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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/749,967	03/30/2010	Brian Christopher Schwamberger	11673	7984

27752 7590 01/25/2019
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EXAMINER

PATEL, BHARAT C

ART UNIT	PAPER NUMBER
3724	

NOTIFICATION DATE	DELIVERY MODE
01/25/2019	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BRIAN CHRISTOPHER SCHWAMBERGER,
DAVID STUART HOWELL II, MARK LEVANDOSKI, and
ANDRÉ MELLIN

Appeal 2017-002370
Application 12/749,967
Technology Center 3700

Before MICHAEL L. HOELTER, PATRICK R. SCANLON, and
JEREMY M. PLENZLER, *Administrative Patent Judges*.

SCANLON, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants¹ seek our review under 35 U.S.C. § 134 of the Examiner's decision, as set forth in the Non-Final Office Action, dated March 10, 2016 ("Non-Final Act."), rejecting claims 1, 2, 9, 17, 30, and 33. An oral hearing was conducted on October 4, 2018, and a transcript of that hearing is included in the record ("Tr."). We have jurisdiction under 35 U.S.C. § 6(b).

¹ Appellants identify The Proctor & Gamble Company as the real party in interest. Appeal Br. 1.

We AFFIRM-IN-PART.

CLAIMED SUBJECT MATTER

Claim 1, reproduced below, is the sole independent claim and is representative of the claimed subject matter.

1. A web diverting apparatus comprising a movable web guiding member comprising a contact severing element which interacts with a complementary contact severing element during movement of the movable web guiding member to simultaneously sever and divert the web from a first downstream web path to a second downstream web path different from the first downstream web path, wherein the severing and conveyance of the web is facilitated by air streams during operation of the web diverting apparatus.

Appeal Br. 5, Claims App.

Claims 2, 9, 17, 30, and 33 depend from claim 1, although claim 30 is drawn to a different statutory category than claim 1.

REFERENCES

The Examiner relies upon the following prior art references:

Jardine	US 3,844,189	Oct. 29, 1974
Breton	US 5,279,195	Jan. 18, 1994

REJECTIONS

The following rejections are before us on appeal:

- I. Claims 1, 2, 9, 17, and 30 stand rejected under 35 U.S.C. § 102(b) as unpatentable over Jardine.
- II. Claims 1, 2, 9, 17, 30, and 33 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Breton and Jardine.

ANALYSIS

Rejection I

Jardine discloses a winding machine into which web 40 is fed over guide plate 3, and then over various rollers to diverting device 9. Jardine, 2:10–15. Diverting device 9 includes facing plates 10, 11 that define respective web feed paths. *Id.* at 2:16–21. Air feed devices 12, 13 direct air through orifices 14 in facing plates 10, 11, such that air from device 12 flows downwardly over plate 10 and air from device 13 flows downwardly over plate 11. *Id.* at 2:21–29. Plate 15 is disposed below plates 10, 11 and has an inverted “V” shape such that arm 16 converges toward plate 10 to define guide throat 17, and arm 18 similarly defines guide throat 19 with plate 11. *Id.* at 2:30–36. Blades 20, 21 are disposed to pass through gaps in plates 10, 11, respectively to sever web 40. *Id.* at 2:37–41. These blades are pneumatically operated by air cylinders 22, 23. *Id.* at 2:41–42.

The Examiner finds that Jardine’s blades and air cylinders 20–23 comprise the claimed movable web guiding member. Non-Final Act. 2. The Examiner also finds that Jardine’s blades 20, 21 comprise the claimed contact severing element, which interacts with a complementary contact severing element in the form of the air passing through orifices 14. *Id.* at 3. As an alternative to the air streams of Jardine functioning as a complementary contact severing element, the Examiner further finds that “the junction of [Jardine’s] arms 16 and 18” can be considered to be a complementary contact severing element “by providing an anvil surface for shearing action.” Ans. 8.

Appellants argue that Jardine’s “pressurized air or air jets are described as non-contact severing elements” and, thus, are “not a

complementary contact severing element.” Appeal Br. 2–3; *see also* Reply Br. 3 (“Appellant respectfully submits that Jardine merely teaches one contact severing element; namely its blade that contacts its web, but [Jardine] does not teach a complementary contact severing element. Rather Jardine merely teaches pressurized air that the Examiner asserts is Jardine’s complementary contact severing element, which Appellant respectfully disagrees with.”).

We agree that neither air stream of Jardine is “a complementary contact severing element” with which blades 20, 21 interact when severing web 40. When blade 20 is operated to sever web 40 and produce a free leading web end and close throat 17, the air flowing over plate 11 draws web 40 toward plate 11 and directs it into throat 19. Jardine, 2:55–62. In a similar manner, when web 40 is severed by blade 21, the air flowing over plate 10 directs the free leading end of web 40 into throat 17. *Id.* at 3:3–13. As such, although assisting in diverting the severed web, the air streams do not interact with blades 20, 21 to *sever* the web.

Appellants, however, do not dispute the Examiner’s alternative finding that the junction of arms 16 and 18 of Jardine’s V-shaped plate 15 comprises a complementary contact severing element. In fact, Appellants agree that this junction (which also could be referred to as an apex) could be a complementary contact severing element that is contacted by blades 20, 21. Tr. 15:18–16:25. Accordingly, we are not persuaded that Jardine fails to disclose a complementary contact severing element.

Appellants also argue that “Jardine fails to teach a movable [web] guiding member because Jardine’s blade and doubling-acting cylinders are not web guiding members.” Appeal Br. 3; *see also* Tr. 16:15–18 (arguing

Jardine’s blade 20 “is not part of a movable web guiding member”). This argument turns, in large part, on the interpretation of the claim term “movable web guiding member.”

During examination, claims are construed by applying the broadest reasonable interpretation consistent with the specification. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). Under the broadest reasonable interpretation standard, claim terms are given their ordinary and customary meaning as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). At oral hearing, Appellants argued that the movable web guiding member recited in claim 1 should be construed so as to require a member through which the web passes, citing lines 14–18 on page 5 of the Specification for support. Tr. 2:25–3:10, 7:8–11. We note that this argument does not appear to have been made in Appellants’ brief or reply brief and, thus, is improper new argument under 37 C.F.R. § 41.47(e)(1).

Nevertheless, Appellants’ argument is not persuasive because, although the claims are interpreted in light of the specification, limitations from the specification must not be read into the claims. *In re Van Geuns*, 988 F.2d 1181 (Fed. Cir. 1993). The passage of the Specification cited by Appellants indicates that web 14 travels through web guiding member 12 in the web diverting apparatus of Figure 1, but the Specification does not set forth, either explicitly or implicitly, a special definition of “web guiding member” that requires a web to pass through the guiding member. Accordingly, we decline to interpret the movable web guiding member of

claim 1 in the manner suggested by Appellants because to do so would be to improperly read limitations from the Specification into the claim.

Here, the ordinary and customary meaning of a “movable web guiding member” could be a “movable member that guides a web” or a “member that guides a movable web” (i.e., an interpretation in which the web is movable, but the guiding member could be stationary). We reject the second possible interpretation as inconsistent with the Specification. First, all embodiments of the web guiding member are described in the Specification as being movable² (in other words, the Specification does not contemplate a stationary guiding member), and, second, a “movable web” is redundant as a web is movable by nature. Accordingly, we determine that the broadest reasonable interpretation of a “movable web guiding member” is a “movable member that guides a web,” which is consistent with the Specification.

Applying this interpretation, we agree with the Examiner that Jardine’s blades and air cylinders 20–23 are movable web guiding members. Specifically, blades 20, 21 are movable in that they are operated by air cylinders 22, 23. Jardine, 2:41–42. When blade 20 is in its “forward projecting position after severing the web,” it closes throat 17 so that the web cannot enter throat 17. *Id.* at 2:41–45, 55–60. Blade 21 similarly closes throat 19 to prevent entry of the web. *Id.* at 3:3–13. The movable blades thus guide the web in the sense that they block the web from entering the

² See, e.g., Spec. 5, ll. 22–24 (“The web guiding member 12 is movable, as represented by the arrows, such that the web guiding member’s path 22 aligns with downstream web path 16 as shown in Fig. 1 so that the web 14 can move from the web guiding member’s web path 22 to the downstream web path 16.”).

adjacent throat and cause it to be directed into the other throat. Accordingly, Jardine discloses at least one “movable member that guides a web.”

In view of the above, Appellants’ arguments do not apprise us of error, and we sustain the rejection of claim 1. Appellants do not present any additional arguments specifically directed to claims 2, 9, 17, and 30, which depend from claim 1. Appeal Br. 3. As such, claims 2, 9, 17, and 30 fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Rejection II

One of the findings made by the Examiner in rejecting claim 1 as obvious over Breton and Jardine is that Breton discloses a web diverting apparatus having “a movable web guiding member 7–8, 15–16, 21.” Non-Final Act. 4. Appellants argue that the combination of Breton and Jardine “fails to teach, at a minimum, a web diverting apparatus comprising a contact severing element that interacts with a complementary contact severing element during movement of a movable web guiding member to sever and divert the web, *let alone a movable web guiding member comprising a contact severing element.*” Appeal Br. 3–4 (emphasis added); *see also* Tr. 12:23–13:5 (arguing that elements 7, 8, 16, and 21 of Breton are not movable).

We agree with Appellants. The Examiner does not explain adequately how elements 7, 8, 15, 16, and 21 of Breton comprise a *movable* web guiding member. Breton discloses “an apparatus for continuously transporting, separating, and changing the paths of webs in machines.” Breton, 1:7–9. Lower guide 7 and upper guide 8 form a channel into which web 4 is conveyed along first transport path 2. *Id.* at 3:17–20, Fig. 1. Guiding section 16 and upper guide 21 further define first transport path 2.

Id. at 3:37–44, Fig. 1. Breton’s apparatus includes guide tongue 15, which defines second transport path 25. *Id.* at 3:23–24, Figs. 1, 2. Breton does not disclose that any of guides 7, 8, 15, 16, and 21 are movable.

Accordingly, we do not sustain the rejection of claim 1—and of claims 2, 9, 17, 30, and 33 depending therefrom—as obvious over Breton and Jardine.

DECISION

We affirm the Examiner’s rejection of claims 1, 2, 9, 17, and 30 under 35 U.S.C. § 102(b) as unpatentable over Jardine.

We reverse the Examiner’s rejection of claims 1, 2, 9, 17, 30, and 33 under 35 U.S.C. § 103(a) as unpatentable over Breton and Jardine.

Accordingly, we affirm the decision of the Examiner rejecting claims 1, 2, 9, 17, and 30, and we reverse the decision of the Examiner rejecting claim 33.

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-IN-PART