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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MARTIN SEERY and ROBERT H. J. MIROS

Appeal 2015-003703¹
Application 13/788,829²
Technology Center 3600

Before ROBERT L. KINDER, TARA L. HUTCHINGS, and
AMEE A. SHAH, *Administrative Patent Judges*.

HUTCHINGS, *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 30–40. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ Our decision references Appellants' Appeal Brief ("Br.," filed Sept. 15, 2014) and the Examiner's Answer ("Ans.," mailed Dec. 1, 2014) and Final Office Action ("Final Act.," mailed Nov. 18, 2013).

² Appellants identify SunLink Corp. as the real party in interest. Br. 1.

CLAIMED INVENTION

Appellants' claimed invention "relates generally to a system for mounting and installing photovoltaic solar panels, and more particularly, to a mounting support system that can support photovoltaic solar panels manufactured by different vendors." Spec. 1, ll. 6–8.

Claims 30 and 37 are the independent claims on appeal. Claim 30, reproduced below, is illustrative:

30. A mounting clamp for solar panels comprising:
a top section comprising:
 at least one elongated slot for aligning with a mounting hole on a solar panel; and
 a spacer fin configured to provide a fixed gap between adjacent solar panels;
a rear section; and
mounting hardware to attach the top and rear sections together around a support member.

REJECTIONS

Claims 30–34 and 36–39 are rejected under 35 U.S.C. § 102(b) as anticipated by Button (US 2,550,001, iss. Apr. 24, 1951).

Claims 35 and 40 are rejected under 35 U.S.C. § 103(a) as unpatentable over Button.

ANALYSIS

Anticipation

Independent Claims 30 and 37, and Dependent Claims 31–34, 36, 38, and 39

We are persuaded by Appellants' argument that the Examiner erred in rejecting independent claims 30 and 37 under 35 U.S.C. § 102(b) because Button does not disclose "a spacer fin configured to provide a fixed gap

between the adjacent solar panels,” as recited in claim 30, and similarly recited in claim 37. Br. 6. The Examiner cites element 33 of Button as disclosing the argued spacer fin. Final Act. 2–3.

Button relates to improvements in adjustable clamps adapted to be secured to standpipes of various diameters. Button, col. 1, ll. 1–5. With reference to Figure 1 of Button, the clamp includes bracket 20, resilient strap 21, cylindrical nuts 23, and screw bolts 24. *Id.* at col. 1, ll. 51–58. Bracket 20 is shaped out of a single piece of metal which is bent and reversely bent to form a central channel 26 and outer channels 27 and 28. *Id.* at col. 2, ll. 6–9, Fig. 1. Bracket 20 is strengthened by providing outer channels 27 and 28 with reversely bent upstanding lips or flanges 32 and 33. *Id.* at col. 3, ll. 3–6.

The Examiner finds that Button’s lip 33 is “capable of fixing a gap between two solar panels when each of the solar panels is positioned on each side of the spacer fin,” and, thus, constitutes a spacer fin. Ans. 2. As used in this application, the claim language “configured to” requires a structure that is made to perform the function — i.e., to provide a fixed gap between the adjacent solar panels. *See In re Giannelli*, 739 F.3d 1375, 1379 (Fed. Cir. 2014). But we find nothing in Button that discloses that lip 33 constitutes or is made to be “a spacer fin configured to provide a fixed gap between adjacent solar panels,” as recited in claims 30 and 37.

In view of the foregoing, we do not sustain the rejection of claims 30 and 37 under 35 U.S.C. § 102(b). For the same reasons, we also do not sustain the rejection of claims 31–34, 36, 38, and 39, which depend therefrom.

Obviousness

Dependent Claims 35 and 40

Claims 35 and 40 depend from independent claims 30 and 37, respectively. We are persuaded for the reasons set forth above that the Examiner erred in rejecting claims 30 and 37 under 35 U.S.C. § 102(b) as anticipated by Button. Further, the Examiner does not persuasively establish that it would have been obvious to modify the prior art system (Button's lip 33) to arrive at the claimed system. We do not sustain the Examiner's rejection of claims 35 and 40 under 35 U.S.C. § 103(a) as unpatentable over Button for substantially the same reasons.

DECISION

The Examiner's rejection of claims 30–34 and 36–39 under 35 U.S.C. § 102(b) is reversed.

The Examiner's rejection of claims 35 and 40 under 35 U.S.C. § 103(a) is reversed.

REVERSED