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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MATTHIAS MAYR, ALEXANDER BAREISS, and ANDREAS WEH

Appeal 2016-005403
Application 13/384,328
Technology Center 3700


REIMERS, Administrative Patent Judge.

DECISION ON APPEAL
STATEMENT OF THE CASE\textsuperscript{1,2}


We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

CLAIMED SUBJECT MATTER

The claimed subject matter “relates to a pump housing of a motor vehicle hydraulic unit.” Spec. 1:7–8, Figs. 1, 5. Claims 1 and 5 are independent.

\textsuperscript{1} The Examiner’s objection(s) to the drawings are not appealable matters, but rather are petitionable matters, and thus, are not within the jurisdiction of the Board. \textit{See} Final Office Action 2 (hereinafter “Final Act.”) (dated Mar. 25, 2015); 37 C.F.R. § 1.181; \textit{In re Berger}, 279 F.3d 975, 984 (Fed. Cir. 2002); \textit{In re Mindick}, 371 F.2d 892, 894 (CCPA 1967). Appellants submitted an Amendment After Final Action proposing amendments to the claims, Figure 2 of the drawings, and the Specification. \textit{See} Amendment After Final Action, 1–10 (filed July 9, 2015). In the Advisory Action, the Examiner states that “[f]or purposes of appeal, the proposed amendment(s)” “will not be entered.” Adv. Act. Summary Sheet PTOL–303 (dated Aug. 6, 2015). Accordingly, Appellants’ proposed amendments to the claims, Figure 2 of the drawings, and the Specification are not before us for review.

\textsuperscript{2} The Examiner states that “[c]laim[s] 4 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.” Final Act. 10.

\textsuperscript{3} Figure 3. \textit{See} Final Act. 3–4.
Claims 1 and 5 are illustrative of the claimed subject matter and recite:

1. A pump housing of a motor vehicle hydraulic unit comprising:
   
   at least one side face;
   
   at least one main cylinder connection opening configured to connect to a main cylinder;
   
   at least one pump element opening configured to receive a pump element; and
   
   a connecting line which connects the at least one main cylinder connection opening to the at least one pump element opening,
   
   wherein the connecting line is configured as a pocket bore leading into the pump housing, and the pocket bore starts from the at least one side face, extends initially through the at least one pump element opening, and subsequently extends into the at least one main cylinder connection opening, and
   
   wherein the connecting line includes a first portion extending from the at least one side face to the at least one pump element opening and a second portion extending from the at least one pump element opening into the at least one main cylinder connection opening, and the first portion and the second portion are coaxial with respect to one another.

5. A method for producing a pump housing of a motor vehicle hydraulic unit, comprising:

   forming at least one side face,
   
   forming at least one main cylinder connection opening configured to connect to a main cylinder,
   
   forming at least one pump element opening configured to receive a pump element, and
   
   forming a connecting line connecting the at least one main cylinder connection opening to the at least one pump element opening, wherein the connecting line is formed by boring from
the at least one side face, through the at least one pump element opening, and into the at least one main cylinder connection opening.

ANALYSIS

Anticipation by AAPA

Claim 1

Independent claim 1 is directed to a pump housing including a connecting line having a first portion extending from at least one side face to at least one pump element opening and a second portion extending from at least one pump element opening into at least one main cylinder connection opening, wherein “the first portion and the second portion are coaxial with respect to one another.” Appeal Br. 27, Claims App.4 The Examiner finds that Figure 3 of AAPA discloses a connecting line having a first portion (portion extending from 36 and 76 in Figure 3) extending from the at least one side face 22 to the at least one pump element opening 76 and a second portion (portion extending from bottom 76 through 84 and ending at top of 42) extending from the at least one pump element opening into the at least one main cylinder connection opening, and the first portion and the second portion are coaxial (same bore) with respect to one another.

Final Act. 4 (emphasis added); see also Ans. 13 (The Examiner’s annotated version of Figure 3 of AAPA).5

Appellants contend that the bores extending from the accumulator openings (40, 42) to the respective valve openings (84, 86) are not the same bore as the bores extending downwardly from the top surface (22)

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5 Examiner’s Answer (hereinafter “Ans.”) (dated Mar. 24, 2016).
through the valve opening (76, 78) and into the respective valve openings (84, 86). Thus, the alleged first portion (extending from 36 to 76) cannot be coaxial with the alleged second portion (extending from 76 to 84 and from 84 to 42).

Appeal Br. 7; see also id. (Appellants’ annotated version of Figure 3 of the subject application).

Appellants further contend that a skilled artisan would not consider the two portions cited by the Examiner “(first portion 36 to 76; and second portion 76 to 84 and 84 to 42) to be coaxial with one another, since the second portion (76 to 84 and 84 to 42) is not even coaxial with itself, and cannot be formed as part of the same pocket bore.” Reply Br. 4.⁶

As an initial matter, Appellants correctly note that “[c]laim 1 requires that ‘the connecting line is configured as a pocket bore’ extending from the side face, through the pump element opening, and into the main cylinder connection opening.” Reply Br. 2 (emphasis added). Stated differently, claim 1 requires the connecting line to be configured as a pocket bore, wherein the pocket bore (1) starts from the at least one side face, extending initially through the at least one pump element opening, (i.e., the pocket bore has a first portion extending from the at least one side face to the at least one pump element opening) and (2) subsequently extends into the at least one main cylinder connection opening (i.e., the pocket bore has a second portion extending from the at least one pump element opening into the at least one main cylinder connection opening). See Appeal Br. 27, Claims App.

Given that claim 1 requires the connecting line be configured as a single pocket bore, we disagree with the Examiner that claim 1 “do[es] not

require the ‘entire’ first portion be coaxial with the ‘entire’ second portion or similar language.” See Ans. 13; see also Reply Br. 3 (“[T]he connecting line must be formed entirely along the same axis. A single bore cannot be drilled along two different axes.”).

Regarding Figure 3 of AAP A, we agree with Appellants that “the connection between the valve receptacle 76 though the valve receptacle 84 and ending at the top of the accumulator opening 42 consists of portions of two different bores that are not coaxial with one another.” See Appeal Br. 8 (emphasis added); see also Reply Br. 3 (“The Examiner’s interpretation of [Figure 3 of] AAP A fails to show a single bore that starts from the side face, extends through the pump element opening, and into the main cylinder connection opening.”) (emphasis added); Figure 3 of the subject application. We further agree with Appellants that “the part of the second portion [cited by the Examiner] between the valve openings (76, 84) is coaxial with the first portion” cited by the Examiner (i.e., between wheel connection 36 and valve opening 76). See Reply Br. 5, n. 5; see also Final Act. 4; Figure 3 of the subject application. However, “the part of the second portion [cited by the Examiner that] extend[s] from the valve opening (84) to the accumulator opening (42), is not coaxial with the first portion” cited by the Examiner; thus, “the [entire] second portion [cited by the Examiner] cannot therefore be reasonably considered to be coaxial with the first portion [cited by the Examiner].” See Reply Br. 5, n. 5 (emphasis added); see also Final Act. 4; Figure 3 of the subject application.

For these reasons, we do not sustain the Examiner’s rejection of independent claim 1 as anticipated by Figure 3 of AAP A.
Anticipation by You

Claim 1

The Examiner finds that You disclose a connecting line that includes a first portion (62/P7) extending from the at least one side face to the at least one pump element opening 58 and a second portion (P1, see Figure 5) extending from the at least one pump element opening into the at least one main cylinder connection opening, and the first portion and the second portion are coaxial (same bore) with respect to one another (see Figures 4 & 5).

Final Act. 5 (emphasis added); see also You, Figs. 4, 5.

As an initial matter, Appellants correctly note that the connecting line of claim 1 is "configured as a pocket bore starting from the side face, extending through the pump element opening, and extending into the main cylinder connection opening," wherein "[t]he first portion of the connecting line/pocket bore extends from the side face to the pump element opening, while the second portion extends from the pump element opening to the main cylinder connection opening." See Reply Br. 8; see also id. at 9 ("[T]he entire connecting line[/pocket bore] must be coaxial, including the first portion extending from the side face to the pump element opening and the second portion extending from the pump element opening into the main cylinder connection opening."); Appeal Br. 27, Claims App.

Given that claim 1 requires a single pocket bore having coaxial first and second portions, we disagree with the Examiner’s interpretation that "[t]he ‘connecting line’ [of claim 1] comprises three parts, the pocket bore, the first portion and the second portion" and that "[t]here are no limitations requiring the bore to be coaxial, only the first and second portions are ‘coaxial with respect to one another’." Ans. 23 (emphasis added).
Appellants correctly note that Figure 4 of You illustrates that “the central axis for the chamber of the damper 62 and the central axis of the passage P1 are offset relative to one another.” See Appeal Br. 15–16; see also id. at 15 (Appellants’ annotated version of Figures 4, 5 of You); Reply Br. 9 (“[D]amper (62) is offset from the lines (P1, P7) (see You FIG. 4.”); You, Figs. 4, 5. We agree with Appellants that accumulator bore 62 of You is “not part of the same bore” and is “not coaxial with bores P7 or P1.” See Appeal Br. 15–16; see also Reply Br. 8–9.

Appellants contend that in the Answer, the Examiner takes an alternate position in that “the Examiner identifies the portion extending from the check valve (72) to the pump (58) as the first portion, while the portion from the damper (62) to the pump (58) is identified as the second portion.” Reply Br. 8–9 (citing Ans. 23); see also Ans. 23 (The Examiner’s annotated version of Figure 4 of You); You, Fig. 4. Here, we agree with Appellants that the identified second portion (i.e., damper 62 to pump 58) “does not extend from the pump element opening to the main cylinder connection opening (MCP),” as required by claim 1. See Reply Br. 8–9 (citing Ans. 23); see also Ans. 23 (The Examiner’s annotated version of Figure 4 of You); You, Fig. 4.

For these reasons, the Examiner fails to establish by a preponderance of the evidence that You anticipates the pump housing of claim 1. Accordingly, we do not sustain the Examiner’s rejection of independent claim 1 as anticipated by You.
Claims 5 and 9–11

Independent claim 5 is directed to a method for producing a pump housing including the step of forming a connecting line that connects at least one main cylinder connection opening to at least one pump element opening, “wherein the connecting line is formed by boring from the at least one side face, through the at least one pump element opening, and into the at least one main cylinder connection opening.” Appeal Br. 28, Claims App.

The Examiner finds that You discloses “forming a connecting line (P7), wherein “the connecting line is formed by boring from the at least one side face (bottom of Figure 4), through the at least one pump element opening, and into the at least one main cylinder connection opening (see Figures 4 & 5).” Final Act. 6.

Appellants correctly note that “[t]he You reference is silent as to the direction in which the bores are formed that connect the dampers (62, 64), the pumps (58, 60), and the master cylinder connections (MCP, MCS).” Appeal Br. 17. Appellants further correctly note that, as illustrated in Figure 4 of You, the bore for P7 is axially offset with respect to the bore opening of damper chamber 62, which would prevent damper 62 and passage P7 from being formed as part of the same bore. See Appeal Br. 17–18; Reply Br. 10, n. 8. Additionally, the Examiner fails to provide sufficient evidence or technical reasoning to establish that connecting line P7 is necessarily formed by boring from the at least one side face, through the at least one pump element opening, and into the at least one main cylinder connection opening. See Final Act. 6; see also Ans. 25–27.

For these reasons, the Examiner fails to establish by a preponderance of the evidence that You anticipates the pump housing method of claim 5.
Accordingly, we do not sustain the Examiner’s rejection of independent claim 5 and its dependent claims 9–11 as anticipated by You.

_Obviousness over You and Dinkel_

_Coim 2, 3, 6, and 7_

The Examiner’s rejection of claims 2, 3, 6, and 7 as unpatentable over You and Dinkel is based on the same unsupported findings discussed above with respect to independent claims 1 and 5. See Final Act. 7–10. The Examiner does not rely on Dinkel to remedy the deficiencies of You. Accordingly, for reasons similar to those discussed above for claims 1 and 5, we do not sustain the Examiner’s rejection of claims 2, 3, 6, and 7 as unpatentable over You and Dinkel.

DECISION

We REVERSE the decision of the Examiner to reject claim 1 as anticipated by Figure 3 of AAP A.

We REVERSE the decision of the Examiner to reject claims 1, 5, and 9–11 as anticipated by You.

We REVERSE the decision of the Examiner to reject claims 2, 3, 6, and 7 as unpatentable over You and Dinkel.

REVERSED