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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte FLORIAN FISCHER and BERNHARD WOHLGENANNT

Appeal 2015-001921
Application 13/274,885
Technology Center 3600

Before JOHN C. KERINS, STEFAN STAICOVICI, and LEE L. STEPINA,
Administrative Patent Judges.

KERINS, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Florian Fischer and Bernhard Wohlgenannt (Appellants) appeal under 35 U.S.C. § 134(a) from the Examiner's final decision rejecting claims 1–8. We have jurisdiction over this appeal under 35 U.S.C. § 6(b).

We REVERSE.

THE INVENTION

Appellants' claimed invention is directed to a system for moving vehicles along tracks and having a switch for switching between tracks.

Claim 1, reproduced below, is representative:

1. A system for moving vehicles, comprising:

a plurality of tracks each formed by two guides for supporting the vehicles;

at least two conveying cables extending along said tracks below a level of said guides for coupling the vehicles thereto and moving the vehicles along said tracks;

at least one switch disposed in said tracks at terminal stations or along a course of said tracks, said switch having four guides disposed next to one another, said four guides including two middle guides rigidly connected to one another and pivotally mounted about a first axis, and including two outer guides, connected to one another in an articulated manner, and pivotally mounted about two mutually spaced-apart further axes, wherein said switch that is formed by said four guides is pivotal out of a first position into a second position.

THE REJECTIONS

The Examiner has rejected:

(i) claims 1–3, 7, and 8 under 35 U.S.C. § 103(a) as being unpatentable over Robinson (US 908,037, issued Dec. 29, 1908) and Witherspoon (US 354,295, issued Dec. 14, 1886); and

(ii) claims 4–6 under 35 U.S.C. § 103(a) as being unpatentable over Robinson, Witherspoon, Flugan (US 820,406, issued May 15, 1906), and Braatz (US 6,422,519 B1, issued July 23, 2002).

ANALYSIS

Claims 1–3, 7, and 8--Obviousness--Robinson/Witherspoon

Claim 1 requires a switch having four guides including two middle guides and two outer guides.

The Examiner finds that Robinson discloses “four guides 19, 20, 10, 11; wherein two middle guides 19, 20 are rigidly connected to one another

and pivotally mounted about first axis 24, and two outer guides 10, 11.”

Final Act. 2.

Appellants assert that Robinson has middle guides 19, 20; “connecting rails” 10, 11; and “outer guides (5 top, 6 bottom),” but that guides 5 and 6 are not pivotally mounted as recited in claim 1. Appeal Br. 5.

In response, the Examiner provides an annotated version of Figure 2 of Robinson in an attempt to support the finding that guides 19 and 20 are middle guides and that guides 10 and 11 are outer guides. *See* Ans. 5. The Examiner takes the position that Appellants have not provided “convincing arguments or evidence[] that the examiner’s interpretation is somehow unreasonable outside the context of a broadest reasonable interpretation.” *Id.* at 6–7.

Appellants reply that, in the switch of Robinson, “the lowermost guide 6 and the uppermost guide 5 must be read as the ‘outer’ guides,” and that “[i]t is entirely *unreasonable*, in the context, to refer to the guides 10, 11 as being the ‘outer guides,’” and “to refer to the V-shaped central switch portion 19, 20 as being the ‘middle guides.’” Reply Br. 2 (citing Appeal Br. 5).

A common and ordinary meaning of the term “middle” in the context of Appellants’ invention is “something intermediate between extremes.”¹ Appellants’ Specification is consistent with this definition and discloses switch 4 having four guides (rails) including inner guides 41, 41a that are intermediate between outer guides 42, 42a that are at outer extremes. *See* Spec., paras. 19–23; Figs. 1, 2. Robinson discloses switch 8 having rails 19

¹ *Merriam-Webster’s Collegiate Dictionary* (11th ed. 2005).

and 20 that pivot from a first position to a second position. Robinson, p. 1, ll. 57–65; Figs. 1, 2. In the first position, rail 19 is aligned with rail 10, and rail 20 is outside of aligned rails 10, 19. *Id.* at Fig. 1. In the second position, rail 20 is aligned with rail 11, and rail 19 is outside of aligned rails 11, 20. *Id.* at Fig. 2. As such, rail 19 is either aligned with rail 10 or outside rail 11, but not between rails 10 and 11. Similarly, rail 20 is either aligned with rail 11 or outside rail 10, but not between rails 10 and 11.

Under the broadest reasonable interpretation of claim 1 consistent with the Specification, because guides 19, 20 of Robinson are not between guides 10, 11; guides 19, 20 are not middle guides of a switch composed of guides 10, 11, 19, and 20. That being the case, the only guides that rails 19 and 20 are between are topmost outer rail 5 and bottommost outer rail 6, as noted by Appellants, and these guides are not pivotable. *See Id.* at p.1, ll. 37–38; Figs. 1, 2; *see also* Appeal Br. 5; Reply Br. 2. As such, the Examiner has not adequately established that Robinson discloses four guide rails as recited in claim 1. The Examiner does not rely on the disclosure of Witherspoon in any manner that remedies the deficiencies of Robinson described *supra*.

The rejection of claims 1–3, 7, and 8 as being unpatentable over Robinson and Witherspoon is not sustained.

Claims 4–6--Obviousness--Robinson/Witherspoon/Flugan/Braatz

The Examiner’s use of the disclosures of Flugan or Braatz does not remedy the deficiencies of the rejection based on Robinson and Witherspoon

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as described *supra*. Accordingly, the rejection of claims 4–6 as unpatentable over Robinson, Witherspoon, Flugan, and Braatz is not sustained.

DECISION

The rejections of claims 1–8 under 35 U.S.C. § 103(a) are reversed.

REVERSED