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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JAMES S. TISOL JR., BROCK T. COOLEY,
and BENJAMIN H. MOERKE

Appeal 2017-007929
Application 14/346,775
Technology Center 1700

Before BRADLEY R. GARRIS, DONNA M. PRAISS,
and MERRELL C. CASHION JR., *Administrative Patent Judges*.

CASHION, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

This is an appeal under 35 U.S.C. § 134(a) from a Final Action, dated August 24, 2016, of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

Claim 1 illustrates the subject matter on appeal and is reproduced below:

1. A system for manufacturing a two-part fastener, the system comprising:

a fastener-molding housing including a fastener mold having a first mold section connected to a second mold section through a flash connection mold section, wherein the fastener mold is configured to receive fastener-forming material to form a pre-engaged fastener having a first fastener portion within the first mold section and a second fastener portion within the second mold section, wherein the first fastener portion is temporarily secured to the second fastener portion through a flash connection portion formed within the flash connection mold section; and

an actuating assembly including a stripper plate, a connecting member having a distal beam within a retaining sleeve that is moveably secured to the stripper plate, and at least one ejection member, wherein the connecting member is configured to securely retain the first fastener portion, wherein the stripper plate is configured to be moved relative to the connecting member in order to drive one of the first or second fastener portions into the other of the first or second fastener portions to form a fully-formed fastener, wherein the stripper plate is positioned around at least a portion of the connecting member as the stripper plate is moved relative to the connecting member, and wherein the at least one ejection member is configured to eject the fully formed fastener from the actuating assembly.

REFERENCES AND REJECTIONS

Appellant¹ requests review of the following rejections maintained by the Examiner:

I. Claims 1, 3–8, 11, 12, 14–18, and 20 rejected under 35 U.S.C. § 103(a) as being unpatentable over Kanie (WO 03/072957 A2, published September 4, 2003).

II. Claims 2 and 13 rejected under 35 U.S.C. § 103(a) as unpatentable over Kanie and Pye (Pye, R., *Assembling Parts in the Mold*, *Modern Plastics*, McGraw-Hill, Inc., Lausanne, CH, Vol. 47, No. 7, 1 July 1970, pages 90–94).

III. Claims 9, 10, and 19 rejected under 35 U.S.C. § 103(a) as unpatentable over Kanie and Seidelman et al. (US 2006/0131787 A1, published June 22, 2006) (“Seidelman”).

OPINION

After review of the respective positions provided by Appellant and the Examiner, we REVERSE the Examiner’s prior art rejections of claims 1–20 under 35 U.S.C. § 103(a) for the reasons presented by Appellant in the Appeal and Reply Briefs. We add the following for emphasis.

Independent claim 1 is directed to a system, a device, for manufacturing a two-part fastener using a single fastener mold having a first mold section for a first fastener portion (pin) and a second mold section for a second fastener portion (grommet), wherein the first and second mold sections are connected through a flash connection mold section. Spec. ¶¶ 6, 10. The claimed invention uses a stripper plate 54 that moves relative to a

¹ Appellant is the Applicant Illinois Tool Works Inc., who is also identified in the Appeal Brief as the real party in interest. App. Br. 4.

connecting member to assemble the pin and grommet together. *See* Spec. ¶¶ 40–41 and Figures 1–3.

The Examiner finds Kanie discloses a system for manufacturing a two-part fastener that differs from the claimed invention in that Kanie does not disclose a stripper plate (fixed die 31) positioned around the connecting member (core pin 37) that moves relative to each other to push the pin and bush together. Final Act. 2–3; Kanie 8–9 and Figures 12 and 14–17. The Examiner finds Kanie, instead, places the stripper plate 31 above the connecting member 37. Final Act. 3; Kanie Figures 12, 14. The Examiner further finds that Kanie discloses “[t]he relationship between the fixed die 31 and the movable die 34 in the following description may be reversed, or the reference numbers 31 and 34 may indicate a movable die and a fixed die, respectively.” Ans. 2–3; Kanie 7. The Examiner determines that this disclosure by Kanie would have led one skilled in the art to place the stripper 31 in a way that it surrounds a portion of the connecting member 37, as claimed. Ans. 3.

Appellant argues that the portion of Kanie relied upon by the Examiner about the relationship of the dies being reversed does not expressly or necessarily describe, teach, or suggest positioning the stripper plate (fixed die) 31 around at least a portion of the connecting member as the stripper plate is moved relative to the connecting member, as claimed. Reply Br. 3. Appellant further contends that the Examiner fails to explain how all of the other components of Kanie would interact if such a reversal of the dies is made. *Id.* at 4.

The Examiner bears the initial burden of presenting a *prima facie* case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (quoted with approval in *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007)). The fact finder must be aware “of the distortion caused by hindsight bias and must be cautious of arguments reliant upon ex post reasoning.” *KSR*, 550 U.S. at 421 (citing *Graham v. John Deere Co.*, 383 U.S. 1, 36 (1966) (warning against a “temptation to read into the prior art the teachings of the invention in issue”)).

We agree with Appellant that the Examiner has not established a prima facie case of obviousness. The Examiner’s rejection is premised on reversing the positions of Kanie’s dies 31 and 34 so that “the fixed die (31, which corresponds to the currently claimed stripper plate) [is] located where the movable die (34) is shown in Figs 12-17, which is to say [that the fixed die 31 would then surround] a portion of the core pin [37]” based on Kanie’s disclosure at the bottom of page 7. Ans. 2–3. While the noted portion of Kanie suggests reversal of the dies, we find no disclosure in Kanie, and the Examiner directs us to none, that would lead one skilled in the art to effect the modification of Kanie’s fixed die 31 as proposed by the Examiner. In fact, the only guidance provided by the noted disclosure of Kanie is that the fixed die 31 would have a reversed function of being movable while the movable die 34 would have a reversed function of being fixed. Thus, we agree with Appellant that the Examiner has not adequately explained why one skilled in the art would have modified fixed die 31 so as to surround connecting member 37 as claimed. The Examiner has not adequately

explained how Kanie's limited disclosure on page 7 would have led one skilled in the art to the claimed stripper plate/connecting member relationship wherein a stripper plate is positioned around at least a portion of a connecting member with the stripper plate movable relative to the connecting member.

Therefore, the Examiner failed to articulate a sufficient reason with some rational underpinning to support a conclusion that a person having ordinary skill in the art would have arrived at the claimed invention from the teachings of Kanie. *KSR*, 550 U.S. at 418.

Accordingly, we reverse the Examiner's prior art rejections under 35 U.S.C. § 103(a) for the reasons presented by Appellant and given above.

ORDER

The Examiner's prior art rejections of claims 1–20 under 35 U.S.C. § 103(a) are reversed.

REVERSED