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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/912,992	10/27/2010	Uwe Fritsche	1006/0176PUS1	3049
60601	7590	11/14/2016	EXAMINER	
Muncy, Geissler, Olds & Lowe, P.C. 4000 Legato Road Suite 310 FAIRFAX, VA 22033			GORMAN, ERIC DAVID	
			ART UNIT	PAPER NUMBER
			3749	
			MAIL DATE	DELIVERY MODE
			11/14/2016	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* UWE FRITSCHÉ, KUNO ZELLER,  
DIETER REISINGER, and MARTIN FIEGER

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Appeal 2015-001835  
Application 12/912,992<sup>1</sup>  
Technology Center 3700

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Before ANTON W. FETTING, KENNETH G. SCHOPFER, and  
TARA L. HUTCHINGS, *Administrative Patent Judges*.

SCHOPFER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the rejection of claims  
1–14. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

BACKGROUND

According to Appellants, “[t]he invention relates to an air vent and to  
a motor vehicle HVAC system.” Spec. ¶ 3.

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<sup>1</sup> According to Appellants, the real party in interest is BEHR GMBH & Co.,  
KG. Appeal Br. 2.

## CLAIMS

Claims 1–14 are on appeal. Claims 1 and 14 are the independent claims on appeal and recite:

1. An air vent for a vehicle interior ventilation system, the air vent comprising:

at least one diffuse air flow duct with at least one diffuse outlet opening configured to discharge air as a diffuse or swirling jet;

at least one spot air flow duct with at least one spot outlet opening configured to discharge the air as a spot jet; and

at least one movable connecting sleeve with an inflow opening and an outflow opening configured as a spot outlet opening, the at least one connecting sleeve forming the at least one spot air flow duct at the at least one spot outlet opening, and via movement of the at least one connecting sleeve different outflow directions of the spot jet from the at least one spot outlet opening is adjusted,

wherein, the at least one connecting sleeve has a greater cross-sectional area at the inflow opening than the outflow opening and/or at least one air guiding wall is formed in the connecting sleeve.

14. An air vent for a vehicle interior ventilation system, the air vent comprising:

at least one movable connecting sleeve with an inflow opening and an outflow opening configured as at least one spot outlet opening, and via movement of the at least one connecting sleeve, different outflow directions from the at least one spot outlet opening is adjusted,

wherein, the at least one connecting sleeve has a greater cross-sectional area at the inflow opening than the outflow opening.

Appeal Br. 13–15.

## REJECTIONS

1. The Examiner rejects claims 1, 4–6, 8–10, and 12 under 35 U.S.C. § 103(a) as unpatentable over Lee<sup>2</sup> in view of Malott.<sup>3</sup>
2. The Examiner rejects claims 2 and 3 under 35 U.S.C. § 103(a) as unpatentable over Lee in view of Malott and Steele.<sup>4</sup>
3. The Examiner rejects claim 7 under 35 U.S.C. § 103(a) as unpatentable over Lee in view of Malott and Guerreiro.<sup>5</sup>
4. The Examiner rejects claim 11 under 35 U.S.C. § 103(a) as unpatentable over Lee in view of Malott<sup>6</sup> and Bielicki.<sup>7</sup>
5. The Examiner rejects claim 13 under 35 U.S.C. § 103(a) as unpatentable over Lee in view of Malott, Guerreiro, and Katoh.<sup>8</sup>
6. The Examiner rejects claim 14 under 35 U.S.C. § 103(a) as unpatentable over Malott in view of Bielicki.

## DISCUSSION

### *Claim 1*

The Examiner relies on Lee as disclosing an air vent with at least one diffuse air flow duct and at least one spot air flow duct as claimed. Final Act. 3 (citing Lee Figs. 1–5; col. 3, ll. 9–16, 47–61). The Examiner relies on

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<sup>2</sup> Lee, US 6,102,660, iss. Aug. 15, 2000.

<sup>3</sup> Malott et al., US 2006/0052050 A1, pub. Mar. 9, 2006.

<sup>4</sup> Steele, US 2,431,146, iss. Nov. 18, 1947.

<sup>5</sup> Guerreiro, US 2008/0119125 A1, pub. May 22, 2008.

<sup>6</sup> The Final Action does not list Malott under the heading for this rejection. Final Act. 10. However, based on claim 11's dependency from claim 1, we understand Malott to be included in this rejection. Appellants' Appeal Brief reflects that understanding as well. *See* Appeal Br. 9.

<sup>7</sup> Bielicki et al., US 2004/0055570 A1, pub. Mar. 25, 2004.

<sup>8</sup> Katoh et al., US 2008/0032618 A1, pub. Feb. 7, 2008.

Malott as disclosing at least one movable connecting sleeve with at least one air guiding wall as claimed. *Id.* at 3–4 (citing Malott, Figs. 1–2B, 3, 6; ¶¶ 20–24, 28, 30–33, 35). The Examiner concludes:

It would have been obvious to a person having ordinary skill in the art at the time of the invention to have modified Lee with Malott. A person having ordinary skill in the art at the time of the invention would have been motivated to combine them at least because having a movable section of an air vent system that hinges upon a specified axis/point allows for air flow to be distributed to different parts of an automobile with a simple adjustment.

*Id.* at 4.

We agree with Appellants’ argument that the Examiner has not provided a sufficient reason for the combination proposed. Appeal Br. 8. Specifically, although providing a movable section of an air vent may allow air flow to be distributed to different parts of an automobile, Lee already provides such a movable section that achieves the same function, and thus, it is not clear what Malott would add in order to achieve this benefit. Lee discloses a miniature fan for an air freshener that is clipped to an air vent in vehicle and allows for the fan to be movable on a ball bearing so that air flows through the fan and is distributed as desired. *See Lee Abstract, Fig. 4.* Without further explanation from the Examiner, it is not clear how Malott would modify Lee’s system or how it would better achieve the function already achieved by Lee. Thus, we determine that the Examiner’s reason for combining the references in the rejection lacks the required rational underpinning to support the Examiner’s conclusion. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007).

Further, in response to Appellants’ arguments the Examiner appears to alternatively find that the combination would have been obvious because

both references relate to vehicle ventilation systems. Ans. 6–7. The mere fact that the art is related and discloses the claimed elements individually is not sufficient to show that the claimed combination of elements would have been obvious, as noted by Appellants. Reply Br. 4–5.

For these reasons, we do not sustain the rejection of claim 1. With respect to the rejections of claims 2–13, the Examiner has not identified anything in the prior art of record that would cure the deficiency noted above in the rejection of claim 1. Thus, we also do not sustain the rejections of any of dependent claims 2–13 for the same reasons discussed above.

*Claim 14*

With respect to claim 14, the Examiner relies on Malott with respect to the claimed movable connecting sleeve. Final Act. 12. The Examiner acknowledges that Malott does not disclose that the connecting sleeve has a greater cross-sectional area at the inflow opening than the outflow opening, and the Examiner relies on Bielicki as teaching an air vent with cross-sectional areas as claimed. *Id.* (citing Bielicki Figs. 3, 4, 6; ¶¶ 28, 29; claims 11, 21, 30). The Examiner concludes

It would have been obvious to a person having ordinary skill in the art at the time of the invention to have modified Malott with Bielicki. A person having ordinary skill in the art at the time of the invention would have been motivated to combine them at least because having a greater cross-sectional area for air inflow compared to the cross-sectional area for air outflow, allows for more air to be taken in at once therefore providing an abundance of air to create a more powerful jet stream for discharging air.

*Id.* at 12–13.

Appellants argue that the references are directed to entirely different air systems: Malott to a vehicle HVAC system and Bielicki to an air

induction system. Appeal Br. 10. Appellants contend “that the device 20 of Bielicki is provided for a specific purpose that is entirely unrelated to the teachings of Malott [and] there is no need for a similar air acceleration in Malott, since the duct 24 of Malott is not provided within an air induction system of an engine to aid in the measurement of air inducted into the engine.” *Id.* at 11. Appellants also assert that a passenger would merely turn the fan in Malott to a higher setting if greater air flow were desired. *Id.* Thus, Appellant asserts that the combination is arbitrary and one would not be motivated to modify Malott as proposed. *Id.*

We are not persuaded of error with respect to the rejection of claim 14. First, to the extent Appellants are arguing that Bielicki is non-analogous art, we agree with the Examiner that both references relate to air distribution devices in a vehicle application. *See* Ans. 8. Thus, without further explanation from Appellants, we find that a preponderance of the evidence supports a finding that Bielicki is in the same field of endeavor as both Malott and the claimed invention. Further, the fact that one may be able to increase the fan speed in Malott does not rebut the Examiner’s proposed motivation for making the combination. The fact that there may be multiple ways of achieving the same effect does not show that the Examiner’s conclusion is erroneous. Significantly, Appellants do not provide evidence that Malott actually has the capability of increasing a fan speed or that the combination with Bielicki would provide the same effect. Rather, one of ordinary skill in the art would readily recognize that the combination of Bielicki and the ability to increase fan speed would provide air at increased speed over the use of a fan alone.

For these reasons, we sustain the rejection of claim 14.

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### CONCLUSION

For the reasons set forth above, we reverse the rejections of claims 1–13, and we affirm the rejection of claim 14.

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).

AFFIRMED-IN-PART