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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte THOMAS FAUST

Appeal 2015-005234
Application 13/229,310
Technology Center 1700

Before LINDA M. GAUDETTE, WESLEY B. DERRICK, and
MICHAEL G. McMANUS, *Administrative Patent Judges*.

GAUDETTE, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's decision² finally rejecting claims 1–18 and 20–50. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

Claim 1 is representative of the claimed invention, and is reproduced below:

1. A bipolar battery plate for a bipolar battery, comprising:
 - a frame;
 - a substrate positioned within the frame and having insulative plastic with conductive particles homogeneously dispersed throughout the insulative plastic and exposed along a surface of the substrate;
 - a first lead layer positioned on one side of the substrate;
 - a second lead layer positioned on another side of the substrate, the first and second lead layer electrically connected to each other through the conductive particles;
 - a positive active material positioned on a surface of the first lead layer; and
 - a negative active material positioned on a surface of the second lead layer.

Br. 22 (Claims App'x). Claim 25, the only other independent claim on appeal, recites a “bipolar battery” comprising a plurality of plates, each plate having the features recited in claim 1. *Id.* at 25 (Claims App'x). Claim 25 further requires “a pair of terminal sections” and “an electrolyte.” *Id.*

¹ Appellant identifies the real party in interest as East Penn Manufacturing Co., Inc. Appeal Brief filed Nov. 25, 2014 (“Br.”), 3.

² Final Office Action mailed June 30, 2014 (“Final Act.”).

The claims stand rejected as follows (*see* Final Act. 3–9; Examiner’s Answer mailed February 10, 2015 (“Ans.”), 2–9):

1. Claims 1–16, 20, and 23–25 are rejected under pre-AIA 35 U.S.C. § 102(b) as anticipated by Rippel et al. (US 4,275,130; June 23, 1981 (“Rippel”).
2. Claims 17, 18, 21, and 22 are rejected under pre-AIA 35 U.S.C. § 103(a) as unpatentable over Rippel in view of Shaffer, II et al. (US 2010/0183920 A1; July 22, 2010 (“Shaffer”).
3. Claims 26–36, 39, and 40 are rejected under pre-AIA 35 U.S.C. § 103(a) as unpatentable over Rippel in view of Meadows et al. (US 5,562,741 A1; Oct. 8, 1996 (“Meadows”).
4. Claims 37 and 38 are rejected under pre-AIA 35 U.S.C. § 103(a) as unpatentable over Rippel and Meadows, further in view of Martin (US 6,569,560 B1; May 27, 2003).
5. Claims 41–50 are rejected under pre-AIA 35 U.S.C. § 103(a) as unpatentable over Rippel in view of Cai et al. (US 2005/0181260 A1; Aug. 18, 2005 (“Cai”)) and Jang (US 2007/0128464 A1; June 7, 2007).³

³ This ground of rejection, as stated in the Final Office Action and the Answer, does not include claims 45 and 50. *See* Final Act. 9; Ans. 8–9. Claims 45 and 50 depend, respectively, from claims 43 and 49. Claim 19 was cancelled and claims 41–50 were added by an amendment filed March 4, 2014. The Final Office Action, mailed in response to this amendment, identifies claims 1–18 and 20–50 as rejected. Final Act. 1. Although claims 45 and 50 are not included explicitly in the statement of the ground of rejection, claims 41–49 are mentioned in the discussion of the rejection, and the Examiner cites paragraph 35 of Cai as teaching “metal-coated fillers” (*see* Final Act. 9; Ans. 8–9), i.e., “metal plated fibers” as recited in claims 45 and 50. Appellant has not raised any objections to the Examiner’s failure to include claims 45 and 50 in the statement of this ground of rejection (*see*

The Examiner finds Rippel discloses a bipolar battery plate comprising frame 22, and substrates 21 positioned within the frame. Final Act. 3. The Examiner finds Rippel describes each substrate 21 as comprising conductive particles homogeneously dispersed throughout insulative plastic and exposed along a surface of the substrate. *See id.* (citing Rippel 3:67–4:24). The Examiner finds Rippel discloses first and second lead layers (lead strips 37, 38) positioned on opposite sides of each substrate 21. *See id.* Rippel discloses separator plates 23 interleaved between substrates 21. Rippel 3:49–51; Fig. 2, cited in Final Act 3. Rippel discloses each separator plate 23 comprises positive active material 24 on one side thereof and negative active material 25 on the opposite side thereof. *Id.* at 3:51–53; Fig. 2. The Examiner finds the positioning of positive active material 24 and negative active material 25 on separator plates 23 adjacent lead strips 37, 38 on substrates 21 meets the limitation of “a positive active material positioned on a surface of the first lead layer; and a negative active material positioned on a surface of the second lead layer” as recited in appealed claims 1 and 25. *See* Final Act. 3.

The sole argument advanced by Appellant in support of patentability as to all appealed claims is that Rippel does not describe a bipolar battery plate having the features recited in claims 1 and 25. *See, e.g.,* Br. 11, 14; *see also id.* at 17–20 (arguing the secondary references cited in the rejections under 35 U.S.C. § 103(a) do not supply the limitations in claims 1 and 25

generally, Br. 10–21), and Appellant identifies claims 1–18 and 20–50 as rejected and on appeal (*see id.* at 5, 20). Accordingly, we view the Examiner’s omission of claims 45 and 50 from the statement of this, or any other specific ground of rejection, as harmless error.

that are not described in Rippel). The only specific distinction between the claimed invention and Rippel argued by Appellant is the following:

Rippel does not teach or suggest a substrate having insulative plastic with conductive filler and separate lead layers being applied to opposite sides of the substrate, and having a PAM [(positive active material)] and NAM [(negative active material)] being pasted to the lead layers. Rather, Rippel teaches a different structure that includes a supporting non-conducting frame 11 (an elastic non-conducting material) with a perforated web and filled with the active materials A, which may be any suitable character, such as oxide of lead or finely-divided lead compressed to the desired density.

Br. 12; *see also id.* at 15–16.

Appellant’s argument, in essence, is that the broadest reasonable interpretation of the phrases “a positive active material *positioned on a surface of the first lead layer*; and a negative active material *positioned on a surface of the second lead layer*” (claims 1 and 25 (emphasis added)), requires that the active materials are “pasted” to the lead layers. Looking first to the language of the claims, we do not find any language explicitly requiring that the active materials are “pasted” to the lead layers (*see generally* Br. 22–28 (Claims App’x)), although we note claim 24, which depends indirectly from claim 1, recites that the active materials are in the form of a paste (*see id.* at 25 (Claim 24: “wherein [the] first active material is a paste applied over the first lead layer and the second active material is a paste spread over the second lead layer.”)). Turning next to the Specification, we find a description of the active materials as “positioned over” the lead layers (*see, e.g.,* Spec. ¶ 24) and also a description of a specific embodiment in which the active materials are “paste[s] of lead or lead oxide mixed with sulfuric acid, water, fiber, and carbon” (*id.* ¶ 41). We

discern no basis in the claims or Specification, however, for limiting claim 1 or claim 25 to a structure in which the active layers are “pasted” to the lead layers. *See In re Bigio*, 381 F.3d 1320, 1325 (Fed. Cir. 2011) (stating that the PTO should only limit a claim term based on an express disclaimer of a broader definition); *cf. Howmedica Osteonics Corp. v. Wright Medical Tech., Inc.*, 540 F.3d 1337, 1345 (Fed. Cir. 2008) (“[T]he fact that the specification describes only a single embodiment, standing alone, is insufficient to limit otherwise broad claim language.”).

Based on our interpretation of the argued claim limitations, Appellant’s argument fails to persuade us of error in the Examiner’s finding that Rippel describes a bipolar battery plate comprising a substrate having first and second lead layers positioned thereon and “a positive active material positioned on a surface of the first lead layer; and a negative active material positioned on a surface of the second lead layer,” as recited in claims 1 and 25 (*see* Final Act. 3).

Appellant’s assertion that “Rippel does not teach or suggest a substrate having insulative plastic with conductive filler” (Br. 12) is refuted by the Examiner’s citation to Rippel, column 3, line 67–column 4, lines 5 and 15–17, on page 11 of the Answer. *See also* Final Act. 3, 5 (wherein the Examiner relies on this disclosure in rejecting claims 1 and 25).

Appellant asserts that

[i]f the Applicant has argued that the reference does not teach each and every element of the claim, as asserted in the § 102 rejection, then it is the Examiner's duty, under MPEP § 2131, to prove that each and every element of the claim as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.

Br. 16.

We have reviewed the grounds of rejection as set forth in the Examiner's Final Office Action, and are satisfied that the Examiner properly identified in Rippel a teaching of each and every limitation recited in claims 1–16, 20, and 23–25, and identified in the various combinations of references relied on in rejecting claims 17, 18, 21, 22, and 26–50, a disclosure or suggestion of the invention as claimed. We agree with the Examiner (*see* Ans. 10) that Appellant's general assertion that Rippel fails to describe each of the limitations recited in claims 1 and 25, fails to satisfy the Board's requirement that Appellant presents substantive arguments in support of patentability. *See In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011) (“[W]e hold that the Board reasonably interpreted Rule 41.37 to require more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art.”); *In re Jung*, 637 F.3d 1356, 1365 (Fed. Cir. 2011) (“Jung argues that the Board gave improper deference to the examiner's rejection by requiring Jung to ‘identif[y] a reversible error’ by the examiner, which improperly shifted the burden of proving patentability onto Jung. . . . This is a hollow argument, because, as discussed above, the examiner established a prima facie case of anticipation and the burden was properly shifted to Jung to rebut it. Moreover, even assuming that the examiner had failed to make a prima facie case, the Board would not have erred in framing the issue as one of ‘reversible error.’ As recently acknowledged by the Board, it has long been the Board's practice to require an applicant to identify the alleged error in the examiner's rejections.”).

In sum, for the reasons stated above, and based on the Examiner's fact finding and reasoning in the Final Office Action and Answer, we determine

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a preponderance of the evidence on this appeal record favors the Examiner's finding of anticipation as to claims 1–16, 20, and 23–25, and conclusion of obviousness as to claims 17, 18, 21, 22, and 26–50. We affirm the Examiner's decision to reject claims 1–18 and 20–50.

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)(iv).

AFFIRMED