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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KYLE L. CHUBBUCK¹

Appeal 2015-003510
Application 13/076,015
Technology Center 3600

Before JOHN C. KERINS, LEE L. STEPINA, and
AMANDA F. WIEKER, *Administrative Patent Judges*.

WIEKER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Kyle L. Chubbuck (“Appellant”) appeals under 35 U.S.C. § 134(a) from the Examiner’s non-final rejection of claims 1–7, 9, and 11–20.² We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

¹ According to Appellant, the Real Party in Interest is Specialized Bicycle Components, Inc. Appeal Br. 2 (filed February 3, 2014).

² Claim 8 has been cancelled. *Id.* at 21 (Claims App.). The Examiner withdrew the rejection of claim 10. Ans. 2 (mailed May 7, 2014).

CLAIMED SUBJECT MATTER

The invention concerns “a cable guide for bicycles.” Spec. ¶ 1.

Claim 1 is illustrative of the subject matter on appeal, and recites:

1. A bicycle comprising:
a frame including a bottom bracket; and
a cable guide including
 a first guide attached to the frame adjacent the
 bottom bracket and configured to support a first cable, the
 first guide including a first cable conduit extending into
 the frame at a first angle; and
 a second guide attached to the frame adjacent the
 bottom bracket and configured to support a second cable,
 the second guide including a second cable conduit
 extending into the frame at a second angle different from
 the first angle.

Appeal Br. 20 (Claims App.).

REJECTIONS

The claims stand rejected as follows:

- I. Claims 6, 7, 16, and 17 under 35 U.S.C. § 112, second paragraph, as indefinite.
- II. Claims 1–5, 9, and 11–14 under 35 U.S.C. § 102(b) as anticipated by Chonan (US 4,915,404, iss. Apr. 10, 1990).
- III. Claims 5–7 and 15–20 under 35 U.S.C. § 102(b) as anticipated by Ueno (US 7,540,217 B2, iss. June 2, 2009).

ANALYSIS

Rejection I – Indefiniteness Claims 6, 7, 16, and 17

The Examiner finds claims 6, 7, 16, and 17 to be indefinite because the claims recite “the first guide in the second guide,” which the Examiner contends is unclear. Non-Final Act. 2 (mailed Sept. 11, 2013).

Concurrent with the filing of the Appeal Brief, Appellant submitted an amendment to these claims to cure this purported typographical error. Appeal Br. 8 (noting that the Claims Appendix accompanying the Appeal Brief reflects the claims as amended). Appellant provides no other argument against the Examiner’s indefiniteness rejection. *Id.*

In an Advisory Action dated February 11, 2014, the Examiner denied entry of Appellant’s amendment. *See Adv. Act.* As such, the pre-amendment version of the claims is before us. Accordingly, we summarily sustain the Examiner’s rejection because no other argument directed to this rejection has been presented.

Rejection II – Anticipation by Chonan Claims 1–5, 9, and 11–14

Claims 1–4

Independent claim 1 recites that first and second guides extend into the bicycle frame at first and second angles, wherein the angles differ. Appeal Br. 20 (Claims App.). The Examiner finds that Chonan discloses, *inter alia*, cable guide 23 including first guide 27A and second guide 27B. Non-Final Act. 3. The Examiner finds that the first and second guides include first and second conduits extending into the frame at different angles. *Id.* (citing Chonan, Fig. 2); Ans. 8. In the Answer, the Examiner

explains that the conduits extend through portion 25 of cable guide 23, and extend into the frame. Ans. 8 (citing Chonan, Figs. 2, 3A, 3B).

Appellant argues that Chonan does not disclose “two guides each having a cable conduit extending into the frame at a different angle.” Appeal Br. 9. According to Appellant, even though *cables* 21A and 21B extend through frame 13 at different angles, due to their respective connections to different levers, “it does not inherently follow that the *conduits* pointed to by the Examiner (i.e. the small conduits connecting the leading-out holes 26A, 26B with the guide grooves 27A, 27B) extend into Chonan’s down tube 13 at different angles.” Reply Br. 4 (emphasis added). Appellant contends that, instead, the conduits extend parallel to each other. *Id.* at 4–5.

We are persuaded by Appellant’s argument, and do not sustain the Examiner’s rejection of claim 1 or claims 2–4, which depend therefrom. Chonan discloses cable guide member 23, which includes body 24 and fitted projection 25. Chonan, 2:55–61, Figs. 3A–3E. Holes 26A and 26B pass from the top of projection 25 and through body 24, to communicate with guide grooves 27A and 27B, formed on the lower surface of cable guide body 24. *Id.* at 2:61–68, Figs. 3A–3E. Chonan explains that the bicycle frame’s bottom bracket 20 includes cable take-out opening 22, into which projection 25 of cable guide 23 fits, so as to mount the cable guide 23 to the bottom bracket of the frame. *Id.* at 2:52–61, Figs. 2, 3A, 5B.

To the extent that the passages extending through cable guide 23 are understood to be the claimed conduits, the Examiner has not shown that they extend at different angles, even if they extend into the frame by virtue of

protrusion 25 being fit into opening 22. For example, the Examiner's reliance on Figure 2 is misplaced. Ans. 8. Although this Figure shows *cables* travelling through the frame at different angles, we agree with Appellant that Figure 2 does not show that the angles of the conduits through which those cables extend necessarily are oriented with the same angular arrangement. Reply Br. 4. Specifically, we are persuaded by Appellant's argument that the divergent angle of the cables may be due to their attachment to different levers located at different positions. Chonan, 2:36–51 (explaining that “[a]n operation lever 19 is mounted on one side of an upper portion of the down tube 13 and an end of an operation cable 21A is coupled with the operation lever 19,” while “[a]nother operation lever not shown is mounted on the other side of the upper portion of the down tube 13 and an end of another operation cable 21B is coupled with this operation lever”). The Examiner does not cite any disclosure in Chonan that clearly explains the relative angular positions of the purported conduits themselves, and we do not discern any. Rather, to the extent their angular positions can be evaluated, these conduits appear to extend into the frame at the *same* angle, due to their parallel arrangement in projection 25 and parallel entry points from grooves 27A, 27B on the bottom of the cable guide body 24. *Id.* at Figs. 3B, 5A.

Accordingly, we do not sustain the rejection of claims 1–4.

Claims 5, 9, and 11–14

Independent claim 5 recites that the first and second guides are separable from each other. Appeal Br. 20 (Claims App.). The Examiner finds that Chonan discloses, *inter alia*, cable guide 23 including first and

second guides 27A, 27B. Non-Final Act. 3–4. The Examiner finds that these guides are “separable from each other,” wherein “the method of assembly is not germane to the patentability of the device itself.” *Id.* at 4.

Appellant argues that Chonan’s first and second guides 27A, 27B “are defined in the cable guide member 23,” such that they “are not separable from each other.” Appeal Br. 11. Appellant also argues that “the separability among the first and second guides further define[s] the structural relationship between the guides, not a method of assembly.” *Id.* at 11–12.

We agree with Appellant, and do not sustain the Examiner’s rejection of claim 5 or claims 9 and 11–14, which depend therefrom. As Appellant correctly argues, claim 5 requires that the structure of the first and second guides be capable of separation; this claim limitation is not directed to a method of assembly. *Cf.* Non-Final Act. 4. Chonan’s guides 27A, 27B are not disclosed as being separable. By contrast, these guides are formed in cable guide member 23, a unitary piece of structure. *See* Chonan, 2:57–68, Fig. 3D. Here, the Examiner’s rejection is based in anticipation under 35 U.S.C. § 102(b), not obviousness under 35 U.S.C. § 103(a), and the Examiner has not explained how Chonan discloses, expressly or inherently, that these guide members are separable.

Accordingly, we do not sustain the rejection of claims 5, 9, or 11–14.

Rejection III – Anticipation by Ueno
Claims 5–7 and 15–20

Independent claims 5 and 15 recite that the first and second guides are attached to the frame “adjacent the bottom bracket.” Appeal Br. 20, 22 (Claims App.). The Examiner finds that Ueno discloses, *inter alia*, “a bottom bracket (unnumbered, see Fig 1); and a cable guide (15) including a

first guide (23) . . . and a second guide (24),” wherein the first and second guides are “attached . . . to the frame adjacent the bottom bracket by a single fastener (30).” Non-Final Act. 5 (claim 5); *see also id.* at 5–6 (claim 15). In the Examiner’s Answer, the Examiner explains that Ueno’s element 15 is “adjacent (near) the bottom bracket,” again citing Figure 1. Ans. 10.

Appellant argues that Ueno’s cable winding conversion device 15 “is mounted on a chain stay portion adjacent the rear hub 12,” which is not “adjacent the bottom bracket,” as claimed. Appeal Br. 14. Appellant contends that “‘adjacent’ is generally accepted to mean ‘lying near, close, or contiguous; adjoining; neighboring’ [and] Ueno’s device is nowhere ‘near’ or close or contiguous to the bottom bracket.” *Id.* at 15–16 (footnote omitted).

Here, because the Examiner failed to particularly identify the structure that the Examiner contends is the claimed “bottom bracket,” we have no point of reference from which to determine if the identified guides are “adjacent,” under any construction of that term. The Examiner’s finding that Ueno’s Figure 1 shows an “unnumbered” bottom bracket is insufficient, because Figure 1 depicts an entire assembled bicycle, and the Examiner does not identify which aspect of this bicycle is regarded as the claimed “bottom bracket.” Non-Final Act. 5–6; Ueno, 5:1–3, Fig. 1. As such, we cannot determine whether the identified guides are “adjacent” to the bottom bracket.

Accordingly, we do not sustain the rejection of claims 5 or 15, or claims 6, 7, or 16–20, which depend therefrom.

DECISION

The Examiner's decision to reject claims 6, 7, 16, and 17 is
AFFIRMED; and

the Examiner's decision to reject claims 1–5, 9, and 11–15, and 18–20
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).

AFFIRMED-IN-PART