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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KARL DAVID MCALLISTER, ANDREW J. LEITERT, and
DANIEL C. CONRAD¹

Appeal 2015-004599
Application 13/568,531
Technology Center 1700

Before CHUNG K. PAK, JEFFREY T. SMITH, and
WESLEY B. DERRICK, *Administrative Patent Judges*.

DERRICK, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on an appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1–7.² We have jurisdiction pursuant to 35 U.S.C. § 6(b).

We AFFIRM.

¹ According to Appellants, the Real Party in Interest is Whirlpool Corporation. Appeal Brief filed October 17, 2014, (“App. Br.”) 4.

² Final Office Action entered April 29, 2014, (“Final Act.”) 2.

CLAIMED SUBJECT MATTER

Appellants' claimed invention is generally directed to a method of washing clothing items in which wash chamber oscillations are varied with respect to time. Spec. Abstract. A single wash cycle includes oscillations with pausing between oscillations where the lengths of the pauses occur within a selected range, and the pauses in a first period are for a first length of time, while the pauses in a subsequent period are for a second, different length of time than in the first period. Claim 1.

Claim 1—the sole independent claim—is reproduced below:

1. A method of washing items during a single wash cycle in an automatic washer having a wash chamber rotatable about a central axis, the wash chamber oscillating during the wash cycle for a plurality of periods, each period having at least one clockwise stroke, a pause, and at least one counter-clockwise stroke and a pause, the method comprising the steps of
loading items into the wash chamber;
supplying wash liquid into the wash chamber; and
oscillating and pausing the wash chamber about the central axis for a plurality of periods, in a first period, having pauses for a first length of time and in a subsequent period, having pauses for a second, different length of time than in the first period, the lengths of the pauses occurring within a selected range.

App. Br. A-1 (Claims Appendix.)

REJECTIONS

The Examiner maintains the following final rejections:³

Claims 1, 2, 4, and 6 under 35 U.S.C. § 102(b) as anticipated by Wentzlaff et al. (US 5,560,061, issued October 1, 1996).

³ Examiner's Answer entered January 30, 2015 ("Ans.").

Claims 1, 2, 4, and 6 under 35 U.S.C. § 103(a) as obvious over Wentzlaff.

Claims 3 and 5 under 35 U.S.C. § 103(a) as obvious over Wentzlaff.

Claim 7 under 35 U.S.C. § 103(a) as obvious over Wentzlaff and admitted prior art in Appellants' Specification.

DISCUSSION

Having carefully reviewed the Examiner's rejections in light of arguments advanced by Appellants in their Appeal and Reply Briefs,⁴ we are not persuaded that the Examiner errs reversibly in finding that claims 1, 2, 4, and 6 were anticipated and concluding that claims 1–7 are unpatentable for obviousness. We add the following for emphasis.

Rejection of Claims 1, 2, 4, and 6 as Anticipated by Wentzlaff

Appellants argue claims 1, 2, 4, and 6 as a group on the basis of claim 1, to which we limit our discussion. App. Br. 11–18.

The Examiner finds that Wentzlaff discloses a method of washing items during a single wash cycle in an automatic washer having a wash chamber rotatable about a central axis, comprising the steps of loading items into the wash chamber, which the Examiner finds to be inherent/implicit to a conventional washing cycle; supplying wash liquid into the wash chamber, which the Examiner also finds to be inherent/implicit to a conventional washing cycle; and oscillating and pausing the wash chamber about the central axis for a plurality of periods, each period having at least one clockwise oscillation stroke, a pause, at least one counter-clockwise

⁴ Reply Brief filed March 10, 2015 (“Rep. Br.”).

oscillation stroke, and a pause. Final Act. 9. The Examiner finds that Wentzlaff discloses that the duration of the pauses can be varied within a selected range during different times in a single wash cycle, thus placing the skilled artisan in possession of the invention as recited in claim 1. Final Act. 9–10; Ans. 9–10.

Appellants argue that Wentzlaff does not disclose “pauses for different lengths of time between a first period and a second period within a single wash cycle,” and Appellants contend that Wentzlaff also does not disclose varying pause length within a selected range. App. Br. 11–13, 16. Appellants further argue that Wentzlaff’s disclosure of varying the length of pauses “is strictly limited to varying the lengths from cycle to cycle, not period to period within a single cycle,” and contend that this interpretation of Wentzlaff’s teachings is supported by Wentzlaff’s disclosures as a whole. App. Br. 14–17.

However, we agree with the Examiner that Wentzlaff’s disclosures would have placed one of ordinary skill in the art in possession of the method of claim 1, for at least the following reasons.

Wentzlaff discloses a washing machine having a perforated washing drum and means for intermittently driving the washing drum in alternating rotary directions during washing, referred to as “reversing mode.”

Wentzlaff col. 1, l. 62–col. 2, l. 3. Wentzlaff discloses that operating the washing machine in reversing mode involves accelerating the drum in a clockwise rotation, returning the drum to a standstill phase (a first pause, Δt_3), accelerating the drum in a counter-clockwise rotation, and returning the drum to a second standstill phase (a second pause, Δt_2). Wentzlaff col. 4, ll. 36–52. Wentzlaff discloses that the length of the second standstill

phase (pause Δt_2) is a “selectable period of time” that is “variable,” and further discloses that the length of the first standstill phase (pause Δt_3), like the second standstill phase (Δt_2), “can be varied.” Wentzlaff col. 4, ll. 43–52. Wentzlaff also discloses a plurality of consecutive periods in which each period includes a clockwise rotation, a first pause (Δt_3), a counter-clockwise rotation, and a second pause (Δt_2). Wentzlaff Fig. 2, col. 4, ll. 36–41 (explaining that the +100 rotation and -35 rotation in Figs. 1 and 2 correspond to clockwise and counterclockwise rotation, respectively).

Contrary to Appellants’ arguments, we find no disclosure in Wentzlaff placing any limitation on how the variation in the length of the pauses could occur, and find no indication or suggestion that the length of the pauses cannot or should not be varied within a single wash cycle, as we find no basis for why they can or should only be varied from one wash cycle to the next. Critically, as to Appellants’ arguments, we do not find any definition in Appellants’ Specification of a “single wash cycle.” Absent such a definition, Appellants’ arguments do not explain why Wentzlaff’s disclosure of varying the first and second pauses would not involve varying the pauses within a single wash cycle. App. Br. 11–18. In other words, Appellants contend that Wentzlaff does not disclose pauses of different lengths of time between a first period and a second period within a single wash cycle, but Appellants do not explain why Wentzlaff’s disclosures exclude washing methods with such variation during a single wash cycle within the meaning of the phrase. *Id.* Accordingly, we agree with the Examiner that one of ordinary skill in the art, armed with Wentzlaff’s disclosures, reasonably would have understood that the pauses after the clockwise and counter-clockwise rotations could be varied both within a single wash cycle, as

claimed, or between wash cycles. *In re Preda*, 401 F. 2d 825, 826 (CCPA 1968) (“[I]t is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom.”).

Appellants also argue that the Examiner’s contention that “within a single wash cycle” is not claimed is unfounded and groundless. Rep. Br. 7–8. However, Appellants do not show harmful error in the Examiner’s assertion that the variation in the length of the pauses recited in claim 1 is not limited to variation within a single wash cycle where Appellants rely on wash cycles with multiple periods having pauses of varying lengths as being a single wash cycle. Rep. Br. 7–8; App. Br. 11–18. As discussed above, Wentzlaff discloses a plurality of consecutive periods that each include two pauses and discloses that the length of the pauses can be varied.

Appellants further argue that Wentzlaff teaches away from the method of claim 1 because one of ordinary skill in the art would have interpreted Wentzlaff’s disclosures as a whole to indicate that the length of the pauses is only varied from wash cycle to wash cycle, and is not varied within a single wash cycle. App. Br. 14–18. However, as discussed above, in the absence of a definition in Appellants’ Specification of a “single wash cycle,” Appellants’ interpretation of Wentzlaff’s teachings is not reasonably supported, particularly where Appellants do not explain how Wentzlaff’s disclosures exclude variation within a single cycle where there is no basis for a single wash cycle not including a plurality of periods with each having pauses of a different length. App. Br. 11–18.

Further, the question of whether a prior art reference “teaches away” from the claimed subject matter is irrelevant to an anticipation analysis. *See*

Celeritas Technologies Ltd. v. Rockwell Int'l Corp., 150 F.3d 1354, 1361 (Fed. Cir. 1998) (“A reference is no less anticipatory if, after disclosing the invention, the reference then disparages it. Thus, the question whether a reference ‘teaches away’ from the invention is inapplicable to an anticipation analysis.”) (Citations omitted). Moreover, we find that Wentzlaff’s disclosures reasonably would not have discouraged one of ordinary skill in the art from varying the length of the pauses from one period to the next in a single wash cycle because Wentzlaff does not does not criticize, discredit, or otherwise discourage such variation. Therefore, Wentzlaff does not teach away from the recited variation as Appellants assert. *In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004) (“[t]he prior art’s mere disclosure of more than one alternative does not constitute a teaching away from any of these alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claimed”); *In re Gurley*, 27 F.3d 551, 552–53 (Fed. Cir. 1994).

Accordingly, we agree with the Examiner that Wentzlaff anticipates claims 1, 2, 4, and 6 within the meaning of 35 U.S.C. § 102(b).

Rejection of Claims 1, 2, 4, and 6 as Obvious over Wentzlaff

Because we sustain the rejection of claims 1, 2, 4, and 6 under 35 U.S.C. § 102(b) as anticipated by Wentzlaff as discussed above, we also sustain the rejection of claims 1, 2, 4, and 6 under 35 U.S.C. § 103(a) as unpatentable over the Wentzlaff. *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548 (Fed. Cir. 1983) (*citing In re Fracalossi*, 681 F.2d 792 (CCPA 1982)) (Anticipation is the epitome of obviousness.). We note that because Wentzlaff discloses that the length of the first and second pauses can be varied, one of ordinary skill in the art would have found it obvious to

adjust the length of the pauses as necessary to achieve desired results, and in doing so reasonably would have arrived at pauses of different lengths in consecutive periods, as recited in claim 1. Appellants' arguments do not establish the criticality of the recited pause variation, and thus do not establish the non-obviousness of the claimed method. App. Br. 19–23. *In re Woodruff*, 919 F.2d 1575, 1578 (Fed. Cir. 1990) (indicating that in cases in which the difference between the claimed invention and the prior art is some range or other variable within the claims, the applicant must show that the particular range is critical, generally by showing that the claimed range achieves unexpected results relative to the prior art range.).

Rejections of claims 3, 5, and 7 as Obvious over Wentzlaff

We summarily affirm the Examiner's rejections of claims 3, 5, and 7 under 35 U.S.C. § 103(a) as obvious over Wentzlaff because Appellants do not contest these rejections. App. Br. 10–23. 37 C.F.R. § 41.37(c)(1)(iv) (requiring that “arguments shall explain why the examiner erred as to each ground of rejection . . . [and that] any arguments or authorities not included in the appeal brief will be refused consideration by the Board”); see also Manual of Patent Examining Procedure (MPEP) § 1205.02 (9th ed. Mar. 2014) (“If a ground of rejection stated by the examiner is not addressed in the appellant's brief, appellant has waived any challenge to that ground of rejection and the Board may summarily sustain it, unless the examiner subsequently withdrew the rejection in the examiner's answer.”).

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DECISION

In view of the foregoing, the Examiner's rejection of claims 1, 2, 4, and 6 under 35 U.S.C. § 102(b) is AFFIRMED, and the Examiner's rejections of claims 1-7 under 35 U.S.C. § 103(a) 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)(1).

AFFIRMED