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Cantor Colburn LLP - Carrier 20 Church Street, 22nd Floor Hartford, CT 06103			SHIRSAT, VIVEK K	
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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte WILLIAM J. ROY and SCOTT A. LILJENBERG

Appeal 2017-005725
Application 13/311,819¹
Technology Center 3700

Before NINA L. MEDLOCK, BRUCE T. WIEDER, and
BRADLEY B. BAYAT, *Administrative Patent Judges*.

WIEDER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 8–12, 14, 15, and 23. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ According to Appellants, the real party in interest is Carrier Corporation. (Appeal Br. 1.)

CLAIMED SUBJECT MATTER

Appellants' invention relates to "gas burners of multi-burner applications" and more specifically "to improvements in flame carryover aspects of low NO_x burners that reduce the gas used for flame carryover while still providing a robust ignition for all burners." (Spec. ¶ 1.)

Claim 8 is the sole independent claim on appeal. It recites (emphasis added):

8. A burner assembly comprising:

a first burner comprising a first burner tube that receives a mixture of fuel and air, the first burner tube coupled to a first outlet;

a second burner comprising a second burner tube that receives a mixture of fuel and air, the second burner tube coupled to a second outlet;

the first outlet having rectilinear front walls, *a first side wall* and a trough formed between the front walls by a concave outer face, the first outlet comprising a primary outlet opening formed in the concave outer face of the first outlet, the primary outlet opening defining a first transverse slot for communicating a flame to the second outlet;

the second outlet having rectilinear front walls, *a second side wall* and a trough formed between the front walls by a concave outer face, the second outlet comprising a second primary outlet opening formed in the concave outer face of the second outlet, the second primary outlet opening defining a second transverse slot for receiving a flame from the first outlet;

the first transverse slot aligned with the second transverse slot, *the first side wall adjoining the second side wall, the first side wall contacting the second side wall.*

REJECTION

Claims 8–12, 14, 15, and 23 are rejected under 35 U.S.C. § 103(a) as unpatentable over Riehl (US 5,244,382, iss. Sept. 14, 1993) and Ripka (US 5,458,484, iss. Oct. 17, 1995).

ANALYSIS

The Examiner finds that Riehl discloses all of the limitations of claim 8 except that the outlet is rectilinear. (*See* Final Action 4–5.) With regard to the limitation “a first side wall,” the Examiner finds that Riehl’s cylindrical wall means 25 along with the “wing-like extensions” 34 and 35 which extend outwardly from the burner body disclose the claimed side walls. (Answer 7; *see also* Riehl, Figs. 1, 4, and col. 3, l. 67–col. 4, l. 29.) The Examiner explains that “because the space between the wing like structures form[s] an outlet (38) they can be fairly interpreted as part of the sidewalls of the first and second outlet.” (Final Action 4 n.1.)

Appellants disagree and argue that Riehl does not disclose the claimed side walls. In particular, Appellants argue that “extensions 34 and 35 in Riehl are not properly interpreted [as] the first wall and second wall of claim 8.” (Appeal Br. 5.) Appellants further argue that “[e]xtensions 34 and 35 [are] not referred to as outlet walls, and in fact are described as ‘extend[ing] from opposed sides of the burner body means 11 adjacent the outlet end means 15 thereof.’” (*Id.* at 4.)

Riehl discloses:

The plates **21** and **22** that form the burner body means **11** each has a pair of wing-like extensions **34** and **35** extending outwardly therefrom in a coplanar manner so that when the formed plates **21** and **22** are secured together by the folded over flange means **23** and **24** to form the burner body means **11**, the

cooperating extensions **34** and **35** define wing-like extensions that are generally indicated by the reference numeral **34'** and **35'**, and that extend from opposed sides of the burner body means **11** adjacent the outlet end means **15** thereof.

(Riehl col. 4, ll. 19–29.) As shown in Figure 1 of Riehl, the wing-like extensions 34 and 35 extend outwardly in a co-planar manner from burner body 11, i.e., extensions 34 and 35 extend in a plane that is perpendicular to a tangent plane to the cylinder formed by the cylindrical wall means 25.

“During examination, ‘claims . . . are to be given their broadest reasonable interpretation consistent with the specification, and . . . claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art.’” *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004), quoting *In re Bond*, 910 F.2d 831, 833 (Fed. Cir. 1990). Figure 2 of the Specification illustrates a prior art burner assembly with “a convenient passageway 35 that can be used for flame carryover between the two burners 31.” (Spec. ¶ 23.) Figures 4, 5, and 8 of the Specification illustrate “sidewalls 151” of the claimed burner tube outlets. (*Id.* ¶ 25.) Under the Examiner’s claim interpretation, “passageway 35” would be formed with the claimed side walls. The evidence does not support such a broad claim interpretation. Rather, we determine that, in view of the Specification, the broadest reasonable interpretation for the claim term “side wall” includes the cylindrical wall means disclosed in Riehl but does not include the perpendicularly positioned wing-like extensions. Because the Examiner relies on this erroneous claim construction in finding that Riehl discloses a first side wall adjoining and contacting a second side wall, we reverse the rejection of claim 8 under

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§ 103(a). For the same reason, we also reverse the rejection of dependent claims 9–12, 14, 15, and 23.

DECISION

The Examiner's rejection of claims 8–12, 14, 15, and 23 under 35 U.S.C. § 103(a) is reversed.

REVERSED