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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RAYMOND EUGENE MAYNARD and
THOMAS RICHARD HELMA

Appeal 2015-005254
Application 12/351,823
Technology Center 2800

Before GEORGE C. BEST, CHRISTOPHER C. KENNEDY, and
JULIA HEANEY, *Administrative Patent Judges*.

HEANEY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ request review pursuant to 35 U.S.C. § 134(a) of a decision of the Examiner to reject claims 1–24 of Application 12/351,823. We have jurisdiction under 35 U.S.C. § 6(b). We affirm and designate part of our affirmance as a New Ground of Rejection pursuant to 37 C.F.R. § 41.50.

¹ Appellants identify the real party in interest as ZIH Corp., a wholly owned subsidiary of Zebra Technologies Corp. App. Br. 2.

BACKGROUND

The subject matter on appeal relates to an assembly for intermediate transfer printing, such as thermal transfer printing, which uses heat to transfer an image from an intermediate transfer media to a product. Spec. ¶ 3. The printing assembly includes a device configured to provide a cooling stream of air near the product for facilitating removal of the intermediate transfer media from the product. Spec. ¶ 2.

Representative claim 1 is reproduced below with emphasis added:

1. An intermediate transfer printing assembly configured to transfer an image to a product, the intermediate transfer printing assembly comprising:
 - an intermediate transfer media comprising an image disposed thereon;
 - a transfer assembly comprising a transfer device, wherein the transfer assembly is configured to transfer the image from the intermediate transfer media to the product by:
 - receiving the product and intermediate transfer media into the transfer assembly along a first direction,
 - compressing the intermediate transfer media between the transfer device and the product,
 - expelling the product from the transfer assembly along a second direction, and
 - peeling the intermediate transfer media from the product such that the image is transferred from the intermediate transfer media to the product; and
 - a blower configured to intermittently provide a cooling stream of air along and in contact with a peel interface defined where the intermediate transfer media is peeled from the product.*

App. Br. 15 (Claims Appx.).

THE REJECTIONS

1. Claims 1–3, 5, 10–12, 16, and 17 are rejected under 35 U.S.C. § 102(b) as anticipated by Kikuchi.²
2. Claims 1, 4, 10, and 13 are rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Kitami³ and Kikuchi.
3. Claims 6–8, 14, 18, 22, and 23 are rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Kikuchi and Yamamoto.⁴
4. Claims 9 and 15 are rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Kikuchi and Fukuda.⁵
5. Claim 19 is rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Kikuchi, Yamamoto, and Okamoto.⁶
6. Claim 20 is rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Kikuchi, Yamamoto, and Fukuda.
7. Claims 21 and 24 are rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Kikuchi, Yamamoto, and Okamoto.

DISCUSSION

Appellants argue for reversal of the rejections on the basis of the limitation of claim 1 italicized above, which is also recited in independent

² Kikuchi (US 5,600,359, issued Feb. 4, 1997).

³ Kitami (JP 08-058125 A, published Mar. 5, 1996).

⁴ Yamamoto (US 7,076,867 B2, issued July 18, 2006).

⁵ Fukuda (JP 2001-331043 A, published Nov. 30, 2001).

⁶ Okamoto (US 5,891,291, issued Apr. 6, 1999).

claims 10 and 16. *See generally* App. Br. 7–12. With the exception of claim 2, Appellants do not separately argue any dependent claims. We limit our discussion accordingly. After review of the evidence in the appeal record and the opposing positions of the Appellants and the Examiner, we determine that Appellants have not identified reversible error in the Examiner’s rejections. With respect to claim 2, however, our reasoning differs somewhat from the Examiner’s. Accordingly, we designate the decision with respect to claim 2 as a NEW GROUND OF REJECTION pursuant to 37 C.F.R. § 41.50(b).

Appellants argue that Kikuchi does not disclose “a blower configured to intermittently provide a cooling stream of air along and in contact with a peel interface defined where the intermediate transfer media is peeled from the product.” App. Br. 8. Specifically, Appellants argue that Kikuchi’s nozzle **51** as shown in Figure 25 is configured to direct air only onto the surface of shutter **5**, rather than at the peel interface, and that no cooling is occurring as Kikuchi’s intermediate transfer media is peeled from the shutter (which corresponds to the “product” recited in the claims). App. Br. 9–11.

Appellants do not dispute the Examiner’s interpretation of “peel interface” as “a location where the intermediate transfer media is peeled from the product.” Ans. 3. *See* App. Br. 11; Reply Br. 3 (“The peel interface of example embodiments of the claims is illustrated in Fig. 3 of the present application . . . as element 66, ‘defined where the intermediate transfer media is peeled from the product.’”) We have reviewed the claim language and Specification in light of the interpretation of “peel interface” presented by the Examiner, and determine that the Examiner’s interpretation is the broadest reasonable interpretation, as we are required to apply. *See In re ICON Health & Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007) (“the

PTO must give claims their broadest reasonable construction consistent with the specification. . . . Therefore, we look to the specification to see if it provides a definition for claim terms, but otherwise apply a broad interpretation.”).

Applying that construction of “peel interface” to Kikuchi, the Examiner’s findings support the conclusion that Kikuchi anticipates claim 1. The Examiner correctly finds that Kikuchi teaches in Figures 18, 19, and 25 that nozzle **51** provides a cooling stream of air to the side of shutter **5** in the location where thermal transfer film **10** is peeled from shutter **5**. Ans. 4. Additionally, Appellants’ arguments concerning the direction of air from nozzle **51** as shown in Figure 25 are not persuasive of reversible error because Figure 18 (not Figure 25) shows the location of nozzle **51**. *See id.* A person of ordinary skill in the art would have understood that the depiction of nozzle **51** in Figure 25 does not represent its location in relation to other parts of the apparatus; for example, Figure 25 does not show the thermal transfer cooling unit to which nozzle **51** is attached, as shown in Figure 18.

Any additional arguments concerning claim 1 raised by Appellants in their Appeal Brief, but not discussed explicitly in this Decision, have been fully addressed by the Examiner in the Answer and we concur in the Examiner’s determination that these arguments are unpersuasive for the reasons stated in the Answer. *See* Ans. 2–9 (Response to Argument). With respect to the rejections under 35 U.S.C. § 103(a), all of which include Kikuchi, Appellants rely on the same arguments as above. Accordingly, we find that the Examiner did not reversibly err, and we affirm the rejections of claims 1 and 3–24.

Claim 2: New Ground of Rejection

Claim 2 depends from claim 1 and additionally recites that the blower is configured to selectively provide the cooling stream of air proximate the peel interface between the intermediate transfer media and the product when the product is expelled from the transfer assembly along the second direction, but not provide the cooling stream of air proximate the peel interface between the intermediate transfer media and the product when the product is received into the transfer assembly along the first direction.

App. Br. 15, Claims App'x. Appellants argue that claim 2 is patentably distinct because Kikuchi does not provide a cooling stream of air proximate the peel interface when the product is expelled from the transfer assembly along the second direction. App. Br. 13–14.

As with our analysis of claim 1 above, we begin by determining the scope of the claim. As an apparatus claim, claim 2 is directed to a structure, i.e., a blower. Functional recitations concerning how the blower is used do not limit the claimed structure. Therefore, claim 2 must be distinguished from the prior art in terms of structure rather than function. *See Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469 (Fed. Cir. 1990) (“[A]pparatus claims cover what a device is, not what a device does.”); *see also In re Schreiber*, 128 F.3d 1473, 1477–78 (Fed. Cir. 1997) (holding that a funnel disclosed for oil dispensing anticipated a claim to a funnel-like structure employed for dispensing popcorn and that applicant had the burden to prove that the funnel was not capable of dispensing popcorn once the Examiner established a similarity in structure). Appellants’ argument about the operation of Kikuchi’s blower (App. Br. 13–14), however, is based on distinguishing Kikuchi’s function, rather than its structure.

The Examiner’s Answer responded to Appellants’ argument by describing the operation of Kikuchi’s blower (nozzle 51) rather than setting

forth a proper claim interpretation based on the structure recited in claim 2. Ans. 9–10. Thus, we enter a new ground of rejection pursuant to 37 C.F.R. § 41.50(b) of claim 2 as anticipated by Kikuchi. Based on the same findings of the Examiner with regard to claim 1, Kikuchi is capable of performing the function recited in claim 2 and therefore meets the claim. *In re Schreiber*, 128 F.3d at 1477. The Examiner established a reasonable basis that Kikuchi’s nozzle **51** is capable of the claimed use. *Id.* at 1478. Accordingly, Appellants’ arguments with respect to claim 2 do not persuade us of reversible error in the rejection.

SUMMARY

We AFFIRM the Examiner’s rejections of claims 1–24, but we designate our affirmance a NEW GROUND OF REJECTION with respect to claim 2 because our reasoning differs from that of the Examiner.

37 C.F.R. § 41.50(b) provides that “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.” Section 41.50(b) also provides that the Appellants, *WITHIN TWO MONTHS FROM THE DATE OF THE DECISION*, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution*. Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the Examiner, in which event the proceeding will be remanded to the Examiner

(2) *Request rehearing*. Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

Appeal 2015-005254
Application 12/351,823

ORDER

AFFIRMED &
NEW GROUND OF REJECTION UNDER 37 C.F.R. § 41.50(b)