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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOHN I. MURI and CRAIG EDWARDS

Appeal 2017-000646
Application 11/558,435
Technology Center 3700

Before JILL D. HILL, THOMAS F. SMEGAL, and
LISA M. GUIJT, *Administrative Patent Judges*.

SMEGAL, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

John I. Muri and Craig Edwards (“Appellants”)¹ seek our review under 35 U.S.C. § 134 of the Examiner’s rejections² under 35 U.S.C. § 103(a) of claims 1, 5, 19, 23, 26, and 30 as unpatentable over Nazarifar (US 7,244,240 B2, issued July 17, 2007) and Artsyukhovich (US 2007/0107490 A1, pub. May 17, 2007); of claims 3, 20, 21, and 28 as unpatentable over Nazarifar, Artsyukhovich, and Cole (WO 99/17818, pub.

¹ According to Appellants, the real party in interest is Abbott Medical Optics Inc. Appeal Br. 3.

² Appeal is taken from the adverse decision of the Examiner, set forth in the Final Office Action, dated May 8, 2015 (“Final Act”).

Apr. 15, 1999); and of claims 6, 25, and 32 as unpatentable over Nazarifar, Artsyukhovich, and Angelini (US 2003/0108429 A1, pub. June 12, 2003).³ We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

CLAIMED SUBJECT MATTER

Claims 1, 19, and 26 are independent claims. Claim 26 is reproduced below and illustrates the claimed subject matter, with disputed limitations emphasized.

26. An eye treatment system comprising:
a console comprising a cassette receptacle,
an eye treatment probe configured to be fluidly connected to the console via a cassette disposed within the cassette receptacle, wherein the cassette receptacle is configured to receive a plurality of cassette types, a first of the plurality of cassette types configured to facilitate a positive displacement aspiration functionality, a second of the plurality of cassette types configured to facilitate vacuum-based aspiration functionality, and a third of the plurality of cassette types configured to facilitate the positive displacement aspiration functionality and the vacuum-based aspiration functionality, and *wherein the console and each received cassette type are configured to communicate to establish the functionality of each received cassette type by the console detecting a functional indicator in each received cassette type*, wherein the console is configured to activate the indicated functionality to the received cassette commensurate with the detected functional indicator.

³ Claims 8–18 have been cancelled by an Amendment filed September 17, 2010 and claims 2, 4, 7, 22, 24, 27, 29, and 31 have been canceled by an Amendment filed November 18, 2014. Thus, inclusion of claim 24 in the Final Office Action as a pending claim is a typographical error. Final Act. 1; Appeal Br. 15 (Claims App’x).

ANALYSIS

Obviousness of Claims 1, 5, 19, 23, 26, and 30 over Nazarifar and Artsyukhovich

Appellants argue claims 1, 5, 19, 23, 26, and 30 as a group. *See* Appeal Br. 6–11; Reply Br. 1–12. We select claim 26 as the representative claim for this group, and the remaining claims stand or fall with claim 26. *See* 37 C.F.R. § 41.37(c)(1)(iv); *In re McDaniel*, 293 F.3d 1379, 1383 (Fed. Cir. 2002); *see also In re Watts*, 354 F.3d 1362, 1368 (Fed. Cir. 2004).

The Examiner finds that Nazarifar discloses an eye treatment system including, *inter alia*, a console having a cassette receptacle “configured to interchangeably receive more than one type of cassette to simplify surgical setup for different portions of surgical procedure.”⁴ Final Act. 2 (citing Nazarifar, col. 3, ll. 24–30; Fig. 9). The Examiner also determines that in Figure 2, Nazarifar teaches a “console and cassette [that] communicate to establish a functionality of [the] cassette by the console detecting a component [regarding] the operation of the cassette.” *Id.* at 4 (citing Nazarifar, col. 6, l. 59–col. 7, l. 17; col. 8, ll. 30–39). Although finding that “**Nazarifar discloses the console detects the received cassette (column 7, lines 26-33),**” the Examiner acknowledges Nazarifar “**fails to teach [such detection] is by a detected functional indicator,**” as claimed. *Id.*

⁴ We understand the Examiner to be generally referring to conventional surgical systems such as briefly described in Nazarifar, column 1, line 66–column 2, line 6, where a single surgical console is designed to receive separate cassettes for either posterior segment or anterior segment procedures. We also understand Nazarifar to teach a console for receiving an improved single cassette capable of performing both procedures. *See* column 3, lines 19–31.

However, the Examiner determines Artsyukhovich “teaches the ability of and thus provides motivation for eye treatment systems and consoles that detect *a functional indicator* . . . in different types of cassettes to identify cassette features and cassette specific performance characteristics.” Final Act. 5 (citing Artsyukhovich ¶¶ 5–8). In particular, the Examiner also determines that Artsyukhovich

teaches cassette receptacles 110 configured to receive a plurality of cassettes 10, 10' types, . . . each cassette type 10, 10' having a different configuration as recited in claim 26, and wherein the console 100 and each received cassette 10, 10 communicate to establish a functionality of each cassette by the console 100 detecting a component in each cassette indigenous to the operation of the cassette.

Id. at 5 (citing Artsyukhovich ¶¶ 13–14; Figs. 1–3); Ans. 17–18.

Based on the foregoing, the Examiner determines that it would have been obvious

to provide the types of cassettes as taught by [Artsyukhovich] with the system of Nazarifar since [Artsyukhovich] states . . . that the benefit of providing systems with this design is that information specific to the performance parameters of each individual type of cassette is transferred to the surgical console so that the software or controller of the console can make automatically appropriate adjustments in the operating parameters of the console to help assure optimum performance of the console and cassettes . . . to optimize the fluidic performance of the entire system thereby providing an improved surgical system for patients.

Id. at 5–6 (citing Artsyukhovich ¶¶ 3, 5–8, 14); Ans. 18.

Furthermore, the Examiner relies on Nazarifar’s disclosure of “aspiration port 118 coupled to first vacuum chamber port 120 through a manifold 136,” as well as Nazarifar’s teaching that “a peristaltic pump opens and closes manifold 138 in order to pump aspirated ophthalmic tissue

and fluid from vacuum chamber 108, through third vacuum chamber port 124, into manifold 138, and through drainage bag port 126,” for determining that, in Nazarifar, “not only is a vacuum based pump employed for aspiration, but Nazarifar’s pump chambers are used with a peristaltic pump,” such that Nazarifar also discloses the claimed first type of cassette (i.e., configured to facilitate a positive displacement aspiration functionality). Ans. 11–12 (citing Nazarifar. col. 5, ll. 1–3 and ll. 45–48, Fig. 8, Spec. ¶ 18).

In taking issue with the Examiner’s findings and conclusions, Appellants acknowledge “Nazarifar generally discloses a prior art surgical system that may accept two separate surgical cassettes,” but contend that Nazarifar employs “only vacuum based aspiration functionality,” not “positive displacement aspiration functionality.”⁵ Appeal Br. 8. Appellants also contend that “Nazarifar nowhere discloses a single console that is configured to receive the three specific cassette types as claimed.”⁶ *Id.* at 10

Although we agree that Nazarifar does not anticipate claim 26, we understand the Examiner’s rejection to include Artsyukhovich, about which Appellants merely observe “fails to cure the deficiencies of Nazarifar.”⁷ *Id.* at 9–10; *see also* Reply Br. 12. However, Appellants’ contention amounts

⁵ Whether or not the Examiner has correctly described the teaching of Nazarifar, Appellants acknowledge that “vacuum based aspiration functionality” and “positive displacement aspiration functionality” are both conventional fluid transport mechanisms during treatment of the eye. *See* Specification, ¶¶ 6–10.

⁶ If there is further prosecution of this application, the Examiner may wish to consider whether all the pending claims should be rejected under 35 U.S.C. § 101, based on a lack of utility in reciting three cassette types that are redundant in their functionality.

⁷ In an appeal under 35 U.S.C. § 134(a), it is the Examiner’s final rejection that we review. *See In re Webb*, 916 F.2d 1553, 1556 (Fed. Cir. 1990).

to unsupported attorney argument, and is entitled to little, if any, weight. *See In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997). In other words, Appellants do not explain why the Examiner’s reliance on Nazarifar, as set forth *supra*, for teaching a first cassette type configured to facilitate a positive aspiration functionality, as claimed, is in error. Nor do Appellants address the Examiner’s proposed combination of Nazarifar and Artsyukhovich to arrive at a system that uses a single console to receive different types of cassettes, including the three claimed.

Furthermore, based upon our review of the Examiner’s stated rationale, as set for in the Final Action and Answer, we are not persuaded that the Examiner failed to produce sufficient evidence and findings (supported by citation to the reference) to support a prima facie case of obviousness based on the teachings of the cited references. *See, e.g., In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011).⁸ As indicated above, Appellants do not explain how or why the Examiner’s analysis of Artsyukhovich might be in error only that it is.

For the foregoing reasons, we sustain the Examiner’s rejection of claims 1, 5, 19, 23, 26, and 30 as obvious over Nazarifar and Artsyukhovich.

Obviousness of Claims 3, 20, 21, and 28 over Nazarifar, Artsyukhovich, and Cole

Other than observing that Cole “fails to overcome the deficiencies of Nazarifar and [Artsyukhovich],” we understand Appellants’ appeal of the

⁸ “[A]ll that is required of the office to meet its prima facie burden of production is to set forth the statutory basis of the rejection and the reference or references relied upon in a sufficiently articulate and informative manner as to meet the notice requirement of [35 U.S.C.] § 132.” *Jung*, 637 F.3d at 1363.

rejection of dependent claims 3, 20, 21, and 28 to rest on the arguments presented *supra* regarding the combination of Nazarifar and Artsyukhovich. Appeal Br. 11; Reply Br. 13. We are not persuaded that Appellants' arguments are demonstrative of error in the Examiner's rejection of independent claims 1, 19, and 26, as set forth *supra*. As such, for the same reasons, we sustain the rejection of claims 3, 20, 21, and 28 under 35 U.S.C. § 103(a) as unpatentable over Nazarifar, Artsyukhovich, and Cole.

Obviousness of Claims 6, 25, and 32 as unpatentable over Nazarifar, Artsyukhovich, and Angelini

Other than observing that Angelini "fails to overcome the deficiencies of Nazarifar and [Artsyukhovich]," we understand Appellants' appeal of the rejection of dependent claims 6, 25, and 32 to rest on the arguments presented *supra* regarding the combination of Nazarifar and Artsyukhovich. Appeal Br. 11–12; Reply Br. 13–14. We are not persuaded that Appellants' arguments are demonstrative of error in the Examiner's rejection of independent claims 1, 19, and 26, as set forth *supra*. As such, for the same reasons, we sustain the rejection of claims 3, 20, 21, and 28 under 35 U.S.C. § 103(a) as unpatentable over Nazarifar, Artsyukhovich, and Angelini.

DECISION

We AFFIRM the Examiner's rejections.

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

Appeal 2017-000646
Application 11/558,435