the structure of Koehler on which the Examiner relies is a housing on rails but not an application device, as required by claim 19. *Id.*, citing Koehler Fig. 12, 8:5–16. The Examiner responds that a person of ordinary skill in the art would understand that Koehler's application devices (blanket cylinder **40**) are mountable via bearings, supports, and housing **46** onto rails **48** because those structures would have been known to enable positioning of the application devices. Ans. 23, citing Koehler 8:5–16. We further note that Koehler explicitly teaches bearing blocks **50** that are slidably mounted on the rails **48**. Therefore, we are not persuaded that the

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Examiner harmfully erred in determining the device of claim 19 would have been obvious.

SUMMARY

We affirm the rejections of claims 1–21.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED