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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KATHRYN ARMSTRONG and
PAUL E. BESHEARS JR.¹

Appeal 2015-005438
Application 12/947,127
Technology Center 1700

Before N. WHITNEY WILSON, CHRISTOPHER C. KENNEDY, and
JULIA HEANEY, *Administrative Patent Judges*.

KENNEDY, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's decision to reject claims 10–13, 16, and 18–21. We have jurisdiction under 35 U.S.C. § 6(b). We REVERSE.

BACKGROUND

The subject matter on appeal relates to a method of operating a dishwasher. *E.g.*, Spec. ¶ 2; Claim 10. Claim 10 is reproduced below from page 30 (Claims Appendix) of the Appeal Brief:

¹ According to the Appellants, the real party in interest is Whirlpool Corporation. App. Br. 1.

10. A method of operating a dishwasher including a treating chamber for receiving dishes and having both a cool cycle of operation and a hot cycle of operation, which may be implemented in the treating chamber and that may be selected by a user and implemented by a controller, where the cool cycle of operation has a cool liquid temperature insufficient to dissolve fatty soils, and the hot cycle of operation has a hot liquid temperature sufficient to dissolve fatty soils, the method comprising:

maintaining liquid temperatures within the treating chamber below the hot liquid temperature for all implemented cycles of operation, regardless of whether the cool or hot cool cycle of operation is selected;

storing in a memory associated with the controller, a running count of the number of cycles of operation implemented within the treating chamber with liquid temperatures below the hot liquid temperature; and

when the count satisfies a predetermined threshold count, using a liquid with a hot liquid temperature within the treating chamber when a subsequent cycle of operation is implemented, regardless of whether the subsequent cycle of operation is selected as the cool cycle of operation or the hot cycle of operation.

REJECTIONS ON APPEAL²

1. Claims 10–13, 16, 20, and 21 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Padtberg et al. (US 2008/0308127 A1, published Dec. 18, 2008) in view of Gaus et al. (US 2009/0250085 A1, published Oct. 8, 2009).

² In the Examiner's Answer, the Examiner withdraws a rejection of claims 10–13, 16, and 18–21 under 35 U.S.C. § 112, ¶ 1. Ans. 2.

2. Claims 10–13, 16, and 18–20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Reichold (US 6,551,414 B2, issued Apr. 22, 2003) in view of Gaus.

ANALYSIS

Rejection 1

Claim 10, reproduced above, recites three principal elements. First, it requires that temperatures “below the hot liquid temperature” are used “for all implemented cycles of operation, regardless of whether the cool or hot [] cycle of operation is selected.” Second, it requires “count[ing] . . . the number of cycles of operation . . . with liquid temperatures below the hot liquid temperature” and storing that count in a memory. Third, it requires that, when the count meets a predetermined value, the next operation cycle to be run is a hot cycle “regardless of whether the subsequent cycle of operation is selected as the cool cycle of operation or the hot cycle of operation.” Claim 10 thus recites a method in which user selection of hot/cool cycles is overridden by the controller, and the controller determines when a hot or cool cycle is to be run based on the accumulated count of cool cycle operations. Thus, a user may select a hot cycle, but if the predetermined threshold count of cool cycles is not met, the controller nevertheless implements a cool cycle, i.e., “regardless of whether the cool or hot [] cycle of operation is selected.” Likewise, a user may select a cool cycle, but if the predetermined threshold count of cool cycles is met, the controller nevertheless implements a hot cycle.

The Examiner finds, *inter alia*, that Padtberg teaches a method of operating a dishwasher having both “a normal cycle of operation and a self-

clean cycle of operation,” and that the method comprises “maintaining the normal operation cycle in the treating chamber for all implemented cycles of operation regardless of whether a normal or self-clean cycle is selected.”

Final Act. 6. In the Answer, the Examiner finds that the claimed “hot cycles” are equivalent to Padtberg’s “self-clean cycles.” Ans. 3–4.

The Appellants explain that the claimed hot cycles are actual operation cycles used to clean dishes or other utensils where the temperature is simply high enough to additionally clean fatty soils from the dishwasher itself, unlike the self-clean cycle of Padtberg, which appears to be used only for cleaning the dishwasher itself (and not dishes). *See* Reply Br. 2–3; Spec. ¶¶ 16, 26; Padtberg ¶¶ 7–13, 17–20, 31 (“Preferably, a signal is sent to the user when automatic execution of the self-cleaning program is imminent, in order that the user does not load the dishwasher with new items to be washed before the self-cleaning program is executed.”), 32, 37. Thus, as recited by claim 10 and supported by the Specification, the Appellants’ invention contemplates a dishwasher in which dishes or other utensils can be washed on either a cool cycle (i.e., lower temperatures not capable of removing fatty soils) or a hot cycle (i.e., higher temperatures capable of removing fatty soils), while Padtberg says nothing about the temperature at which dishes are washed and instead simply contemplates a distinct self-clean cycle in which dishes are not washed. *See* Spec. ¶¶ 16, 26; Padtberg ¶¶ 7–13, 17–20, 31, 32, 37.

The Examiner finds that Padtberg teaches maintaining a “normal” (i.e., cool) cycle “regardless of whether the cool or hot [] cycle of operation is selected,” as required by claim 10. However, a preponderance of the evidence of record does not support the Examiner’s finding. For Padtberg to

disclose that limitation, it would need to teach or suggest a method in which a user may select a self-clean cycle, but the system overrides the user selection and runs a normal cycle. As the Appellants point out, *e.g.*, App. Br. 16–17, the Examiner does not persuasively identify a disclosure in Padtberg that teaches or suggests the disputed limitation. While Padtberg discloses counting operating cycles and running a self-clean cycle after the count reaches a certain value, the Examiner does not persuasively explain where or how Padtberg teaches or suggests running a non-self-clean cycle even if a self-clean cycle has been selected (or running a self-clean cycle even when a normal cleaning cycle has been selected). Nor does the Examiner provide any persuasive explanation as to whether or why it would have been obvious to do that notwithstanding Padtberg’s failure to teach or suggest it.

On the record before us, we are not persuaded that Padtberg teaches or suggests the step of “maintaining liquid temperatures within the treating chamber below the hot liquid temperature for all implemented cycles of operation, regardless of whether the cool or hot cool cycle of operation is selected.” Accordingly, we reverse the Examiner’s rejection of claim 10 over Padtberg in view of Gaus. Because the other claims subject to Rejection 1 depend from claim 10, and the Examiner’s rejection of those claims does not remedy the error identified above, we likewise reverse the Examiner’s rejection of those claims.

Rejection 2

For essentially the same reasons, we reverse the Examiner’s rejection of the claims subject to Rejection 2. Reichold teaches a dishwasher that automatically performs a descaling operation “at times when the dishwasher

will not be required for normal operation.” Reichold at 1:42–45. It further teaches that the “operator can configure the de-scaling system 40 to perform a de-scaling operation either on a periodic basis, as determined by the number of days indicated by the real-time clock 48, which have elapsed since a previous de-scaling operation, or every time a specified number of operating cycles has occurred.” *Id.* at 3:49–54. As above, however, the Examiner does not persuasively identify any disclosure in Reichold that teaches or suggests running a normal operation rather than a de-scaling operation, “regardless of whether the [normal] or [de-scaling] cycle of operation is selected,” as required by claim 10. Accordingly, we reverse the Examiner’s rejection of claim 10 over Reichold and Gaus. Because the other claims subject to Rejection 2 include that limitation either expressly or through claim dependency, and the Examiner’s rejection of those claims does not remedy the error identified above, we likewise reverse the Examiner’s rejection of those claims.

CONCLUSION

We REVERSE the Examiner’s rejections of claims 10–13, 16, and 18–21.

REVERSED