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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GEORG KRÄMER, KONRAD MEIER-HYNEK, and
LOTHAR NEHR

Appeal 2015-002921^{1,2}
Application 13/484,791
Technology Center 3700

Before JOSEPH A. FISCHETTI, PHILIP J. HOFFMANN, and
TARA L. HUTCHINGS, *Administrative Patent Judges*.

HOFFMANN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner’s rejection of claims 1–8. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

According to Appellants, “[t]he invention relates to a device for repairing a damaged area in an underwater wall region of a container or

¹ Our decision references Appellants’ Specification (“Spec.,” filed May 31, 2012) and Appeal Brief (“Br.,” filed Oct. 7, 2014), as well as the Final Office Action (“Final Action,” mailed July 30, 2014) and the Examiner’s Answer (“Answer,” mailed Nov. 21, 2014).

² Appellants indicate that “GROSS & FROELICH GMBH & CO. KG is . . . the real party in interest.” Br. 1.

tank, in particular in the wall region of a tank of a nuclear reactor installation.” Spec. ¶ 1. Claim 1 is the only independent claim on appeal. *See Br., Claims App.* We reproduce claim 1, below, as representative of the appealed claims.

1. A device for repairing a damaged area of an underwater wall region of a container or tank, comprising:

a guide system to be mounted along a side wall, at a spacing distance from, and secured to, said side wall;

at least one first carriage guided on said guide system, and movable in a longitudinal direction of said guide system;

a receptacle displaceably mounted on said at least one first carriage, said receptacle being configured for holding a repair overlay to be applied with an adhesive surface to the wall region having the damaged area; and

at least one suction mount disposed on said first carriage and configured for placement against the side wall and connected to a suction line, said at least one suction mount being disposed and configured for fixing said first carriage on the side wall for absorbing forces generated by applying the repair overlay to the side wall.

Id.

REJECTIONS AND PRIOR ART

The Examiner rejects claims 1 and 5–8 under 35 U.S.C. § 103(a) as unpatentable over Krämer (US 2010/0192368 A1, pub. Aug. 5, 2010) and Buchot (FR 2 932 602, pub. Dec. 18, 2009).³

³ In the Analysis section of this Decision, when we refer to Buchot, we refer to the English-language translation provided by the Examiner with the Final Office Action mailed February 21, 2014.

The Examiner rejects claims 2–4 under 35 U.S.C. § 103(a) as unpatentable over Krämer, Buchot, and Kozak (US 6,494,307 B1, iss. Dec. 17, 2002).

See Answer 2–8.

ANALYSIS

With respect to the obviousness rejection of claim 1, the Examiner finds that Krämer discloses all of the limitations of the claim, except for

at least one suction mount disposed on said first carriage and configured for placement against the side wall and connected to a suction line, said at least one suction mount being disposed and configured for fixing said first carriage on the side wall for absorbing forces generated by applying the repair overlay to the side wall.

See Answer 3; see also Br., Claims App. Nonetheless, the Examiner finds that Buchot discloses this limitation of claim 1, and that it would have been obvious to combine Krämer and Buchot. *See Answer 3–4.* Based on our review of the record, however, we determine that the Examiner’s proposed combination is based on impermissible hindsight, and, thus, we do not sustain the rejection of claim 1. *See Br. 12–13.*

As reproduced above, independent claim 1 requires “at least one suction mount disposed on said first carriage . . . , said at least one suction mount being disposed and configured for fixing said first carriage on the side wall for absorbing forces generated by applying the repair overlay to the side wall.” *Br., Claims App.* Restated, in accordance with the requirements of claim 1, by using the suction mount to fix the carriage to the same side wall to which the carriage generates a force by applying the repair overlay, the suction mount “absorb[s] forces generated by applying the repair overlay

to the side wall.” *See* Br. 8–9. The Examiner’s proposed modification places Buchot’s suction cups 15, which are used to hold frame or chassis 11 on bottom 3 of pool 1 while cylinders 30 apply forces to storage rack 5, on Krämer’s carriage 20 that applies a repair overlay 22 to side wall 12 of storage pool 2. *See* Buchot 3–5; *see also* Answer 3; *see also* Br. 8. Buchot’s suction cups 15 are not used to fix chassis 11 to storage rack 5, and, thus, Buchot’s suction cups 15 neither are “disposed and configured for fixing” chassis 11 on storage rack 5 to which cylinders 30 of chassis 11 apply a force, nor “absorb forces generated by applying” a force to the storage rack. *See* Br. 8. Instead, as described above, Buchot’s suction cups 15 are used to mount the device to bottom 3 of pool 1. This is similar to Krämer’s suction cups 10 that are used to mount Krämer’s device to side wall 12 of storage pool 2.

Thus, based on the foregoing, we determine that the Examiner’s rejection is based on hindsight, and, as such, we do not sustain the rejection of independent claim 1. Further, inasmuch as the Examiner does not show how any other reference remedies the deficiency in the rejection of claim 1 from which claims 2–8 depend, we also do not sustain the rejections of any of claims 2–8.

DECISION

We REVERSE the Examiner’s obviousness rejections of claims 1–8.

REVERSED