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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SHAILENDRA YADAV

Appeal 2017-006592¹
Application 14/572,945²
Technology Center 3600

Before KENNETH G. SCHOPFER, AMEE A. SHAH, and
MATTHEW S. MEYERS, *Administrative Patent Judges*.

SCHOPFER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the rejection of claims 1, 2, and 4–20. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Our decision references the Appeal Brief (“Appeal Br.,” filed Oct. 3, 2016) and Reply Brief (“Reply Br.,” filed Mar. 20, 2017), and the Examiner’s Answer (“Ans.,” mailed Jan. 19, 2017) and Final Office Action (“Final Act.,” mailed May 5, 2016).

² According to Appellant, the real party in interest is Ford Global Technologies, LLC. Appeal Br. 3.

BACKGROUND

According to Appellant, the Specification “relates generally to clips for mounting cables wires, tubes and pipes to a support structure such as a motor vehicle body.” Spec. ¶ 1.

ILLUSTRATIVE CLAIM

Claim 1 is illustrative of the appealed claims and recites:

1. A wire harness clip, comprising:
an elongated wire support;
a plurality of wire retainers provided at spaced locations on said elongated wire support, wherein at least one wire retainer of said plurality of wire retainers includes opposed flexible flanges, wherein each of the opposed flexible flanges include a base at said elongated wire support, and wherein opposed bases are separated by a distance D_1 ; and
a mounting stud projecting from said elongated wire support.

Appeal Br. 17 (Claims App’x).

REJECTIONS

1. The Examiner rejects claims 1, 2, 4–10, and 12–20 under 35 U.S.C. § 103(a) as unpatentable over Brightwell.³
2. The Examiner rejects claim 11 under 35 U.S.C. § 103(a) as unpatentable over Brightwell in view of Alloway.⁴
3. The Examiner rejects claims 1, 2, 4, 5, 7–10, 12–16, and 18–20 under 35 U.S.C. § 103(a) as unpatentable over Warrens.⁵

³ Brightwell, US 4,805,479, iss. Feb. 21, 1989.

⁴ Alloway et al., US 2007/0082541 A1, pub. Apr. 12, 2007.

⁵ Warrens et al., US 2,495,995, iss. Jan. 31, 1950.

DISCUSSION

Obviousness over Brightwell

Appellant raises separate arguments with respect to claims 1, 7, 12, and 18. *See* Appeal Br. 9–12. We address each of these claims separately below.

Claim 1

With respect to claim 1, the Examiner finds that Brightwell discloses a wire harness clip as claimed including opposed flexible flanges 12, 14 with bases (i.e., where 12, 14 meet channel 16 at ribbed portion 18) separated by a distance D_1 . Final Act. 4; *see also* Ans. 4 (Ann. Fig. A). Further, the Examiner states:

the base limitation of the claimed invention appears to simply be the point at which the flanges are coupled to the elongated wire support. Examiner contends that Brightwell also discloses a point where the flanges are coupled to the elongated wire support, which is what is being interpreted as the base. . . . Moreover, the cross-sectional view of Brightwell shows that there is a distance between the bases.

Id. at 4. The Examiner also concludes that one of ordinary skill in the art would “understand that the structural elements disclosed by Brightwell implicitly teach and therefore obviously show the limitations of the claim.”

Id.

With respect to claim 1, Appellant argues only that Brightwell discloses flanges with a unitary base and not opposed bases separated by a distance as claimed. Appeal Br. 10. We are not persuaded of reversible error for the reasons discussed below.

We determine the scope of the claims in patent applications by giving them their broadest reasonable interpretation consistent with the

Specification. *See In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). Here, Appellant does not point to, and we do not see, a limiting definition for the term “base” in the Specification. Rather, the Specification and claims indicate only that the base is the portion or point of the flange where the flange is connected to the wire support structure. *See, e.g.*, claim 1; Spec. ¶¶ 8, 21. We agree with the Examiner that it is reasonable to construe the claimed base to include the point where Brightwell’s flanges connect to the ribbed portion of the wire support structure, which may be interpreted to be the point where they cease to be flanges and become support members for the base of the wire. *See* Brightwell Fig. 1. Furthermore, we agree with the Examiner that one of ordinary skill in the art would have found the claim limitations obvious in view of Brightwell because Brightwell implicitly teaches the structure elements claimed, i.e. Brightwell’s unitary structure forms essentially the same structure as that which is claimed. We note that the decision to make an assembly from multiple separate but connected structures, i.e. separate flanges attached to a support structure, rather than a single integral structure is a matter of obvious design choice that does not confer patentability on an otherwise unpatentable structure. *See In re Larson*, 340 F.2d 965, 968 (CCPA 1965) (“[T]he use of a one piece construction instead of the structure disclosed in [the prior art, which comprised ‘several parts, . . . rigidly secured together’] would be merely a matter of obvious engineering choice.”).

For these reasons, we are not persuaded of reversible error with respect to the rejection of claim 1. Accordingly, we sustain the rejection of

claim 1. We also sustain the rejection of dependent claims 2 and 4–6, which depend from claim 1 and were not separately argued.

Claim 7

Claim 7 requires that “opposed tips [on the flanges] are separated by a distance D_2 where $D_1 > D_2$.” Appeal Br. 17 (Claims App’x). The Examiner finds that Brightwell discloses this limitation. Final Act. 5. Appellant first relies on arguments raised with respect to claim 1, which we also find unpersuasive here. Second, Appellant argues “the Examiner improperly cites a non-tip portion of the flanges for establishing a distance D_2 .” Appeal Br. 11. Appellant asserts that the tip is the point at the end of the flanges in Brightwell and not the mid-section of the flanges identified by the Examiner. *Id.*

We are not persuaded and agree with the reasoning and response provided by the Examiner. Ans. 17. First, we note that claim 4 requires that arcuate flanges include a gap therebetween and claim 6 requires that each flange “includes a tip adjacent said gap.” Appeal Br. 17 (Claims App’x). Thus, the claims require only that the flanges include a tip adjacent a gap between opposed flanges and do not expressly require that the claimed tip be at the end of the flange. We also see no indication in the Specification that the claimed tip must be interpreted to be the end of the flange. Thus, the broadest reasonable interpretation of the claim may include any tip that is adjacent a gap between opposed flanges. We find that Brightwell’s barbs 42, which are relied upon by the Examiner, are tips adjacent to the gap between opposed flanges of the device according to the broadest reasonable interpretation of the claim.

Based on the foregoing, we are not persuaded of reversible error with respect to the rejection of claim 7. Accordingly, we sustain the rejection. We also sustain the rejection of dependent claims 8–10, which depend from claim 7 and were separately argued.

Claim 12

With respect to claim 12, the Examiner finds that Brightwell discloses, *inter alia*, an elongated wire support having a longitudinal axis extending between opposed sidewalls, as claimed. Final Act. 7 (citing Brightwell, Fig. 1⁶). Appellant argues only that “as plainly shown in Figures 1 and 2 [of Brightwell], Brightwell fails to disclose that the elongated wire support has opposed sidewalls along the length of the elongated wire support.” Appeal Br. 11–12. Appellant’s argument does not apprise us of reversible error in the rejection of claim 12 particularly because Appellant does not explain why the sidewalls identified by the Examiner in Brightwell may not be the claimed sidewalls. Further, we are not persuaded of error to the extent Appellant argues that “the small section in Brightwell cited as the claimed opposed sidewalls does not extend along the longitudinal axis of the elongated wire support.” Reply Br. 4. Appellant interprets the claim to require that the sidewalls run along the entire length of the entire structure. However, the claim requires only that the support has “a longitudinal axis extending between opposed sidewalls.” We agree with the Examiner that because the identified sidewalls run along some portion of the longitudinal axis, they may be considered sidewalls as claimed. *See* Ans. 17–18.

⁶ We note that the Examiner provides an annotated Figure 1 labeled as “Annotated Fig. B.”

Based on the foregoing, we are not persuaded of reversible error with respect to the rejection of claim 12. Accordingly, we sustain the rejection of claim 12. We also sustain the rejection of dependent claims 13–17, which depend from claim 12 and for which Appellant does not provide separate arguments.

Claim 18

Appellant argues that claim 18 is not obvious over Brightwell because “the Examiner has failed to show that Brightwell discloses ‘opposed bases’ separated by any distance whatsoever” and the distance between the alleged bases “is clearly not greater than the distance between the opposed tips in Brightwell.” Appeal Br. 12. However, we are not persuaded of error by these arguments for the same reasons discussed above with respect to claims 1 and 7. Accordingly, we sustain the rejection of claim 18. We also sustain the rejection of claims 19 and 20, which depend from claim 18 and for which Appellant does not present separate arguments.

Obviousness over Brightwell in view of Alloway

Claim 11 requires that the “mounting stud includes a series of aligned frustoconical ribs.” Appeal Br. 18 (Claims App’x). The Examiner acknowledges that “Brightwell discloses resilient prongs but does not disclose a series of frustoconical ribs.” Final Act. 14. However, the Examiner finds that Alloway teaches a wire clip with a mounting stud including a series of aligned frustoconical ribs. *Id.* The Examiner concludes that “[i]t would have been obvious to a person having ordinary skill . . . to modify the apparatus of Brightwell, by using ribs similar to that taught by Alloway to provide a mounting stud that would have a more secure and sure fit in a mounting hole.” *Id.*

Appellant argues that the rejection “fails to provide any reason based on a rational underpinning for combining the references.” Appeal Br. 14. Appellant asserts that the Examiner’s conclusion is not supported and “at best, the statement simply makes unfounded, conclusory statement about the potential benefits of the proposed combination.” *Id.* at 15. Appellant also asserts that Brightwell is silent regarding the need for a more secure mount and that Alloway does not teach that the disclosed retainer provides a more secure and sure fit. *Id.* at 15–16. Thus, Appellant indicates that the combination is based on hindsight. *Id.* at 16.

We are not persuaded of reversible error. We agree with the Examiner’s response regarding this argument. *See Ans.* 19–20. Specifically, we note that the motivation for a combination need not be expressly found in the references relied upon and may be found in the knowledge of one of ordinary skill in the art. We agree with the Examiner that one of ordinary skill in the art would have found it obvious that the use of multiple layers of ribs of Alloway’s mount would provide a more secure mount than the single set of prongs provided in Brightwell. Furthermore, we find that this advantage would have been readily recognized by one of ordinary skill in the art, and we are not persuaded that the rejection is based on hindsight. Accordingly, we sustain the rejection of claim 11.

Obviousness over Warrens

Because we sustain the rejections discussed above, which are dispositive of all claims on appeal, we do not reach the alternate rejection over Warrens.

CONCLUSION

We AFFIRM the rejection of claims 1, 2, 4–10, and 12–20 over Brightwell. We AFFIRM the rejection of claim 11 over Brightwell in view of Alloway. We do not reach the rejection over Warrens.

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)(iv).

AFFIRMED