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Muncy, Geissler, Olds & Lowe, P.C. 4000 Legato Road Suite 310 FAIRFAX, VA 22033			KELLEHER, WILLIAM J	
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The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JUERGEN SILLER, FRIEDER KRUEGER,
ANDRÉ BLINZLER, STEPHANIE HARTLEB, MATTHIAS WEISS,
MICHAEL ZELLMANN, and VOLKER MOELLER

Appeal 2015-000905
Application 12/966,964
Technology Center 3600

Before EDWARD A. BROWN, WILLIAM A. CAPP, and
FREDERICK C. LANEY, *Administrative Patent Judges*.

CAPP, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the final rejection of claims 1–10 as unpatentable under 35 U.S.C. § 103(a) over Lange (US 7,461,900 B2, iss. Dec. 9, 2008).¹ We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ A rejection of claims 9 and 10 under 35 U.S.C. § 112, second paragraph, is withdrawn in response to an after final amendment filed by Appellants. Ans. 7.

THE INVENTION

Appellants' invention relates to a method for manufacturing an adjustment fitting for a motor vehicle seat. Spec. ¶ 3. Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A method for manufacturing an adjustment fitting for a motor vehicle seat having an outer wheel with internal teeth that are associated with a first fitting part, and having an inner wheel with external teeth that are associated with a second fitting part, the method comprising:
 - inserting the inner wheel with the external teeth eccentrically to an axis of rotation, in the manner of a wobble mechanism, in the outer wheel with the internal teeth,
 - placing eccentric cam parts that form a variable eccentricity such that the eccentric cam parts are rotatable with respect to one another in an eccentric receiving space formed between the axis of rotation and the inner wheel; and
 - providing a transmission element having engagement elements, the transmission element being configured to actuate the eccentric cam parts and is employed such that the engagement elements work together with carrier elements of the eccentric cam parts,
 - wherein a measurement of the geometry of the inserted eccentric cam parts is made after said placing the eccentric cam parts and the geometry of the transmission element is individually matched based on the measurement data before insertion of the transmission element, said measurement of the geometry of the inserted eccentric cam part comprising an angle of rotation of the eccentric cam parts relative to one another.

OPINION

Unpatentability of Claims 1–7, 9, and 10

The Examiner finds that Lange discloses all of the elements of claim 1 except that it is silent regarding the claimed sequence of the measuring and

matching steps. Final Action 4–5. The Examiner finds that the measurement step is inherently met by Lange. *Id.* at 3–4.

One skilled in the art would recognize that the material mechanical components are formed from (e.g. metal, steel, etc.) inherently require [sic] reshaping in order for the components to properly fit together with adjacent components.

Id. at 4. The Examiner finds that one of ordinary skill in the art would have recognized that a change in sequence of when the cam parts are measured is a matter of engineering design, suited to the intended use of the device. *Id.* at 5 (citing *In re Burhans*, 154 F.2d 690 (CCPA 1946)). The Examiner concludes that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to change Lange’s sequence of measuring for the predictable result of increasing the efficiency of manufacturing. *Id.*

Appellants traverse the Examiner’s rejection by arguing that Lange does not teach the step of measuring, or the sequence of the measuring step. Appeal Br. 8. Appellants argue that there is no evidence in Lange to support the position that measurement of the elements during manufacturing inherently takes place. *Id.* at 8–9. Appellants argue that Lange does not teach or suggest a method for compensating for manufacturing tolerances. *Id.* Moreover, Appellants argue that Lange fails to teach or suggest that the geometry of the eccentric cam parts is measured after assembly of the cam parts. *Id.* at 9–10.

In response, the Examiner defends the inherency finding of the final action, noting that Lange’s eccentric cam parts (12, 20) are created in a particular dimension, weight, size, and orientation in order to engage and communicate with other parts. Ans. 9–10. Consequently, the size and

dimensions of individual parts within an assembly are constructed to physically match and communicate with other components. *Id.* at 10. According to the Examiner, this constitutes “measurement.” *Id.* at 9 (citing Merriam Webster’s Dictionary 10th Ed.).

With respect to the sequential order of steps, the Examiner reiterates the position from the final action that “one of ordinary skill in the art would have recognized that the change in sequence of when the measurement of the geometry of the inserted eccentric cam parts is made after said placing is a matter of engineering design, suited to the intended use of the device.” *Id.* at 11. The Examiner reiterates that the change of sequence can be utilized for the predictable result of increasing the efficiency of manufacturing by making products in an order convenient for construction. *Id.* The Examiner takes the position that the order of performing process steps is prima facie obvious in the absence of new or unexpected results. *Id.* (citing *Burhans*, 154 F.2d at 690). The Examiner observes that Appellants tout the claimed sequence of steps as maximizing compatibility based on matching measured machine tolerances; however, the Examiner reasons that such a result is neither new nor unexpected. *Id.*

In reply, Appellants argue that the Examiner focuses on the dimensions of individual parts of the assembly, which Appellants contend is unrelated to the claimed invention. Reply Br. 3.

That is, while it may be accurate to assume that the individual components were indeed measured at the time they were manufactured, *Lange* does not teach or suggest, explicitly or inherently, that the individual components are also measured during the assembly of the adjustment fitting. Indeed, as previously explained, conventionally, for manufacturing reasons, the individual parts of adjustment fittings have deviations from the norm with respect to their geometry

parameters. That is, manufacturing tolerances are typically permitted and always present in the individual parts.

Id. Appellants argue that the Examiner's findings regarding measurement of parts occurs at the time that the parts are manufactured and that it is not obvious to measure the eccentric cam during assembly. *Id.*

Although the Examiner provides no supporting evidence, we tend to agree with the Examiner that it is conventional in the design and manufacture of component parts of an overall larger assembly to design and make the parts in accordance with predetermined, specified dimensions. We also agree that it is conventional in such process to compare the dimensions of one part with the dimensions of another part, among other things, to ensure that the parts will complement each other. This process can properly be considered "measurement of the geometry of . . . parts" within a broad, but reasonable, construction of "measure." We also tend to agree with the Examiner that *Burhans* generally stands for the proposition that sequencing the order of performing process steps is prima facie obvious in the absence of new or unexpected results.

In the instant case, however, geometric measurement of cam parts is "individually matched." Claims App., claim 1. As we understand the claimed method in view of the Specification, the method requires measuring and comparing the measured geometry of an actual, manufactured cam part 30 to the measured geometry of an actual, manufactured cam part 32. This situation is different, for example, from comparing the measured geometry of an actual, manufactured cam part to an objective standard, such as engineering CAD drawings, as might be accomplished during an interim, work-in-progress quality control inspection during the manufacturing process.

Thus, even if it is inherent in Lange to measure the cam parts, we agree with Appellants that the Examiner has not established that Lange teaches or suggests measuring an actual cam part (such as cam part 30) and individually matching it to another cam part (such as cam part 32). The Examiner's underlying fact findings also are not sufficient to support a conclusion that it would have been obvious to a person of ordinary skill in the art to measure and compare one actual part to another for purposes of individually matching them during the assembly process, and the Examiner does not provide any reason to modify Lange to meet these limitations.

In view of the foregoing, we do not sustain the rejection of claim 1, neither do we sustain the rejection of claims 2–7, 9, and 10, that depend therefrom. *See In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992) (dependent claims are nonobvious if the independent claims from which they depend are nonobvious).

Unpatentability of Claim 8

Claim 8 is an independent claim that, like claim 1, contains a limitation directed to individually matching the geometry of cam parts. Claims App. Consequently, we do not sustain the rejection of claim 8 for the reasons expressed above with respect to claim 1.

DECISION

The decision of the Examiner to reject claims 1–10 is reversed.

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)(iv).

REVERSED