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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KENNETH FORTUNE, JAMES M. JANKY, and
MICHAEL V. MCCUSKER

Appeal 2015-001952
Application 13/566,440
Technology Center 3600

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

STEPINA, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Kenneth Fortune et al. (Appellants) appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1–21. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

CLAIMED SUBJECT MATTER

The claims are directed to a mobile platform for conveying a survey instrument. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A survey instrument conveyance comprising:
a mobile platform comprising:
a set of wheels attached to the platform;
a handle attached to the mobile platform, the handle for a user to propel and guide the mobile platform along a path;
a mechanical coupling assembly to couple a survey instrument to the mobile platform; and
an adjustable position mechanism coupled to the mechanical coupling assembly to raise and lower the survey instrument relative to the mobile platform.

REFERENCES

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

Capps	US 4,691,444	Sept. 8, 1987
Simpson	US 4,754,553	July 5, 1988
Howard	US 5,990,809	Nov. 23, 1999
Boulianne	US 6,008,757	Dec. 28, 1999
Gilliland	US 6,241,047 B1	June 5, 2001
Maggio	US 2006/0278454 A1	Dec. 14, 2006
Zimmerman	US 7,693,659 B2	Apr. 6, 2010
Anderson	US 2011/0150348 A1	June 23, 2011

REJECTIONS

(I) Claim 9 is rejected under 35 U.S.C. § 112, second paragraph, as indefinite.

(II) Claims 1, 5, and 6 are rejected under 35 U.S.C. § 103(a) as unpatentable over Howard, Capps and Gilliland.

(III) Claim 2 is rejected under 35 U.S.C. § 103(a) as unpatentable over Howard, Capps, Gilliland, and Boulianne.

(IV) Claims 3, 4, and 7 are rejected under 35 U.S.C. § 103(a) as unpatentable over Howard, Capps, Gilliland, and Maggio.

(V) Claims 8, 9, 11, and 15 are rejected under 35 U.S.C. § 103(a) as unpatentable over Howard, Boulianne, Gilliland, and Capps.

(VI) Claims 10 and 12 are rejected under 35 U.S.C. § 103(a) as unpatentable over Howard, Boulianne, Gilliland, Capps, and Maggio.

(VII) Claim 13 is rejected under 35 U.S.C. § 103(a) as unpatentable over Howard, Boulianne, Gilliland, Capps, and Simpson.

(VIII) Claim 14 is rejected under 35 U.S.C. § 103(a) as unpatentable over Howard, Boulianne, Gilliland, Capps, and Zimmerman.

(IX) Claim 16 is rejected under 35 U.S.C. § 103(a) as unpatentable over Howard, Boulianne, Gilliland, Capps, and Anderson.

(X) Claims 17 and 20 are rejected under 35 U.S.C. § 103(a) as unpatentable over Howard, Boulianne, Gilliland, Capps, and Zimmerman.

(XI) Claim 18 is rejected under 35 U.S.C. § 103(a) as unpatentable over Howard, Boulianne, Gilliland, Capps, Zimmerman, and Maggio.

(XII) Claim 19 is rejected under 35 U.S.C. § 103(a) as unpatentable over Howard, Boulianne, Gilliland, Capps, Zimmerman, and Simpson.

(XIII) Claim 21 is rejected under 35 U.S.C. § 103(a) as unpatentable over Howard, Boulianne, Gilliland, Capps, Zimmerman, Anderson, and Simpson.

OPINION

Rejection (I)

Appellants make no arguments traversing the Examiner's rejection of claim 9 as indefinite. Accordingly, we summarily sustain this rejection.

Rejection (II)

The Examiner finds that Howard discloses most of the limitations of claim 1 including a mobile platform having wheels and a mechanical coupling assembly for a survey instrument, but relies on Gilliland for teaching handles for vehicle propelling and guiding. Final Act. 4–5 (citing Howard, Abstract; col. 1, ll. 51–53; Figs. 1–4 and 6; and Gilliland, col. 3, ll. 15–36). The Examiner concludes that it would have been obvious “to modify the teaching of Howard by adding and utilizing . . . handles with means for controlling motions of a vehicle with its components as taught by Gilliland in order to control motions of vehicle and its components such as steering and traction of vehicle, and raising or lowering platform.” *Id.* at 6 (citing Gilliland, col. 2, ll. 6–9).

Appellants argue that “adding a handle is not an obvious variation of Howard . . . it is but one example of [impermissible] hindsight.” Appeal Br. 7. Appellants assert that there is no “logical reasoning” to modify the engine driven/remote controlled cart of Howard to have a handle. *Id.* at 8.

The Examiner responds that the rejection does not require “remov[ing] the remote control and/or engine aspects of the cart.” Ans. 6.

Appellants also assert that the device of Howard is used underwater and it is not reasonable to have a handle to be pulled by a user on such a device. *See* Appeal Br. 7, Reply Br. 3.

Howard relates to an underwater surveying system (*see* Howard, Title; Abstract) and Howard's vehicle 10 is already "driven along an underwater route, with . . . control signals to drive control module 22, which controls engine 18 and valves 40 to move vehicle 10 along the desired route" Howard, col. 6, ll. 23–27. As Appellants note, the modification proposed by the Examiner, to add and use handles, would require a scuba diver, or other under water operator to propel and guide the cart of Howard. *See* Reply Br. 3. Although the handles described in Gilliland provide benefits (steering and traction) in a certain context, the Examiner does not explain sufficiently how these benefits would be provided in the Examiner's proposed modification of Howard. Thus, we agree with Appellants that the Examiner's rationale for the proposed combination of Howard and Gilliland is not adequate. *See* Appeal Br. 8.

Accordingly, we do not sustain the Examiner's rejection of claims 1, 5, and 6 as unpatentable over Howard, Capps, and Gilliland.

Rejections (III–IV)

The Examiner's reliance on Boulianne and Maggio does not remedy the deficiencies discussed above with respect to Rejection (I), and we likewise do not sustain Rejections (III–IV).

Rejection (V)

Independent claim 8 recites substantially similar features to those discussed above with respect to the rejection of independent claim 1, and Appellants rely on similar arguments made for the patentability of claim 1 for the patentability of claim 8 as well. *See* Appeal Br. 9–12. The

Examiner's reliance on Boulianne does not remedy the deficiencies discussed above with respect to Rejection (I), and we likewise do not sustain the Examiner's rejection of claim 8 and claims 9, 11, and 15 depending therefrom as unpatentable over Howard, Boulianne, Gilliland, and Capps.

Rejections (VI–IX)

The Examiner's reliance on Boulianne, Maggio, Simpson, Zimmerman, and Anderson does not remedy the deficiencies discussed above with respect to Rejection (I), and we likewise do not sustain Rejections (VI–IX).

Rejection (X)

Independent claim 17 recites substantially similar features to those discussed above with respect to the rejection of independent claim 1, and Appellants rely on similar arguments made for the patentability of claim 1 for the patentability of claim 17 as well. *See* Appeal Br. 13–16. The Examiner's reliance on Boulianne and Zimmerman does not remedy the deficiencies discussed above with respect to Rejection (I), and we likewise do not sustain the Examiner's rejection of claim 17 and claim 20 depending therefrom as unpatentable over Howard, Boulianne, Gilliland, Capps, and Zimmerman.

Rejections (XI)–(XIII)

The Examiner's reliance on Boulianne, Maggio, Simpson, Zimmerman, and Anderson does not remedy the deficiencies discussed above with respect to Rejection (I), and we likewise do not sustain Rejections (XI–XIII).

DECISION

The Examiner's decision to reject claim 9 under 35 U.S.C. § 112, second paragraph, is affirmed.

The Examiner's decision to reject claims 1–21 under 35 U.S.C. § 103(a) 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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART