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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ERGIN ARSLAN, AHMET ALI USLU,
and DAVUT AYHAN SERABATIR

Appeal 2016-001077
Application 12/810,925
Technology Center 3700

Before JOHN C. KERINS, EDWARD A. BROWN, and
LYNNE H. BROWNE, *Administrative Patent Judges*.

BROWNE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Ergin Arslan et al. (Appellants) appeal under 35 U.S.C. § 134(a) from the rejection of claims 1–15. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

CLAIMED SUBJECT MATTER

Claim 1, reproduced below with emphasis added, is representative of the claimed subject matter:

1. An oven (1) comprising *a heating chamber* (2) having *a rear wall* wherein the cooking process is performed, a fan (3) in

the heating chamber (2), a fan motor (5) mounted outside the rear wall (4) having a shaft axis (E) vertical to and extending through the rear wall (4) for rotating *a fan (3) in the heating chamber (2)*, more than one lug (6) supporting the fan motor (5) and helping the assembly thereof, each one vertical to the shaft axis (E) of the fan motor (5) and extending in different directions (D1, D2, D3, . . .) outward from the fan motor (5), and a mounting plate (7) secured outside the rear wall (4), whereto the lugs (6) are fastened and including more than one leaf spring (8),

- having a first spring arm (9) mounted between each lug (6) and the mounting plate (7), secured to the lug (6), *a second spring arm (109) fastened to the mounting plate (7)* and at least one curve (10) joining the spring arms (9, 109),

- whose spring arms (9, 109) extending in the direction (D1, D2, D3, . . .) of the lug (6) fastened thereto and the curve (10) vertical to the direction (D1, D2, D3, . . .) of the lug (6),

- attenuating the vibrations of the fan motor (5) in parallel directions to the mounting plate (7) by stretching in the direction (D1, D2, D3, . . .) the lug (6) extends.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Huffman	US 3,324,844	June 13, 1967
Buckman	US 4,161,667	July 17, 1979
Heinrich	US 4,382,587	May 10, 1983
Welch	US 4,473,316	Sept. 25, 1984
Gurri	WO 2004/074707 A1	Sept. 2, 2004

REJECTIONS

I. Claims 1, 4–6, and 9 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Huffman and Buckman.

- II. Claims 7 and 10–12 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Huffman, Buckman, and Welch.
- III. Claims 8 and 13–15 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Huffman, Buckman, Welch, and Heinrich.
- IV. Claims 1–3 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Huffman and Gurri.

DISCUSSION

Rejection I

Appellants argue claims 1, 4–6, and 9 together. *See* Appeal Br. 13–15. We select independent claim 1 as the representative claim, and claims 4–6, and 9 stand or fall with claim 1.

The Examiner finds that the combined teachings of Huffman and Buckman disclose or suggest all of the limitations of claim 1. *See* Final Act. 4–5. In particular, the Examiner finds that “Huffman discloses an oven comprising a heating chamber [reference characters 23 and 26 in Fig. 3 and column 2[,] lines 44–46] having a rear wall [reference character A in Fig. 3 of Huffman]” and “a fan [reference character 38 in Fig. 1 and column 3[,] line 19] in the heating chamber.” Final Act. 4. The Examiner further finds that Buckman discloses a flexible mount for a blower motor that reduces vibration and which includes more than one leaf spring 6–8 having a first spring arm 6 mounted between each lug 4–5 and the mounting plate 2, a second spring arm 8 fastened to the mounting plate, and at least one curve 7 joining the spring arms, in which the spring arms extend in the direction of the lug fastened thereto and the curve vertical to the direction of the lug,

attenuating the vibrations of the fan motor in parallel directions to the mounting plate by stretching in the direction the lug extends. *Id.* at 4–5 (citing Buckman 2:1; 3:58–62; Figs. 2–3).

Appellants contend that the Examiner’s finding that Huffman discloses a heating chamber as claimed “is not true.” *See* Appeal Br. 13. In support of this contention, Appellants argue that “*Huffman* appears to teach that the so-called heat exchange chambers 26 are not in the rear but on each side of the oven (see col. 2, lines 44–49).” *Id.* at 14. Appellants are correct; however, this is not indicative of error. The Examiner explains in the rejection that the areas 23 and 26 of Huffman are considered as a heating chamber. *See* Ans. 14 (citing Huffman, Figs. 1, 3; col. 2, ll. 44–46; col. 3, l. 19). Claim 1 does not preclude part of the heating chamber from being located on the sides of the oven. *See* Appeal Br. 19 (Claims App.). Appellants do not persuasively explain why the Examiner’s finding that Huffman’s rectangular oven 23 and heating chambers 26 correspond to the claimed heating chamber is in error. *See id.* at 13–14. Thus, Appellants’ argument is unconvincing.

Appellants further contend that “*Huffman* appears to teach that the so called fan 38 resides within the element 38 (‘blower chamber’) which is separate from the elements 23 and 26 (col. 3, lines 37–43).” *Id.* at 14. Again, Appellants’ argument is not indicative of error. Claim 1 requires “a fan (3) in the heating chamber.” Appeal Br. 19 (Claims App.). As clearly shown in Huffman’s Figure 3, Huffman’s fan (i.e., rotary blower impeller 38) is located inside Huffman’s fan chamber 35, which is located inside of

rear wall “A”¹ forming a part of the claimed “heating chamber” as explained in the rejection. Thus, Huffman’s fan is in the heating chamber as required by claim 1.

Next, Appellants contend that that “the office action’s admission that element 14 is a mounting plate evidences that element 35 (blower chamber) is not part [of] the so-called ‘heating chamber’ comprising elements 23 and 26.” Appeal Br. 14. In support of this contention, Appellants note that “it appears that the element 35 (blower chamber) [is] formed across element 14 and element 36” and “that the mounting plate [is] not ‘secured outside the rear wall (4).” *Id.* at 14–15.

Appellants’ argument is not responsive to the rejection as articulated by the Examiner. As discussed *supra*, the rejection identifies the wall labeled “A” in the annotated version of Huffman’s Figure 3 as corresponding to the claimed rear wall. Moreover, the Examiner explains that, in Huffman, “[t]he blower chamber and heat exchanger chambers form one continuous structure through which air flows from the blower, over the heat exchanger, and into the oven [reference character 23 in Fig. 3 and column 2 line 44].” Ans. 15 (citing Huffman, col. 3, ll. 37–43). As shown in both the annotated and non-annotated versions of Huffman’s Figure 3, Huffman’s blower chamber 35 is located in the heating chamber, as that chamber is identified in the rejection. Furthermore, as shown in these drawings, Huffman’s oven unit rear wall 14 (i.e., mounting plate) is secured to the outside of wall “A.” Thus, the Examiner’s finding that Huffman’s

¹ See the annotated version of Huffman’s Figure 3 reproduced on page 5 of the Final Action.

element 14 is a mounting plate does not evidence, as argued by Appellants, that blower chamber 35 is not part of the housing chamber. Accordingly, Appellants do not apprise us of error.

In addition, Appellants contend that Buckman fails to disclose a second spring arm fastened to the mounting plate. Appeal Br. 15. In support of this contention, Appellants note that “*Buckman* appears to teach that element 8 is a portion of the bracket (element 3) that terminates in an outer integral pad (element 9). It is element 9 which is used to ‘secure bracket 3 to the housing 2’” not element 8.” *Id.*; *see also* Reply Br. 7–8. Appellants further argue that “the Examiner has admitted that the *Buckman* [reference] does not meet the limitation of the claim ‘a second spring arm (109) fastened to the mounting plate (7)’ as the so-called ‘pad’ is fastened to the mounting plate not the spring arm.” Appeal. Br. 15; *see also* Reply Br. 8.

Responding to this argument, the Examiner correctly notes that “the claim does not require that the second spring arm [be] ‘directly fastened’ to the mounting plate, or connected in some way that prohibits the use of intervening structure.” Ans. 16. Further, the Examiner explains that “[t]he second spring arm [of *Buckman*], and by virtue the entire bracket, are attached to the mounting plate [reference numeral 2 in Fig. 3] via outer integral pad [reference numeral 9 in Fig. 3],” and “[t]herefore the second spring arm is fastened to the mounting plate, albeit via the pad.” *Id.* at 16–17. Appellants do not explain why the Examiner’s reasoning is flawed or provide a convincing argument as to why the claim should be interpreted to require a direct connection between the second spring arm and the mounting plate. Accordingly, Appellants do not apprise us of error.

Appellants contend that “one of ordinary skill in the art would not look to combine *Huffman* with *Buckman* as *Buckman* teaches away from *Huffman*.” Appeal Br. 15; *see also* Reply Br. 8. According to Appellants, “it appears that *Huffman* teaches that the blower impeller 30 is coupled to a pulley coupled by a belt with a drive pulley on the shaft of an electric motor” while “*Buckman* teaches away and eliminates ‘soft resilient non-metallic materials’ that can provide a quieter blower unit” and that “[t]he belt taught by *Huffman* would be a soft non-metallic material.” Appeal Br. 15; *see also* Reply Br. 8.

Although Appellants do not identify the portion of *Buckman* relied upon in support of this argument, we note that *Buckman* states:

The vibration absorbing brackets of the invention may be welded in different positions on the main frame of a motor in the same welding machine. The curved outer pad is suitable for any practical angle of mounting screw application to the housing of a blower. The reverse bend provides additional length to the flexible arm of the bracket thus increasing its ability to flex and isolate vibration of the motor from the housing and the length of the arm is also increased in a confined space when the outward curvature or crimp is provided in that portion of the arm immediately located ahead of the outer pad. The reverse bend design minimizes scrap and lends itself to optional choices of material thickness or temper to facilitate the desired flexibility and the necessary resistance to fatigue. A motor mounted by the reverse bend brackets has maximum flexibility in the twisting mode where the most isolation is required. The reverse-bend brackets support the motor close to the center of gravity of the wheel and motor assembly thus improving structural rigidity, minimizing the various torsional vibration modes and consequences, and permits maximum entry of the motor into the blower which improves cooling and reduces overall unit size. In addition, *the invention eliminates structural parts and hardware* required in previous constructions *and the need for*

soft resilient non-metallic materials to provide a quiet blower unit.

Buckman 1:66–2:24 (emphasis added).

Thus, the Examiner correctly notes that “[t]he teaching of Buckman that excludes the need for soft resilient materials applies to the mounting of the motor only and not to how the motor drives a driven load, an issue about which Buckman is generally silent.” Ans. 17. We will not read into a reference a teaching away from a proposed combination when no such language exists. *See Dystar Textilfarben GmbH & Co. Deutschland KG. v. C.H. Patrick Co.*, 464 F.3d 1356, 1364 (Fed. Cir. 2006). Thus, Appellants do not apprise us of error.

In the Reply Brief, Appellants contend that

the figure [of Huffman] clearly does not provide one of ordinary skill in the art a shaft axis (E) vertical to and extending through the rear wall (4) for rotating a fan (3) since the ‘reference character E’ does not provide the structural limitation required in the claim to rotate the fan.

Reply. Br. 7; *see also id.* at 13. However, this argument was not raised in the Appeal Brief, and does not appear to be responsive to any argument raised in the Examiner’s Answer. As stated in 37 C.F.R. § 41.41(b)(2):

Any argument raised in the reply brief which was not raised in the appeal brief, or is not responsive to an argument raised in the examiner’s answer, including any designated new ground of rejection, will not be considered by the Board for purposes of the present appeal, unless good cause is shown.

(Emphasis added). As Appellants fail to show good cause as to why we should consider this argument, in accordance with Rule 41.41(b)(2), we do not do so.

For these reasons, we sustain the Examiner’s decision rejecting claim 1, and claims 4–6 and 9, which fall therewith, as unpatentable over Huffman and Buckman.

Rejections II and III

Appellants do not present separate arguments pertaining to Rejections II and III. *See* Appeal Br. 16. Rather, Appellants argue that if claim 1 is allowable then claims 7, 8, and 10–15 are also allowable. *Id.*

Accordingly, we sustain the Examiner’s decisions set forth in Rejections II and III.

Rejection IV

Appellants argue claims 1–3 together. *See* Appeal Br. 16–18. We select independent claim 1 as the representative claim, and claims 2 and 3 stand or fall with claim 1.

This rejection relies on essentially the same findings pertaining to Huffman discussed *supra*, but relies on Gurri rather than Buckman for the limitations pertaining to the leaf springs. *See* Final Act. 12–14. In particular, the Examiner finds that Gurri discloses a leaf spring vibration dampener 1 comprising a first spring arm, shown as character A in the Examiner’s annotated Figure 1 of Gurri, secured to a first surface 41 and a second spring arm, shown as character B in the Examiner’s annotated Figure 1 of Gurri, and a curve 13 joining the two spring arms. *Id.* (citing Gurri, Figs. 1; p. 5, ll. 33–37, p. 6, l. 4). Based on these findings, the Examiner determines that it would have been obvious “to modify the oven taught by Huffman by including the spring elements taught by Gurri in order to

prevent the effects of motor vibration from being transmitted from the motor to the oven case.” *Id.*

Regarding Huffman, Appellants essentially repeat the same arguments presented to contest Rejection I. *See* Appeal Br. 17–18. These arguments, are unconvincing for the reasons discussed *supra*.

Turning to Gurri, Appellants argue that the Office Action “states that Gurri discloses ‘a leaf vibration damp[e]ner.’” This is not an element of claim 1.” Appeal Br. 18; *see also* Reply Br. 14. It is unclear why the Examiner referred to “a leaf spring vibration dampener” in the Final Action rather than a “leaf spring,” but it is clear that the rejection identifies Gurri’s member 1 as corresponding to the claimed leaf spring. *See* Final Act. 13. Gurri describes joining member 1 as being

made up of at least one body 10, having an annular elongated shape, in the form of a band the width of which is significantly greater than the thickness thereof (better view in Figs. 5 and 7), made from flexible, tensile resistant material. Said body 10 comprises two opposed, elongated sections 12, facing each other, linked by means of curved end sectors 13.

Gurri 5:33–6–4. This feature is shown in Figure 1. This structure corresponds to the structure of one type of leaf spring. *See* Spec. ¶ 30; *cf. id.* at Fig. 3. Thus, Appellants do not apprise us of error.

Appellants also argue that “the Examiner has admitted that the *Gurri* [reference] does not meet the limitation of the claim ‘a second spring arm (109) fastened to the mounting plate (7)’ as the so-called ‘element 31’ is fastened to the mounting plate not the spring arm.” Appeal. Br. 18; *see also* Reply Br. 14.

The Examiner explains that “despite the fact that there is an intervening structure between the second spring arm and the mounting plate

surface the second spring arm is still attached to the mounting plate by that intervening structure.” Ans. 19. The Examiner again notes that “the claim does not require that the second spring arm is ‘directly fastened’ to the mounting plate, or connected in some way that prohibits the use of intervening structure.” For these reasons, Appellants’ argument is unconvincing. Accordingly, Appellants do not apprise us of error.

Appellants contend that “one of ordinary skill in the art would not look to combine *Huffman* with *Gurri* as *Gurri* teaches away from *Huffman*.” Appeal Br. 18; *see also* Reply Br. 14. According to Appellants, “it appears that *Huffman* teaches that the blower impeller 30 is coupled to a pulley coupled by a belt with a drive pulley on the shaft of an electric motor” while “*Gurri* teaches away as the belt may not transmit vibrations and there is no reason for *Gurri*.” Appeal Br. 18; *see also* Reply Br. 14.

Appellants’ argument is unconvincing because “teaching away” requires that the reference “criticize, discredit, or otherwise discourage” the proposed modification. *See In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004). Although Appellants identify differences between *Huffman* and *Gurri*, Appellants do not identify where *Gurri* “criticize[s], discredit[s], or otherwise discourage[s]” the use of a pulley and a belt. We will not read into a reference a teaching away from a proposed combination when no such language exists. *See Dystar*, 464 F.3d at 1364 (Fed. Cir. 2006).

Moreover, to the extent that Appellants are arguing that the Examiner’s reasoning lacks rational underpinnings because *Gurri*’s belt “may not transmit vibrations,” so that there is no reason to modify *Buckman* in view of *Gurri*’s, Appellants’ argument is unconvincing. As the Examiner explains,

Vibrations may arise in the motor itself, due to imperfect balancing of any rotating parts of the motor. Further, vibrations may occur because of an unbalanced motor pulley, or they may be transmitted from the fan to the motor through the belt, or from the fan to the motor via the oven. Therefore, the presence of the belt does not immunize the structure from vibration.

Ans. 20. Thus, the Examiner's determination is supported by some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006), cited with approval in *KSR*, 550 U.S. at 418. Accordingly, Appellants do not apprise us of error.

For these reasons, we sustain the Examiner's decision rejecting claim 1, and claims 2 and 3, which fall therewith, as unpatentable over Huffman and Gurri.

DECISION

The Examiner's rejections of claims 1–15 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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED