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EXAMINER

KOSANOVIC, HELENA

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DIRK NIEDERMANN and KELVIN LI

Appeal 2015-001174
Application 12/460,055
Technology Center 3700

Before EDWARD A. BROWN, GEORGE R. HOSKINS, and
SEAN P. O'HANLON, *Administrative Patent Judges*.

O'HANLON, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Dirk Niedermann and Kelvin Li (Appellants)¹ appeal under 35 U.S.C. § 134 from the Examiner's final decision rejecting claims 1–16 and 18–21.² We have jurisdiction over this appeal under 35 U.S.C. § 6(b).

SUMMARY OF DECISION

We REVERSE.

¹ According to Appellants, the real party in interest is Wachsmuth & Krogmann, Inc. App. Br. 1.

² The rejection of claim 17 is withdrawn. Ans. 7–8.

SUMMARY OF INVENTION

Appellants' claimed invention relates to "an appliance requiring a continuous intake of atmospheric air during operation thereof." Spec. ¶ 1. Claim 1, reproduced below from page 16 (Claims Appendix) of the Appeal Brief, is illustrative of the claimed subject matter:

1. A portable appliance comprising:
 - a housing defining a space; and
 - operating components in the space, the housing having a top and bottom,
 - the operating components comprising an air moving mechanism for causing atmospheric air to be drawn into the housing space to at least one of: a) cool at least one of the operating components; b) be treated by at least one of the operating components; and c) cause movement of a fluid within the housing space,
 - the housing having a first wall with a downwardly facing surface in which an inlet opening is defined through which atmospheric air is drawn into the housing space,
 - the housing further comprising a spacing wall that underlies the inlet opening and bounds in conjunction with the first wall an intake space through which atmospheric air is guided in a generally horizontal path towards the inlet opening,
 - the portable appliance configured to be supported stably in an operative position upon an upwardly facing, subjacent support surface so that the upwardly facing, subjacent support surface underlies the inlet opening.

REJECTION

Claims 1–16 and 18–21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hou (US 8,025,270 B2, iss. Sept. 27, 2011), Widerby (US 4,109,564, iss. Aug. 29, 1978), and Modlin (US 7,712,249 B1, iss. May 11, 2010).

ANALYSIS

Claims 1–16

The Examiner finds that Hou discloses the invention substantially as claimed in independent claim 1, including, *inter alia*, a portable appliance having a housing with an air intake opening on a bottom surface thereof, but does not disclose a spacing wall. Final Act. 2–3 (citing Hou, 2:48–51, Fig. 1). The Examiner finds that Widerby discloses a spacing wall underlying an inlet opening to define an intake space, and reasons that it would have been obvious to a skilled artisan to include Widerby’s spacing wall with Hou’s appliance to control the amount of air that flows into and through Hou’s housing. *Id.* at 4 (citing Widerby, Fig. 2), 6; *see also* Ans. 9. The Examiner finds that Modlin discloses the stable support of an appliance on a support surface such that the support surface underlies the appliance air inlet opening, and reasons that it would have been obvious to a skilled artisan to support the Hou appliance, as modified by Widerby, on a support surface as taught by Modlin. Final Act. 6 (citing Modlin, Fig. 2).

Appellants traverse, arguing, *inter alia*, that although the result of incorporating Widerby’s cover disc 8 into Hou’s appliance “might be to control the amount of air flow, this general **result** is not a **reason** to make the combination in the first place, and none has been stated.” App. Br. 11. Continuing, Appellants allege that “the only motivation that one skilled in the art would have to modify Hou’s appliance is to replicate [Appellants’] invention.” *Id.* We are persuaded by Appellants’ arguments.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of

obviousness. *See In re Fine*, 837 F.2d 1071, 1073–74 (Fed. Cir. 1988). Although the analysis need not identify explicit teachings directed to the claimed subject matter, “it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements *in the way the claimed new invention does.*” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 401 (2007) (emphasis added). As such, “there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.* at 418 (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

Here, the Examiner proposes to include Widerby’s cover disc 8 as the recited spacing wall with Hou’s appliance to create an intake space and thereby control flow of air into and through the Hou appliance. Final Act. 4, 6; *see also* Ans. 9. However, the Examiner has not established how the inclusion of Widerby’s cover disc would control the flow of air into Hou’s appliance, or why a skilled artisan would wish to control output in this manner. We note that, although not explicitly relied upon by the Examiner, Widerby discloses that the width—and therefore the volume of the Examiner-defined intake space—between cover disc 8 and hood 13 is adjustable via slots 16. *See* Widerby 2:19–22. However, even if the Examiner relies upon this adjustability as the proffered “control,” the Examiner has not established that reducing the volume of the air flow path would reduce the amount of air drawn in by Hou’s fan 302 rather than, for example, merely altering the velocity at which the air is drawn.

Furthermore, in Widerby, cover disc 8, as part of the disclosed ventilation element, is provided to spread or direct fresh air *into* a room. *See*

Widerby, 1:33–37. Widerby describes that cover disc 8 has “a flat, but somewhat convex” configuration for this particular purpose. *Id.* at 1:38–39. The Examiner has failed to establish how the inclusion of Widerby’s cover disc 8, shaped for diffusing the *output* of air, would function to control the *intake* of air.

We therefore find the Examiner has failed to set forth a rational underpinning for the proposed combination of Hou and Widerby.

Accordingly, for the foregoing reasons, we reverse the Examiner’s rejection of independent claim 1 as being unpatentable over Hou, Widerby, and Modlin. Because claims 2–16 depend from claim 1, and the Examiner’s use of Hou, Widerby, and Modlin with respect to those claims does not remedy the foregoing error for claim 1, we likewise reverse the Examiner’s rejection of claims 2–16.

Claims 18–20

Independent claim 18 requires a spacing wall similar to that of independent claim 1. App. Br. 20 (Claims Appendix). The Examiner rejects claim 18 similarly to the rejection of claim 1 (Final Act. 2–7), and Appellants rely on the arguments discussed above in regards to the rejection of claim 1 (App. Br. 12). Accordingly, for the same reasons as discussed above, we also reverse the rejection of claim 18 as being unpatentable over Hou, Widerby, and Modlin. Because claims 19 and 20 depend from claim 18, and the Examiner’s use of Hou, Widerby, and Modlin with respect to those claims does not remedy the foregoing error for claim 18, we likewise reverse the Examiner’s rejection of claims 19 and 20.

Claim 21

Independent claim 21 requires a spacing wall similar to that of independent claim 1. App. Br. 21 (Claims Appendix). The Examiner rejects claim 21 similarly to the rejection of claim 1 (Final Act. 2–7), and Appellants rely on the arguments discussed above in regards to the rejection of claim 1 (App. Br. 12–13). Accordingly, for the same reasons as discussed above, we also reverse the rejection of claim 21 as being unpatentable over Hou, Widerby, and Modlin.

DECISION

The Examiner’s decision to reject claims 1–16 and 18–21 is reversed.

REVERSED