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EXAMINER

MATHEW, FENN C

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HERBERT BALTES and PETER KLOFT

Appeal 2016-005613
Application 13/261,842
Technology Center 3700

Before LINDA E. HORNER, LISA M. GUIJT, and BRENT M. DOUGAL,
Administrative Patent Judges.

GUIJT, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants¹ seek our review under 35 U.S.C. § 134 of the Examiner's decision² rejecting claims 5–9 under 35 U.S.C. § 102(b) as anticipated by Stroganov (US 2010/0050622 A1; published Mar. 4, 2010). We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ Appellants identify the real party in interest as Hydac Technology GmbH. Appeal Br. 1.

² Appeal is taken from the Final Office Action dated May 11, 2015 (“Final Act.”), as supplemented by the Advisory Action dated Aug. 11, 2015.

CLAIMED SUBJECT MATTER

Claim 5 is the sole independent claim on appeal. Claim 5, reproduced below, is illustrative of the appealed claims.

Claim 5. A pressure accumulator, comprising:

at least one accumulator housing having at least one connection for entry of a pressure medium to be stored in said accumulator housing and having an inner surface; and

a filling material having cavities in said accumulator housing to accommodate the pressure medium and filling completely an interior of said accumulator housing, said filling material contacting said inner surface of said accumulator housing over a full area thereof, said filling material being formed from a cellular material having different densities within said accumulator housing created by one of repeated injection or repeated foaming.

ANALYSIS

Regarding independent claim 5, the Examiner finds, *inter alia*, that Stroganov's accumulator housing (or more precisely, an interior of Stroganov's accumulator housing) is "the area between shell insert 10 (not labeled in Figure 1) and buffer insert 8 (located above separator 6)." Ans. 3.³ The Examiner also finds that Stroganov's filler 7 completely fills this

³ Appellants incorrectly argue that a new ground in the Examiner's Answer should not be considered by the Board. Reply Br. 2. The rules governing appeals to the Board state that "[a]ny request to seek review of the primary examiner's failure to designate a rejection as a new ground of rejection in an examiner's answer must be by way of petition to the Director under § 1.181 of this title filed . . . before the filing of any reply brief." 37 C.F.R. § 41.40(a). We deem Appellants, by their presentation of arguments in the Reply Brief in rebuttal to the Answer, to have waived any argument that the

interior and also contacts an inner surface of the accumulator housing over a full area, as claimed. Final Act. 2. The Examiner determines that because membranes 11 are located within the interior, as defined by the Examiner, and contact the inner surface, as defined by the Examiner, “the membranes are considered part of the filling material.” Adv. Act. 2. The Examiner further determines that “[t]here are no limitations in claim 5 that preclude the membranes from being part of the filling material (i.e., that the filling material *consists* of cellular material).” Ans. 3.

Appellants correctly argue that Stroganov’s membranes 11 cannot correspond to the claimed filling material, as determined by the Examiner, because Stroganov’s membranes are not “formed from a cellular material,” as required by claim 5. Appeal Br. 4; Reply Br. 3. As set forth *supra*, claim 5 requires the filling material to be “formed from a cellular material,” and Stroganov discloses that membranes 11 are made of polymeric film. *See* Stroganov ¶ 43. Thus, a preponderance of evidence does not support the Examiner’s finding that Stroganov’s filler 7 contacts the full area of an inner surface⁴ of Stroganov’s housing, which is defined by the Examiner to

rejection must be designated a new ground. *Id.*

⁴ The terms “a” and “an” are indefinite articles interpreted to mean “at least one,” permitting the inclusion of additional elements not recited in the claim. *See KCJ Corp. v. Kinetic Concepts, Inc.*, 223 F.3d 1351, 1356 (Fed. Cir. 2000). Thus, we construe “said accumulator housing . . . having an inner surface” to mean that the claimed housing has at least one inner surface and can have additional inner surfaces.

include an inner surface that is contacted by membranes 11 in place of filler 7.

Notwithstanding, Stroganov discloses that it is known to fill the *entire* gas reservoir with filler material, without membranes 11 (membranes 11 being an improvement disclosed by Stroganov). *See* Stroganov ¶ 8 (“A disadvantage [of filling the gas reservoir with a filler is that] the filler loses its ability to reshape and to fill the entire volume of the gas reservoir.”). However, Stroganov’s shell 1, not gas reservoir 4, corresponds to the claimed accumulator housing. Therefore, even in view of Stroganov’s recognition of the prior art, Stroganov fails to disclose that it is known for a filler to completely fill the interior⁵ of an accumulator housing, as claimed. Stroganov only discloses that it is known for a filler to completely fill a portion of the interior housing, which comprises the gas reservoir.

Accordingly, we do not sustain the Examiner’s rejection of claim 5, and claims 6–9 as depending therefrom.

DECISION

The decision of the Examiner to reject claims 5–9 is reversed.

REVERSED

⁵ Contrary to the claim term “an inner surface,” but consistent with the Specification, wherein the housing has one interior and one exterior ((*see, e.g.,* Spec. 6:1 (“The interior 117 of the accumulator housing 103”)), we construe “an interior of said accumulator housing” to mean a single interior (and not more than one interior)). Although a housing may have more than one inner surface, a housing generally has one interior and one exterior, unless otherwise specified.