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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GIANNI BORINATO

Appeal 2017-010270
Application 14/162,234¹
Technology Center 3700

Before MURRIEL E. CRAWFORD, MICHAEL W. KIM, and
PHILIP J. HOFFMANN, *Administrative Patent Judges*.

HOFFMANN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant appeals from the Examiner's rejection of claims 1–3, 5–7, 11–20, and 22–27. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ According to Appellant, the “real party in interest . . . is Positec Power Tools (Suzhou) Co., Ltd.” Appeal Br. 3.

According to Appellant, the “invention relates to a portable washing device.” Spec. 1. Claims 1 and 25 are the independent claims on appeal. Below, we reproduce claim 1 as illustrative of the appealed claims.

1. A portable washing device, comprising:
 - a housing;
 - a motor arranged in the housing;
 - a pump driven by the motor;
 - a container connected to the pump and configured to store a washing liquid;
 - a flexible tube connected to the pump;
 - a spraying pistol connected to the pump by way of the flexible tube, the spraying pistol being configured to be held and controlled by a user using one hand to spray out the washing liquid from the spraying pistol; and
 - a control unit configured to change one or more of an operating mode or a rotation speed of the motorwherein the control unit is positioned on the spraying pistol in a location to facilitate simultaneous operation of the control unit and holding of the spraying pistol with the user’s one hand.

REJECTIONS AND PRIOR ART

The Examiner rejects the claims as follows:²

- I. Claims 1–3, 5, 11, 19, 20, 22, and 27 under 35 U.S.C. § 102(b) as anticipated by Attar (US 2005/0156060 A1, pub. July 21, 2005);

² We reorder claim rejections from the order presented in the Final Office Action and Answer.

- II. Claims 6, 7, 16–18, 23, 24, and 26 under 35 U.S.C. § 103(a) as unpatentable over Attar;
- III. Claim 12 under 35 U.S.C. § 103(a) as unpatentable over Attar and Lindell (US 6,571,596 B1, iss. June 3, 2003);
- IV. Claims 13–15 under 35 U.S.C. § 103(a) as unpatentable over Attar and Parks (US 5,588,303, iss. Dec. 31, 1996);
- V. Claims 1–3, 5–7, 11, 13–20, and 22–24 under 35 U.S.C. § 103(a) as unpatentable over Baker (US 4,801,088, iss. Jan. 31, 1989) and Attar;
- VI. Claim 25 under 35 U.S.C. § 102(b) as anticipated by Attar; and
- VII. Claim 25 under 35 U.S.C. § 103(a) as unpatentable over Attar and Cooper (US 5,826,803, iss. Oct. 27, 1998).

ANALYSIS

Rejection I

Based on our review of the record, including the Examiner’s Final Office Action and Answer, and Appellant’s Appeal Brief and Reply Brief, Appellant persuades us that the Examiner’s rejection is in error. Thus, for the reasons discussed below, we do not sustain the anticipation rejection of independent claim 1 and its dependent claims 2, 3, 5, 11, 19, 20, 22, and 27, based on Attar.

As set forth above, claim 1 recites, in relevant part,

a control unit configured to change one or more of an operating mode or a rotation speed of the motor[,]

wherein the control unit is positioned on the spraying pistol in a location to facilitate simultaneous operation of the control unit and holding of the spraying pistol with the user’s one hand.

Appeal Br., Claims App. To reject the claim, the Examiner finds that Attar's dial 62 and trigger 66 disclose the claimed "control unit" (Final Act. 2), and that "a user can grasp the grip of spraying pistol 60 using the third, fourth[,] and fifth fingers (of the right hand) and reach dial 62 using the index finger and thumb. Trigger 66 can be reached using the index finger while grasping the grip with the remaining fingers" (Answer 12–13). Appellant argues that the Examiner errs because "one of ordinary skill would recognize that the configuration illustrated in Attar would likely require two hands—one to hold . . . nozzle 60, and one to operate . . . dial 62." Appeal Br. 11.

As stated above, we do not sustain claim 1's rejection. First, we note that the Examiner does not support adequately, and it is not clear from our review of Attar, that Attar's trigger 66 changes the motors' operating mode or rotation speed, such that trigger 66 discloses the claimed control unit as required by claim 1. Thus, for Attar to anticipate the claim, based on the Examiner's stated findings, Attar must disclose that dial 62 is positioned on a spraying pistol in a location to facilitate simultaneous operation of the dial and holding of the spraying pistol with a user's one hand. But, the Examiner does not establish that Attar's dial 62 is so positioned. Instead, it is only conjecture by the Examiner that "a user can grasp the grip of spraying pistol 60 using the third, fourth[,] and fifth fingers (of the right hand) and reach dial 62 using the index finger and thumb." Answer 12. Restated, the Examiner does not cite evidence that would support adequately the Examiner's finding. Therefore, we do not sustain claim 1's rejection, or the rejection of dependent claims 2, 3, 5, 11, 19, 20, 22, and 27, as anticipated by Attar.

Rejections II–IV

Claims 6, 7, 16–18, 23, 24, and 26 depend from independent claim 1. The Examiner does not demonstrate how an obvious variation of Attar remedies the above deficiency in claim 1’s rejection. Thus, we do not sustain the Examiner’s obviousness rejection, based solely on Attar, of claims 6, 7, 16–18, 23, 24, and 26.

Claims 12–15 also depend from independent claim 1. The Examiner does not demonstrate how either Lindell or Parks remedies the above deficiency in claim 1’s rejection. Thus, we do not sustain the Examiner’s obviousness rejections of dependent claims 12–15.

Rejection V

With respect to the Examiner’s obviousness rejection of independent claim 1 based on Baker and Attar, the Examiner finds that Baker discloses almost all of the claim’s recitation, but finds that Baker does not disclose that its control unit 50 is configured to change a motor rotation speed. Answer 7–8. The Examiner relies on Attar’s dial 62, discussed supra, to disclose this claim recitation. *Id.* at 8. The Examiner further finds that Attar’s dial 62 may be provided “in lieu of or in conjunction with [Baker’s] switch 50.” *Id.* at 24.

We do not sustain the Examiner’s obviousness rejection, for reasons similar to those discussed above with respect to the Examiner’s anticipation rejection of claim 1. In particular, to the extent that the Examiner proposes to provide Attar’s dial 62 in place of and in the location of Baker’s control unit 50, it is not clear that control unit 50 itself is, or dial 62 in control unit 50’s location would be, positioned on a spraying pistol in a location to

facilitate simultaneous operation of the dial and holding of the spraying pistol with a user's one hand, as required by the claim. Further, to the extent that the Examiner proposes to reposition dial 62 such that it is situated on a spraying pistol in a location to facilitate simultaneous operation of the dial and holding of the spraying pistol with a user's one hand, it is not clear that such is shown or suggested by either Attar or Baker, and, further, the Examiner provides no rational reason to so locate dial 62. Thus, it would appear that the only suggestion to locate dial 62, as claimed, would be provided by Appellant. Therefore, we do not sustain claim 1's obviousness rejection, or the rejection of claims 2, 3, 5–7, 11, 13–20, and 22–24 depending therefrom, as obvious based on Baker and Attar.

Rejections VI and VII

With regard to independent claim 25, the Examiner finds that the “[c]laim . . . stands rejected under . . . 35 U.S.C. [§] 102(b) as anticipated by or, in the alternative, under . . . 35 U.S.C. [§] 103(a) as obvious over Attar . . . in view of Cooper.” Answer 6. We note, however, that the Examiner's subsequent findings do not indicate that either Attar or Cooper discloses all of the claim recitations. *See id.* at 7 (“Attar discloses the limitations of the claimed invention with the exception of a filter inside the flexible tube.”). Thus, the Examiner does not support adequately that either Attar or Cooper anticipates claim 25.

Regarding the Examiner's obviousness rejection of claim 25 based on Attar and Cooper, the Examiner finds it would have been obvious to utilize Cooper's filter that is “inside a garden hose when nut 16 is connected to a

garden hose,” with Attar’s pressure-wash system, in order “to filter the fluid.” Answer 7. Appellant argues that the rejection is in error:

[T]he reason [that Appellant] include[s] a filter in the portable washing device of the present invention is to prevent impurities from reaching the container. This is in conjunction with reversing the operating mode of the motor in the portable washer and using the sprayer as a suction inlet to refill the container by way of the flexible tube that extends from the pump to the spraying pistol.

Appeal Br. 26–27. Appellant continues: “[b]ecause the reservoir in Attar is filled through [tank water supply] fitting 24 rather than through [high-pressure outlet] hose 50, one of ordinary skill in the art would not be motivated to include [Cooper’s] filter in hose 50.” *Id.* at 27.

Appellant persuades us that the Examiner errs. Although the Examiner finds that that it would have been obvious to use a filter in Attar to filter water, the Examiner gives no rational reason as to why one would be motivated to filter water in Attar’s output hose that is not used also “as a suction inlet to refill the container” as occurs with Appellant’s device (*id.* at 27). In Attar, this water would already have been received and held in reservoir 20, and pressurized by pump 30, for delivery through nozzle 60. *See, e.g.*, Attar ¶ 29. The Examiner does not explain why one of ordinary skill would filter water already received in reservoir 20 and pumped downstream of pump 30. Thus, for these reasons, we do not sustain claim 25’s obviousness rejection.

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DECISION

We REVERSE the Examiner's anticipation and obviousness rejections of claims 1–3, 5–7, 11–20, and 22–27.

REVERSED