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EXAMINER

VANAMAN, FRANK BENNETT

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HENRY F. THORNE, ROBERT D. DALEY, and
MARY J. KOES

Appeal 2015-001959
Application 13/109,109
Technology Center 3600

Before MICHAEL L. HOELTER, LYNNE H. BROWNE, and
ERIC C. JESCHKE, *Administrative Patent Judges*.

BROWNE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Henry F. Thorne et al. (Appellants) appeal under 35 U.S.C. § 134 from the rejection of claims 1, 2, 6–8, 10–14, 19, and 20. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

CLAIMED SUBJECT MATTER

Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A stroller, comprising:
 - a first stroller component;
 - a second stroller component comprising a child receiving portion;
 - a drive mechanism comprising a motor operatively engaged with at least one of the first and second stroller components to move the at least one of the first and second stroller components from a first position to a second position;
 - an electronic object sensor operably coupled to the child receiving portion; and
 - a microprocessor operatively coupled to the object sensor and the drive mechanism,wherein the object sensor provides a signal that is electrically acted upon by the microprocessor to prevent or interrupt power to the motor, thereby preventing movement of the first and second stroller components from the first position to the second position if the object sensor detects the presence of an object in the child receiving portion.

REFERENCES

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

Singletary	US 4,896,894	Jan. 30, 1990
Rogers, Jr.	US 5,409,277	Apr. 25, 1995
Regan	5,581,939	Dec. 10, 1996
Nathan	US 7,289,035 B2	Oct. 30, 2007
Takahashi	EP 0 719 693 A2	July 3, 1996

REJECTIONS

- I. Claims 1, 2, 6, 7, 14, 19, and 20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Takahashi and Nathan.

- II. Claims 8 and 11 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Takahashi, Nathan, and Singletary.
- III. Claim 10 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Takahashi, Nathan, Singletary, and Rogers, Jr.
- IV. Claims 12 and 13 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Takahashi, Nathan, and Regan.

DISCUSSION

Rejection I

Appellants argue claims 1, 2, 6, 7, 14, 19, and 20 together. *See* Br. 10–16. We select independent claim 1 as the illustrative claim, and claims 2, 6, 7, 14, 19, and 20 stand or fall with claim 1.

The Examiner finds that Takahashi discloses all of the limitations of claim 1 except for “an electronic sensor arrangement which can sense an object in the frame and prevent or interrupt actuation of the powered folding and unfolding device ‘when an object is present’, by providing an electrical signal to a microprocessor to interrupt power to the motor.” Final Act. 2.

The Examiner further finds that Nathan provides evidence that:

it is well known in a folding apparatus operable by a user-switch (72), involving a seat which may have an object therein, to provide the seat with an electronic sensor (one or more of 52, 64, 82) which is in electrical contact with a controller and microprocessor (60, 68, 78) which controls operation of at least one folding motor (80) and wherein the motor operation is electrically interrupted by the microprocessor “when an object is present” in the seat area.

Id. at 2–3 (citing Nathan 2:25–37). Based on these findings the Examiner determines that it would have been obvious

to provide the motor operated folding mechanism taught by Takahashi with the electronic sensor, display and microprocessor and to include the interruption control as taught by Nathan et al., resultantly placing the motor under control of the microprocessor (i.e., the user-operated switch, sensors and position switches would be then connected to the microprocessor in order to ensure that all elements which affect the operation of the motor are received and processed in the same device), for the purpose of ensuring that no damage is done to the seat, the drive motor, drive motor gearing or an object in the seat should folding be initiated when the object is present.

Id. at 3.

Appellants contend that the Takahashi and Nathan references are non-analogous art because “[o]ne of ordinary skill in the stroller arts would not reasonably consider references that are directed to automobile seats.” Br. 12. In support of this contention, Appellants note that “the seats implemented in automobiles are very different from the child receiving portion of a stroller.” *Id.* Because of this difference in structure, Appellants argue that “any weight sensing arrangement utilized in a seat for an automobile would not be applicable to a stroller.” *Id.* at 13. Appellants further note that in an automobile seat, “only the position of the seat back is changed during the folding operation and the structure of the seat base remains substantially intact. A stroller, on the other hand, requires a plurality of moving parts such that the entire stroller frame changes size and shape during the folding operation.” *Id.*

The determination of the scope and content of the prior art includes determining whether prior art references are “analogous.” Whether a reference in the prior art is “analogous” is a fact question. Two criteria have evolved for determining whether prior art is analogous: (1) whether the art is from the same field of endeavor, regardless of the problem addressed, and

(2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved. *In re Clay*, 966 F.2d 656, 658 (Fed. Cir. 1992) (citing *In re Deminski*, 796 F.2d 436, 442 (Fed. Cir. 1986); *In re Wood*, 599 F.2d 1032, 1036 (CCPA 1979)).

Appellants' argument does not address the criteria for determining if Nathan is analogous art and thus does not apprise us of error in the Examiner's determination (*see, e.g.*, Ans. 2–3) that Nathan is analogous art.¹ Rather, Appellants summarily conclude that Nathan is in a different field of endeavor because of differences in structure between automobile seats and stroller seats (*see* Br. 13) and do not explain why Nathan is not pertinent to the problem with which the inventors were involved (i.e., detecting an object in the seat as claimed). Furthermore, although we agree that automobile seats and stroller seats have structural differences, "it is not necessary that the inventions of the references be physically combinable to render obvious the invention under review." *In re Sneed*, 710 F.2d 1544, 1550 (Fed. Cir. 1983) (citation omitted). The relevant inquiry is whether the claimed subject matter would have been obvious to those of ordinary skill in the art in light of the *combined teachings* of those references. *See In re Keller*, 642 F.2d 413, 425 (CCPA 1981). "Combining the *teachings* of references does not involve an ability to combine their specific structures." *In re Nievelt*, 482 F.2d 965, 968 (CCPA 1973). Thus, Appellants' arguments pertaining to the differences in structure between Takahashi's seat and Nathan's seat do not apprise us of error in the Examiner's combination thereof.

¹ We only address Nathan as Takahashi is directed to a stroller, which is clearly within the same field of endeavor as the instant invention.

Furthermore, the Declaration of Henry Thorne filed February 18, 2014, which essentially repeats Appellants' arguments pertaining to structural differences between Takahashi's seat and Nathan's seat does not apprise us of error because the arguments therein are not commensurate in scope with the scope of the claimed invention.² As noted by the Examiner, "[t]he claims under consideration recite a stroller comprising 'an electronic object sensor' (see claim 1, lines 7 and 10 and claim 14, lines 8 and 11 as presented in the Appendix to the Brief), the open-ended attribute ascribed by 'comprising' not preventing the presence of additional elements" whereas Appellants'

comments imply that the recitation "an electronic object sensor" . . . is intended to carry a more limited definition as meaning only a single "electronic object sensor", however . . . it appears to be reasonably clear that the use of "comprising" in the claim allows for the prior art applied to include further elements (such as more than one sensor).

Ans. 6–7. In other words, the Examiner determines that the arguments in the Thorne Declaration are premised on an overly narrower interpretation of the claim term "electronic object sensor." We agree as neither the Specification nor the claims limit the claimed "electronic object sensor" to a single sensor.

Appellants further contend that "impermissible hindsight was required for the Examiner to reach the conclusion that the stroller disclosed in the Takahashi publication could be modified to include an electronic object sensor." Br. 14. However, Appellants do not identify any knowledge relied upon by the Examiner that was gleaned only from Appellants' disclosure

² "Evidence of secondary considerations must be reasonably commensurate with the scope of the claims." *In re Kao*, 639 F.3d 1057, 1068 (Fed. Cir. 2011) (citing *In re Tiffin*, 448 F.2d 791, 792 (CCPA 1971) and *In re Hiniker*, 150 F.3d 1362, 1369 (Fed. Cir. 1998)).

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and that was not otherwise within the level of ordinary skill at the time of the invention, thereby obviating Appellants' assertion of hindsight. *See In re McLaughlin*, 443 F.2d 1392, 1395 (CCPA 1971).

In addition, Appellants contend that “[i]t is impermissible to use the claimed invention as an instruction manual or ‘template’ to piece together the teachings of the prior art so that the claimed invention is rendered obvious” (Br. 14 (citing *In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992))) and that “[t]here is no teaching or suggestion in the Takahashi publication, as the Examiner admits in the final Office Action, of an object sensor that provides a signal that is electrically acted upon by the microprocessor to prevent or interrupt power to the motor.” Br. 15. However, these arguments are foreclosed by *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007), in which the Court rejected the rigid requirement of a teaching or suggestion or motivation to combine known elements in order to show obviousness and instructed us that “in many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle” (*id.* at 420) and that “[a] person of ordinary skill is also a person of ordinary creativity, not an automaton.” *Id.* at 421. Moreover, as discussed *supra*, the Examiner articulated reasons for the proposed modification. Accordingly, Appellants do not apprise us of error.

We sustain the Examiner’s decision rejecting claim 1, and claims 2, 6, 7, 14, 19, and 20, which fall therewith.

Rejections II–IV

Appellants do not present separate arguments for Rejections II–IV. Rather, Appellants argue that none of Singletary, Rogers, or Regan cure the deficiencies of the combination of Takahashi and Nathan. *See* Br. 16, 17, 18. As we find no deficiencies in this combination as discussed *supra*, Appellants’ argument is unconvincing.

We sustain the Examiner decisions rejecting claims 8 and 10–13.

DECISION

The Examiner’s rejections of claims 1, 2, 6–8, 10–14, 19, and 20 are AFFIRMED.

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