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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SEAN T. OGBURN

Appeal 2015-007225
Application 12/016,987¹
Technology Center 3700

Before HUBERT C. LORIN, PHILIP J. HOFFMANN, and
MATTHEW S. MEYERS, *Administrative Patent Judges*.

HOFFMANN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the final rejection of claims 12–34. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

According to Appellant, the “invention relates to a pallet for storing or transporting goods.” Spec. ¶ 1. Claims 12 and 27 are the independent claims on appeal. We reproduce claim 12, below, as illustrative of the appealed claims.

¹ According to Appellant, “REHRIG PACIFIC COMPANY is the real party in interest.” Appeal Br. 1.

12. A method for manufacturing a pallet including the steps of:

a) forming a lower deck portion having a lower planar portion, a peripheral wall of the lower deck portion having a recess at an upper exterior surface thereof;

b) forming an upper deck portion having an upper planar portion, a peripheral lip protruding downwardly from a periphery of the upper planar portion, one of the upper planar portion and the lower planar portion including a plurality of transversely intersecting ribs and a plurality of mating portions protruding from the plurality of intersecting ribs;

c) placing the upper deck portion on the lower deck portion, with the peripheral wall of the lower deck portion within the peripheral lip of the upper deck portion; and

d) vibration welding the mating portions of the ribs to the other of the upper planar portion and the lower planar portion.

REJECTIONS AND PRIOR ART

The Examiner rejects claims 12 and 14–28 under 35 U.S.C. § 102(b) as anticipated by Ogburn (US 2006/0032413 A1, pub. Feb. 16, 2006).

The Examiner rejects claims 13 and 29–34 under 35 U.S.C. § 103(a) as unpatentable over Ogburn.

ANALYSIS

Anticipation rejection

Based on our review of the record, for the reasons discussed in detail below, Appellant does not persuade us of error in the Examiner's rejection of claims 12 and 14–28 as anticipated by Ogburn. Thus, we sustain the anticipation rejection.

As an initial matter, Appellant does not argue separately claims 12 and 14–28. Thus, dependent claims 14–28 stand or fall with independent claim 12, which we select for our analysis. *See* 37 C.F.R. § 41.37 (c)(iv). As set forth above, independent claim 12 recites “forming a lower deck portion having a lower planar portion, . . . forming an upper deck portion having a upper planar portion,” and vibration welding the upper and lower deck portions to one another. Appeal Br., Claims App. As summarized by Appellant, “[t]he Examiner reads the claimed ‘lower deck portion’ on Ogburn’s base 18[,] and the claimed ‘lower planar portion’ on Ogburn’s mid-top member 30.” *Id.* at 4. Appellant argues that the rejection is in error because “the Examiner’s interpretation [of claim 12] . . . is *unreasonably* broad and is not consistent with the specification.” *Id.* We disagree with Appellant, however, that the Examiner’s rejection is inconsistent with the broadest reasonable interpretation of the claim, in view of the Specification.

Specifically, we do not agree that either Appellant’s Figure 1, or paragraphs 21 or 29 of Appellant’s Specification, precludes the Examiner from finding that Ogburn’s separate base 18 and mid-top member 30 teach the claimed lower deck portion having a lower planar portion, because the claim requires a lower deck portion integral with a lower planar portion. *Id.* We note, for example, that the Specification describes that “[i]n the *example* embodiment, . . . the *example* lower deck portion 14 is integrally molded as a single part from a thermoplastic material via injection molding.” Specification ¶ 29 (emphases added); *see also* Answer 8–9. Thus, we determine that Appellant does not persuade us that the Specification limits the claimed lower deck and planar portions to an integral, molded unit. Based on the foregoing, we sustain the anticipation rejection.

Obviousness rejection of claim 13

Inasmuch as Appellant does not argue separately dependent claim 13's obviousness rejection based on Ogburn, we sustain the rejection.

Obviousness rejection of claims 29–34

Based on our review of the record, we do not sustain the obviousness rejection of dependent claims 29–34, based on Ogburn.

As pointed out by Appellant, “[c]laims 29 and 32, for example, include that ‘the lower deck portion is integrally molded *as a single part.*’” Appeal Br. 4. “Ogburn vibration welds its top deck 12 to the mid-top member 30 *before* the joined top deck 12/mid-top member 30 structure is snap fit onto the base 18. See Ogburn at [0037]. Thus, the mid-top member 30 could not be integrally formed with the base 18.” *Id.* at 5. The Examiner’s determinations that “[i]t would have been obvious . . . to provide the lower deck portion (18, 30) as a single integrally molded part” (Final Action 7), because

[o]ne . . . would recognize that the design of Ogburn could be formed with the lower deck portion (18) integrally molded with the mid-top member (30); furthermore, such a construction would increase the joint strength between the mid-top member (30) and lower deck portion (18) since it would provide more than the shoulder connection of Ogburn (see paras. [0005]–[0009]) thereby further strengthening the plastic pallet member which is the goal of Ogburn Finally, nothing would prevent one from vibration welding the upper deck portion 12 to the mid-top member 30 integrally formed with the base 18 since access to mid-top member 30 remains between the columns,

(Answer 9–10) is not adequate to support the rejection, in view of Ogburn’s express, contrary teaching as to how the pallet is assembled. Further, the supposed advantages that would result from the modification, as indicated above by the Examiner, are speculative and without evidence. Thus, based

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on the foregoing, we do not sustain the rejection of claim 29 and 32, or the rejection of claims 30, 31, 33, and 34 that further depend from claims 29 and 32.

DECISION

We AFFIRM the Examiner's anticipation rejection of claims 12 and 14–28.

We AFFIRM the Examiner's obviousness rejection of claim 13.

We REVERSE the Examiner's obviousness rejection of claims 29–34.

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-IN-PART