



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.
14/465,562	08/21/2014	Brian Cothren	A1099.10CIP	9283
138988	7590	09/26/2019	EXAMINER	
Driver McAfee Peek & Hawthorne, P.L. One Independent Dr. Suite 1200 Jacksonville, FL 32202			OSWALD, KIRSTIN U	
			ART UNIT	PAPER NUMBER
			3763	
			NOTIFICATION DATE	DELIVERY MODE
			09/26/2019	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):

dboswell@dmphlaw.com
ipdocket@dmphlaw.com
tsaitta@dmphlaw.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BRIAN COTHREN and WILLIAM QUILLEN

Appeal 2017-011817
Application 14/465,562¹
Technology Center 3700

Before JOSEPH A. FISCHETTI, NINA L. MEDLOCK, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

SILVERMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 1–11. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ The Appeal Brief does not identify a real party in interest, pursuant to 37 C.F.R. § 41.37(c)(1)(i). We note that the present application is designated as a continuation-in-part of US 13/398,962 (issued as US 9,435,554) (*see* Spec. 1, ll. 4–6), which is assigned to Athletic Recovery Zone, LLC, according to documents filed with the USPTO, Reel/Frame 027721/0826 (received Feb. 17, 2012).

ILLUSTRATIVE CLAIM

1. An outdoor heating and cooling system creating an open temperature-controlled zone comprising:

an air conditioning apparatus producing conditioned air;
a wall member;

a deck member extending from said wall member, said deck member adapted to support personnel on said deck member;

a lower air outlet, an upper air outlet and a central air intake disposed between said lower and upper air outlets; said central air intake being below said upper air outlet and above said lower air outlet; said lower air outlet, said upper air outlet and said central air intake being in communication with said air conditioning apparatus;

wherein said air conditioning apparatus delivers conditioned air to said upper and lower air outlets and said conditioned air is expelled from said upper and lower air outlets;

wherein the combination of said deck member and said wall member define an open front, ends and top, and wherein said conditioned air expelled from said lower and upper air outlets is drawn through said central air intake and returned to said air conditioning apparatus, reconditioned by said air conditioning apparatus, and redelivered to and expelled from said lower air outlet and said upper air outlet, such that an open temperature-controlled zone of said conditioned air is defined.

CITED REFERENCES

The Examiner relies upon the following references:

Reed et al. (hereinafter "Reed")	US 3,745,305	July 10, 1973
Ward et al. (hereinafter "Ward")	US 4,775,001	Oct. 4, 1988
Johnson	US 2011/0100592 A1	May 5, 2011

REJECTIONS

I. Claims 1–6 are rejected under 35 U.S.C. § 102(a)(1) as anticipated by Ward.

II. Claims 1–11 are rejected under 35 U.S.C. § 103 as unpatentable over Reed and Johnson.

FINDINGS OF FACT

The findings of fact relied upon, which are supported by a preponderance of the evidence, appear in the following Analysis.

ANALYSIS

Rejection I

In rejecting independent claim 1 as anticipated by Ward, the Examiner relies upon Ward’s “second vent 43” (*see* Ward col. 4, ll. 8–12) as teaching the claimed “lower air outlet” of independent claim 1. Final Action 2; Answer 17.

The Appellants argue that the rejection is erroneous, because Ward’s “second vent 43” is an inlet — not an “outlet,” as claimed:

The Examiner . . . has misread the Ward et al. reference. Element 43 of Ward et al. is not a lower air outlet, it is instead the opposite — an “inlet vent” (col. 4, lines 59–60; col. 5, line 17). Ward et al. describes this vent as: “The second vent 43 is provided in the side of the terminal unit 41 and allows air 37 to be drawn from the under floor space 17 . . .” (col. 4, lines 7–10). Arrow 37 in Figs. 2, 3 and 4 clearly shows the direction of air flow through inlet vent 43.

Appeal Br. 16.

In response, the Examiner states:

[E]lement 43 operates as an air outlet, as the air reclaimed into passageway 14 and 17 and passes under 10 to enter into 43 to *then exit* into the HVAC terminal 41. Thus, 43 serves as an air

outlet. Further, the office regard as 42 and 43 as the air outlet from under floor 10 into the space.

Answer 17.

The Appellants contend that Ward’s element 43 operates in a manner consistent with the “plain meaning” of the word “outlet” as “a vent member that expels air from the physical structure of the apparatus into the open or ambient atmosphere.” Reply Br. 2² (citing Ward col. 4, ll. 8–15).

Notably, the Specification refers to an “outlet” as a portal through which air flows away from an HVAC apparatus into a zone that is the subject of temperature/HVAC regulation. *See, e.g.*, Spec. 10, l. 22–11, l. 2 (“The HVAC apparatus 25 forces conditioned air through the air delivery conduits 26 to the *lower air outlet 20* and the *upper air outlet 21*, where the conditioned air is expelled by the seating system to create a temperature-controlled zone 30”) (emphasis added). By contrast, as the Appellants point out (Reply Br. 2–3), Ward’s element 43 does not expel air from an HVAC apparatus into the ambient atmosphere; rather, Ward’s “second vent 43” draws air into the inlet chamber 49, from where it is subsequently expelled into an “air conditioned space”:

Room air terminals 41 are provided at various locations throughout the air conditioned area and comprise a housing mounted in the floor and designed to replace one tile of the raised floor system, the housing having an inlet vent 44 in its upper surface to draw return air 36 from th[e] conditioned space into an inlet chamber 49. The *second vent 43* is provided in the side of the terminal 10 unit 41 and *allows air 37 to be drawn from the under floor space 17* and mixed in the inlet chamber 49 with the return air from the air conditioned space. The air

² Because the pages of the Reply Brief are not numbered, we treat the page bearing the title as the first page, with the following pages numbered sequentially thereafter.

from the inlet chamber 49 is then blown into an outlet chamber 51 by a fan 46 and the mixed air 35 is then expelled via a vent 42 into the air conditioned space.

Ward col. 4, ll. 3–15 (emphasis added).

Because the Examiner does not adequately show Ward to meet independent claim 1's "lower air outlet" limitation, we do not sustain the rejection of independent claim 1, along with dependent claims 2–6, under 35 U.S.C. § 102(a)(1).

Rejection II

Independent claims 1, 7, and 11 (along with their respective dependent claims) stand rejected as obvious over Reed and Johnson.

In regard to claim 1, the Appellants argue, in part, that the combination of references fails to teach or suggest claim 1's "central air intake" that is "disposed between said lower and upper air outlets; said central air intake being below said upper air outlet and above said lower air outlet." *See* Appeal Br. 19–21.

In the Final Office Action, the Examiner states that Reed teaches a "lower air outlet" and an "upper air outlet," but concedes that Reed fails to teach the claimed "central air intake." Final Action 5–6. Instead, according to the Examiner, the "central air intake" is taught by Johnson's element 17 (called an "air return conduit" in the reference, ¶ 22). *Id.* at 6. The Examiner states: "Johnson teaches a central air intake (17) disposed between a lower air outlets (23); said central air intake (17) above said lower air outlet (23)." *Id.*

Disputing the rejection, the Appellants argue:

[T]here is nothing "central" about the air return conduit 17 of Johnson. As clearly illustrated in Fig. 5, the air return conduit

17 is laterally disposed relative to the lower air outlets 23 of the deck member 20. . . .

Most importantly, Johnson fails to suggest positioning a central air intake below an upper air outlet and above a lower air outlet.

Appeal Br. 20.

Disagreeing with the Appellants' position, the Examiner responds, in the Answer, stating:

Appellants . . . rely on the argument that 17 of Johnson is not "central." However, the claim never gave a specific description to "central" in any plane, axis or exact position relative to the system and thus is merely an adjective to describing the ["intake." Further, 17 of Johnson is central relative to the outlets 12 of Johnson and vertical element 15 as seen in Figure 5. Thus, under the broadest reasonable interpretation 17 is central as it is in between 12 and 15 and thus central.

Answer 19.

Yet, the claimed "central air intake" must satisfy a particular configuration of specific claim elements — "disposed *between* said lower and upper air outlets; said central air intake being *below* said upper air outlet and *above* said lower air outlet." (Emphasis added). As the Appellants point out, this arrangement is not shown in the Examiner's reliance on the position of Johnson's element 15:

The Examiner states that "17 of Johnson is central relative to the outlets 12 of Johnson and vertical element 15". Element 15 is a post holding up a canopy 14 (paragraph [0023], 3rd line). This statement is therefore meaningless with regard to the claim limitation.

Reply Br. 4 (emphasis added). Accordingly, the combination of Reed and Johnson presented in the rejection does not satisfy claim 1's limitation of a

“central air intake” limitation that is “disposed between said lower and upper air outlets.”

Independent claims 7 and 11 require essentially the same configuration of a “central air intake,” a “lower air outlet,” and an “upper air outlet,” as claim 1. Accordingly, for essentially the same reasons discussed above, the combination of Reed and Johnson relied upon in the rejection (*see* Final Action 9–11, 12–14) does not satisfy the respective “central air intake” limitations of claims 7 and 11.

Therefore, we do not sustain the rejection of independent claims 1, 7, and 11, along with dependent claims 2–6 and 8–10 under 35 U.S.C. § 103.

DECISION

We REVERSE the Examiner’s decision rejecting claims 1–6 under 35 U.S.C. § 102(a)(1).

We REVERSE the Examiner’s decision rejecting claims 1–11 under 35 U.S.C. § 103.

REVERSED