



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/409,922	12/19/2014	Ron Lartinus Laurentius Van Lieshout	2012P00471WOUS	9531
24737	7590	02/26/2018	EXAMINER	
PHILIPS INTELLECTUAL PROPERTY & STANDARDS 465 Columbus Avenue Suite 340 Valhalla, NY 10595			TALPALATSKI, ALEXANDER	
			ART UNIT	PAPER NUMBER
			2837	
			NOTIFICATION DATE	DELIVERY MODE
			02/26/2018	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patti.demichele@Philips.com
marianne.fox@philips.com
katelyn.mulroy@philips.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RON LARTINUS LAURENTIUS VAN LIESHOUT,
JOANNES BAPTIST ADRIANUS DIONISIUS VAN ZON,
and TOON HENDRIK EVERS

Appeal 2017-005354
Application 14/409,922
Technology Center 2800

Before JAMES C. HOUSEL, DONNA M. PRAISS, and
JENNIFER R. GUPTA, *Administrative Patent Judges*.

PRAISS, *Administrative Patent Judge*.

DECISION ON APPEAL¹

This is an appeal under 35 U.S.C. § 134 from the Final Rejection of claims 1, 3–6, 12, 13, 15, 17, and 18. App. Br. 4; Ans. 2. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ In our opinion we refer to the Specification (filed Dec. 19, 2014) (“Spec.”), the Final Office Action (entered May 20, 2016) (“Final Act.”), the Appeal Brief (filed Oct. 13, 2016) (“App. Br.”), the Examiner’s Answer (entered Dec. 14, 2016) (“Ans.”), and the Reply Brief (filed Feb. 14, 2017) (“Reply Br.”).

The subject matter of this appeal relates to “an apparatus for the processing of magnetic particles that can bind to a binding region.” Spec. 1:2–3. According to the Specification, the apparatus may be used for molecular diagnostics, biological sample analysis, chemical sample analysis, food analysis, and/or forensic analysis. Spec. 6:31–33.

Claim 1 is illustrative below (disputed limitations italicized):

1. An apparatus for processing magnetic particles (MP, MP’), the apparatus comprising:

a processing chamber comprising a binding region to which magnetic particles (MP’) can bind, *the binding region being arranged on a processing surface of the processing chamber*;

a magnetic field generator for generating a magnetic field (H) in the processing chamber; and

a tilting unit for controllably changing an inclination of the binding region.

App. Br. 12 (Claims Appendix).

The Examiner maintains, and Appellant² appeals, the rejection of claims 1, 3–6, 12, 13, 15, 17, and 18³ under 35 U.S.C. § 102(b) as anticipated by Whited.⁴ App. Br. 3; Ans. 2. Appellant argues the rejection of claim 1 and relies on those same arguments with respect to claims 3–6, 12, 13, 15, 17, and 18. App. Br. 4–9. In accordance with 37 C.F.R. § 41.37(c)(1)(iv), dependent claims 3–6, 12, 13, 15, 17, and 18 will stand or fall together with independent claim 1 on which they depend.

² Appellant is the Applicant, Koninklijke Philips N.V., identified in the Appeal Brief as the real party in interest. App. Br. 3.

³ Pending claims 2, 7–11, 14, and 16 stand allowed. Final Act. 5; App. Br. 3.

⁴ Whited, US 3,967,892, issued July 6, 1976 (“Whited”).

OPINION

The dispositive issues for this appeal are: (1) whether the Examiner erred in construing the claim term “binding region;” (2) whether the Examiner erred in finding that Whited discloses a binding region as required by claim 1; and (3) whether the Examiner erred in finding that Whited discloses a tilting unit for controllably changing an inclination of the binding region as required by claim 1.

After review of the arguments and evidence presented by both Appellant and the Examiner, we affirm the stated rejection.

The Examiner finds that Whited’s Figures 1–5 disclose an apparatus for processing magnetic particles comprising each of the limitations required by claim 1 for the reasons stated on page 3 of the Final Office Action.

In the Appeal Brief, Appellant argues that the Examiner’s finding that Whited’s tubular member 110 discloses both a “binding region” and the “processing surface” required by claim 1 is based on an improper claim construction. App. Br. 5. According to Appellant, the Examiner’s construction of claim 1 is in error because claim 1 recites “the binding region is arranged on a processing surface of the processing chamber, and not that the binding region is the processing surface of the processing chamber.” *Id.* Appellant also contends that Whited does not disclose a tilting unit as required by claim 1 because Whited’s wheel 72 spins or rotates and “spinning (or rotating) does not disclose tilting.” *Id.* Appellant further argues that Whited’s disclosure of “Rolls 74, 76 are rotated in conjunction with paddle wheel 72 by a gear train (not shown)” cannot be relied upon because it is vague and not enabling with regard to how tubular member 110 is “tilted.” *Id.* at 7.

The Examiner responds that the surface of Whited's member 110 is a processing surface of the processing chamber (28–32) and includes a binding region on a portion of the processing surface. Ans. 2. Citing Whited's Fig. 3 and column 8, line 50, the Examiner further responds that the processing surface has a binding region with attached magnetic particles and another region without magnetic particles. *Id.* The Examiner finds that this configuration is consistent with Appellant's Specification wherein binding region 116 is a portion of surface 115 in processing chamber 114. *Id.* at 2–3. The Examiner also responds that the magnetic particles do not become part of the surface in the prior art, but, rather, they attach to the binding region and detach at a location where the binding region is not present. *Id.* at 4. Regarding Appellant's argument that spinning is not tilting, the Examiner states that the claim does not require tilting, but rather, more broadly claims a tilting unit that changes an inclination of a binding region. *Id.* at 3. The Examiner finds that "rotation of the binding region of the prior art inherently changes the inclination of the region." *Id.*

In the Reply Brief, Appellant maintains that for the tubular member 110 to disclose both the binding region and the processing surface, it would have to be arranged on the surface of itself. Reply Br. 4. According to Appellant, Whited does not disclose tubular member 110 being arranged on any surface let alone a processing surface of developer unit 28. *Id.* at 6. Regarding the claim requirement that the tilting unit changes an inclination of the binding region, Appellant contends that the Specification defines a tilting unit and its function of tilting the binding region as "giving it an inclination other than horizontal." *Id.* at 5 (citing Spec. 3:19–20). Appellant also quotes page 11 of the Specification: "By tilting the surface 115, a

component of the gravitational force F_g directed along the surface will become available. This force component will move free particles MP away from the bound particles M_p in the spot.” *Id.* (quoting Spec. 11:23–25).

For the reasons discussed below, Appellant’s arguments fail to identify a reversible error in the Examiner’s claim interpretations and findings as to Whited. *In re Jung*, 637 F.3d 1356, 1365 (Fed. Cir. 2011).

We find the Examiner’s claim construction reasonable because Appellant does not direct us to any particular disclosure in the Specification that restricts the binding region beyond being a portion, area, or location on the processing surface where binding or attachment occurs. The Examiner’s finding (Ans. 2–3) that such a construction of binding region is consistent with the Specification is supported by the record. According to the Specification, binding region 116 is “located on” processing surface 115 in the processing chamber 114 and depicted in Figure 1 as a portion or region of processing surface 115. Spec. 8:15–19; Fig 1. Indeed, the Specification indicates that “[t]he ‘binding region’ may extend over the whole surface of the processing chamber, though it will typically be only a part thereof.” Spec. 2:12–13. The Specification further describes the binding region as comprising capture probes such as antibodies to which substances such as magnetic particles may bind. Spec. 8:15–17. The interaction of magnetic particles to the binding region is said to be “of any type.” Spec. 2:15. A magnetic field generator (shown in Figure 1 as magnet 153 with poles 153a and 153b) below binding region 116 is also disclosed in the Specification for manipulating magnetic particles. *Id.* at 8:20–24. Appellant asserts that Whited’s surface 110 cannot disclose both the binding region and the processing surface because that would require the surface to be arranged on

the surface of itself. App. Br. 5. However, Appellant does not offer any affirmative construction or definition of the term that would distinguish the processing surface from the binding region apart from binding occurring in the binding region. Accordingly, we are not persuaded that the Examiner erred in the construction of the term “binding region” as recited in claim 1.

We also are not persuaded that the Examiner erred in finding that Whited discloses a binding region as properly construed. The Examiner’s findings that Whited discloses processing chambers 28–32 in which magnetic particles bind to surface 110 constituting a binding region is supported by the record. Whited Fig. 3. Appellant does not dispute that magnetic particles attach to Whited’s surface 110 shown in Figure 3 or that surface 110 is a processing surface. Instead, Appellant contends that the binding region must be a separate surface on the processing surface. Reply Br. 4; App. Br. 5. As discussed above, the broadest reasonable interpretation of “binding region” is a portion, area, or location on the processing surface where binding or attachment occurs and encompasses the entirety of the processing surface and any type of binding.

In addition, we are not persuaded by Appellant that the Examiner erred in finding that Whited discloses a tilting unit for controllably changing an inclination of the binding region as required by claim 1. Appellant’s argument that the rotation disclosed by Whited does not disclose tilting (App. Br. 5) does not adequately explain why rotation of a surface does not result in “controllably changing an inclination of the binding region” on Whited’s surface 110. Appellant’s assertion that the function of tilting is defined by the Specification as “giving [the binding region] an inclination other than horizontal” and that the Specification describes gravitational force

along the surface becoming available from this operation does not adequately distinguish the change in orientation and gravitational forces along Whited's surface 110 as it rotates. *See* Reply Br. 5 (citing Spec. 3:19–20). To the extent that Appellant contends that the term “tilting unit” requires the apparatus to have a processing surface and a binding region that are uniformly planar such that their orientation with respect to the horizontal is uniform, such an interpretation of the claim would have us read limitations into the claim from the Specification. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993). Accordingly, we are unpersuaded of error in the Examiner's finding that Whited discloses a tilting unit for controllably changing an inclination of the binding region.

Based on the cited record on appeal, we are not persuaded of error in the Examiner's rejection of claim 1. Accordingly, we affirm the stated rejection of claims 1, 3–6, 12, 13, 15, 17, and 18 as anticipated by Whited.

DECISION

For the foregoing reasons, we affirm the Examiner's rejection under 35 U.S.C. §102(b).

No time period for taking any subsequent action in connection with this Appeal may be extended under 37 C.F.R. § 1.136(a)(1).

AFFIRMED