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| 13/562,455 | 07/31/2012 | Michael James Daciw | MASCP 0101 PUS | 4072 |
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL JAMES DACIW

Appeal 2017-003351
Application 13/562,455¹
Technology Center 3700

Before STEFAN STAICOVICI, GEORGE R. HOSKINS, and
FREDERICK C. LANEY, *Administrative Patent Judges*.

LANEY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Michael James Daciw (Appellant) appeals under 35 U.S.C. § 134(a) from the Examiner’s decision (entered Oct. 15, 2015 hereinafter “Final Act.”) rejecting claims 1, 3–5, 10–17, and 21 under 35 U.S.C. § 103(a) as unpatentable in view of Stein (US 8,307,468 B2, iss. Nov. 13, 2012) and Vandenberg (US 8,782,822 B1, iss. July 22, 2014) (hereinafter “Rejection I”); and claims 1, 3–5, 10–17, and 21 as unpatentable in view of Stein and

¹ According to Appellant, the real party in interest is Brasscraft Manufacturing Company. Appeal Br. 3 (entered Apr. 14, 2016).

Hadfield (US 70,087, iss. Oct. 22, 1867) (hereinafter “Rejection II”).² We have jurisdiction over this appeal under 35 U.S.C. § 6(b). We REVERSE.

INVENTION

The invention Appellant describes in the Specification “relate[s] to a plunger for unclogging plumbing.” Spec. ¶ 1.

Claim 1 is independent. Claim 1 is representative of the claimed invention and it is reproduced below with emphasis added to the limitation at the center of this dispute.

1. A plunger comprising:
 - a flange having a length, a width and a thickness, wherein the length is greater than the width to cover an elongated toilet trapway; and
 - a peripheral seal extending away from the flange to seal with the elongated toilet trapway;
 - wherein the seal extends centrally inward from an outward periphery of the flange;*
 - wherein the seal is radially asymmetrical; and
 - wherein the seal has a continuous profile around the periphery of the flange.

Appeal Br. (Claims App. 1).

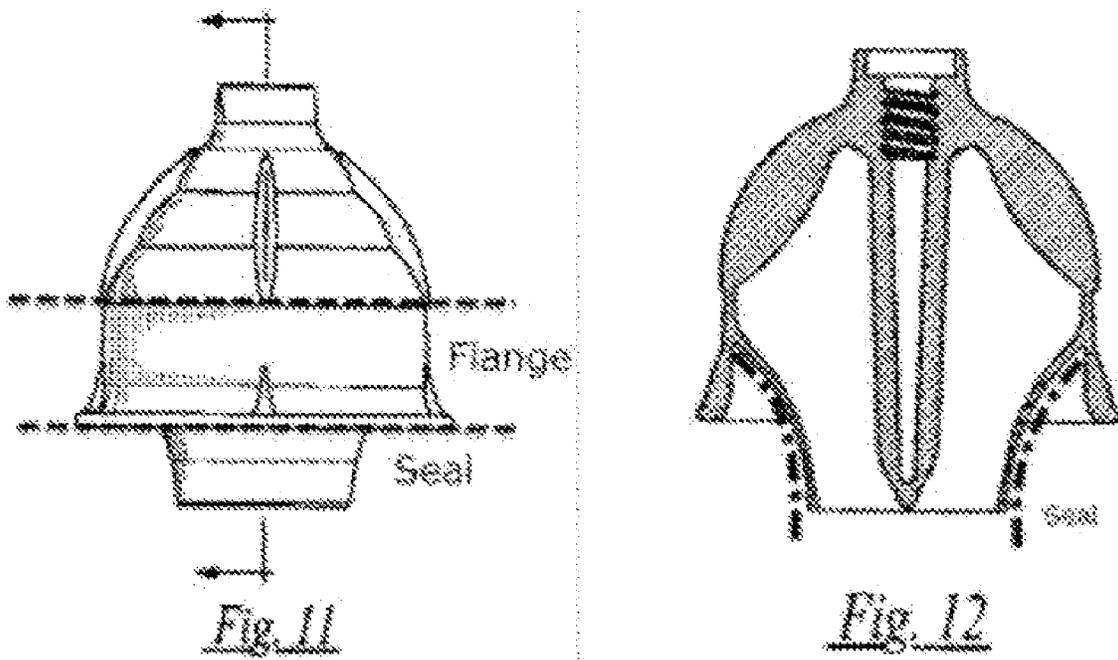
ANALYSIS

Appellant contends Rejection I and Rejection II are improper because the Examiner wrongly finds Stein discloses a plunger with a seal that “extends centrally inward from an outward periphery of the flange,” as recited in independent claim 1. Appeal Br. 6–10. This is so, Appellant asserts, because the element in Stein that the Examiner relies on to show that

² Claims 2, 6, and 18–20 have been canceled. Response 2, 4 (entered June 30, 2015). Claims 7–9 have been withdrawn. *Id.* at 3.

limitation “extends centrally inward *from a sidewall of the cup* 14.” *Id.* at 9, 10 (emphasis added). For the following reasons, we agree.

The Examiner finds Figures 1–7 of Stein illustrate a plunger with a seal that “extends centrally inward from an outward periphery of the flange,” and notably without any citations to its written description. In the Answer, as additional support, the Examiner cites to an annotated version of Figures 11 and 12 from Stein, reproduced below. Ans. 4.



Above Figures 11 and 12 illustrate a side and cross-sectional view of the plunger Stein discloses, which the Examiner annotates to specifically identify the flange and seal elements. *Id.* The Examiner explains “[t]he seal is joined at a connection on the wall of the flange” and “[t]his connection between the seal and the flange meets the claim requirement of an outward periphery as the points along the wall of the flange are interpreted to be an outer periphery.” *Id.* Therefore, the Examiner finds, “[t]he seal of Stein

both extends away from the flange, and centrally inward from an outward periphery of the flange.” *Id.*

The Examiner erred by relying on an unreasonable interpretation of “flange” that broadens its scope to include the inner side wall of the plunger cup 14 Stein discloses. As claim 1 recites, the flange “cover[s] an elongated toilet trapway” and provides the base structure that the plunger seal “extend[s] away from . . . to seal with the elongated toilet trapway.” Appeal Br. (Claims App. 1). The Specification illustrates and describes the flange as being located at the periphery of the distal end of the plunger bell and shaped for engagement with an elongated trapway. *See Spec.* ¶ 37, 39, Figs. 2, 4. Stein uses “flange” similarly to describe a rim at the distal end of a plunger bell that engages a trapway; specifically, Stein describes the distal end of the plunger bell as having a “rim 50 that forms an ‘O-ring’ type bead about the outer circumferential edge in a manner that flanges outwards.” Stein col. 4, ll. 57–59, Figs. 8, 11, 12. The generally understood meaning of the term “flange” is “a rib or rim for strength, for guiding, or for attachment to another object.” *See Flange Definition*, Merriam-Webster.com, <http://www.merriam-webster.com/dictionary/flange> (last visited on Feb. 22, 2018). In light of Appellant’s Specification and the ordinary meaning of the term “flange,” the broadest reasonable interpretation of “flange” is a rim at the circumferential edge and distal end of a plunger bell (or force cup) that covers a toilet trapway.

Although Stein does not include any written description of the element that the Examiner identifies as the seal in Figure 12, Stein does describe the bell structure to which the illustration shows the seal is attached to a portion of the continuous sidewall that extends vertically upward from

flanging rim 50. Stein col. 4, ll. 61–63. The Examiner does not offer any support or reasoning for why a skilled artisan would consider this portion of the sidewall of the Stein plunger to be part of the flange. And, in view of the broadest reasonable interpretation of “flange” discussed above, we do not agree that the vertically extending sidewall portion of the Stein plunger is part of the flange. Therefore, the Examiner has failed to establish by a preponderance of the evidence that Stein discloses a seal that “extends centrally inward from an outward periphery of the flange,” as recited in independent claim 1.

As a result, because claims 3–5, 10–17, and 21 depend from claim 1, and furthermore, because the Examiner does not rely on Vandenberg or Hadfield to correct the above deficiency with the rejection of claim 1, we do not sustain Rejection I or Rejection II.

DECISION

The Examiner’s rejections of claims 1, 3–5, 10–17, and 21 are reversed.

REVERSED