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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HENDRIKUS JOHANNES VAN DER MEIJDEN
and MICHAEL EDWARD MOORE

Appeal 2017-003211
Application 14/461,576
Technology Center 3700

Before: CHARLES N. GREENHUT, MICHELLE R. OSINSKI, and
THOMAS F. SMEGAL, *Administrative Patent Judges*.

GREENHUT, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from a rejection of claims
22–30. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

CLAIMED SUBJECT MATTER

The claims are directed to fluid-powered motors and pumps. Claim 22, reproduced below, is illustrative of the claimed subject matter:

22. An assembly for contacting water flowing in a cleaner of a swimming pool or spa, comprising:
- a. a first hub;
 - b. a first paddle (i) having a flexible edge and (ii) rotatable about first and second axes;
 - c. a second paddle (i) having a flexible edge and (ii) rotatable about the first and second axes;
 - d. a first shaft connecting the first and second paddles;
 - e. a first rotational bearing fitted to facilitate rotation of the first shaft in the first hub; and
 - f. a second hub fitted over the first rotational bearing and attached to the first hub.

REFERENCES

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

Sommer	US 3,895,893	July 22, 1975
Sommer	US 4,465,445	Aug. 14, 1984
Godsall	US 6,877,968	Apr. 12, 2005
Van Der Meijden	US 8,845,276	Sept. 30, 2014

REJECTIONS

Claims 22–30 are rejected on the ground of nonstatutory double patenting as being unpatentable over claim 1 of U.S. Patent No. 8,845,276 to Van Der Meijden and Sommer '445. This rejection is not contested (App. Br. 3) and therefore summarily sustained. *See, e.g., In re Berger*, 279 F.3d 975 (Fed. Cir. 2002) (in which the Board affirmed an uncontested rejection of claims under 35 U.S.C. § 112, second paragraph, and on appeal the Federal Circuit affirmed the Board's decision and found that the appellant

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had waived his right to contest the indefiniteness rejection by not presenting arguments as to error in the rejection on appeal to the Board). *See also Hyatt v. Dudas*, 551 F.3d 1307, 1314 (Fed. Cir. 2008) (“the applicant can waive appeal of a ground of rejection”).

Claims 22–30 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Sommer ’893, Sommer ’445 and Godsall.

OPINION

The prior art rejection is argued as a group for which claim 22 is representative under 37 C.F.R. § 41.50(c)(1)(iv). The Examiner relies on the Sommer references to demonstrate all aspects of the claimed invention were known with the exception of the flexible edges. For the flexible edges the Examiner cites Godsall.

Appellants contend that because Godsall is directed to a water turbine, i.e., as opposed to a pump, Godsall is non-analogous art. App. Br. 8–9; Reply. Br 4. Appellants’ argument is inconsistent with the field of endeavor defined in their own Specification which acknowledges inclusion of devices whether powering, or powered by, liquids. The Examiner, correctly considers the structure and function in determining the scope of prior art to be considered in the obviousness inquiry:¹ “both applicant’s invention and Godsall relate to machines guiding fluid through a housing using rotating blades.” Ans. 11. The main difference, the direction of work or energy flow, to or from the fluid, does not amount to something that would disqualify a reference as prior art to the skilled artisan. Differences in scale or degree

¹ *In re Bigio*, 381 F.3d 1320, 1326 (Fed. Cir. 2004) (“[R]eferences [are] within the same field of endeavor where they have essentially the same function and structure”) (citations and internal quotations omitted).

(App. Br. 9) also cannot reasonably be said to be disqualifying. Fluidic systems of different sizes, and working in different directions, remain governed by the same general principles of fluid dynamics.

Appellants contend that Sommer '893 teaches away from the incorporation of flexible paddles because Sommer '893 already has flexible connecting rods. App. Br. 9–10. However, the Examiner is correct that “the strips were applied to the blades for a different reason (reducing passage of water past the blades) and [] coupling the low friction, flexible, plastic strips to the blades would not take away from the functionality of the connecting rods.” Ans. 11.

Appellants contend the Examiner’s reasoning in support of the proposed combination is flawed because, “power that otherwise would be available to move the swimming pool cleaner would instead be utilized to counter the sealing force, thus producing an undesirable result.” App. Br. 10. Appellants’ reasoning incorrectly presumes Godsall’s teachings are being applied to *Appellants’ device* used for *Appellants’ stated purpose*. The Examiner is proposing to incorporate Godsall’s flexible edges for a beneficial effect on efficiency *in Sommer’s pump*. Ans. 11–12; Final Act. 10–11. It is not necessary for the prior art to serve the same purpose as that disclosed in Appellants’ Specification in order to support the conclusion that the claimed subject matter would have been obvious. *See In re Lintner*, 458 F.2d 1013, 1016 (CCPA 1972). Appellants do not dispute that a reduction in fluid leakage would increase the output and efficiency of Sommer’s pump. Thus, the *actual* basis for the Examiner’s proposed combination stands uncontroverted.

Lastly, Appellants argue that “rotational bearing” means the bearing itself must rotate as opposed to just hold something that rotates. App. Br.

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11–12. The Specification refers to the much more specific, “wheels 86” which are understood based on Figure 3 and the affiliated description (spec. 6–7) to *themselves* rotate. Instead of defining this particular structural arrangement, this particular function, or some combination thereof (e.g., “rotating/rotable/rotatable bearing/wheels”), Appellants have merely characterized the bearing as “rotational.” Where Appellants have the opportunity to define the claimed subject matter as broadly or as narrowly as they choose, and Appellants choose to omit language and details found in the Specification, it is not our place to import it. *SuperGuide Corp. v. DirecTV Enters., Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004) (“Though understanding the claim language may be aided by the explanations contained in the written description, it is important not to import into a claim limitations that are not a part of the claim. For example, a particular embodiment appearing in the written description may not be read into a claim when the claim language is broader than the embodiment.”). If Appellants wished to define that the bearing *itself* is configured to rotate (Reply. Br. 3), language was certainly available to do so. The Examiner is correct that the adjective “rotational,” when used to modify “bearing” does not, without more, necessarily convey that the bearing itself must rotate as opposed to being configured to allow rotation of something therein. Ans. 12. Absent compelling reasons to do so, we will not construe the claims to incorporate limitations that Appellants could have easily included but chose to omit.

DECISION

The Examiner’s rejections are affirmed.

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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