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Stanley Black & Decker, Inc. 6201 Greenleigh Avenue, MR045 Middle River, MD 21220			FLORES SANCHEZ, OMAR	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERT S. GEHRET

Appeal 2018-000001
Application 14/252,387
Technology Center 3700

Before JOHN C. KERINS, BRANDON J. WARNER, and
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

WARNER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Black & Decker Inc. (“Appellant”)¹ appeals under 35 U.S.C. § 134(a) from the Examiner’s decision rejecting claims 1–9, which are all the pending claims.² Appeal Br. 5. We have jurisdiction over the appeal under 35 U.S.C. § 6(b). An oral hearing was held on July 8, 2019.

We REVERSE.

¹ Black & Decker Inc. is the applicant, as provided in 37 C.F.R. § 1.46, and is identified as the real party in interest. Appeal Br. 3.

² We note that claim 5 stands objected to by the Examiner, but “is not rejected over the prior art,” such that it appears to be indicated as allowable but for its dependence from a rejected base claim. Final Act. 5.

CLAIMED SUBJECT MATTER

Appellant’s disclosed invention “generally relates to circular saws and more particularly to a circular saw having a relatively deeper depth of cut capability.” Spec. ¶ 2. Claim 1, reproduced below with emphasis added, is the sole independent claim and is representative of the subject matter on appeal.

1. A circular saw comprising:
a circular saw blade having a diameter;
the saw capable of providing a depth of cut;
*a ratio of the saw blade diameter to the depth of cut
being about 2.4 to 1.*

EVIDENCE

The Examiner relied on the following evidence in rejecting the claims on appeal:

Clowers	US 4,856,394	Aug. 15, 1989
Techter	US 5,010,651	Apr. 30, 1991
Hon	US 6,026,909	Feb. 22, 2000
Kirn	US 6,148,526	Nov. 21, 2000
Okada	US 2010/0192389 A1	Aug. 5, 2010

REJECTIONS

The following rejections are before us for review:

- I. Claim 1 stands rejected under 35 U.S.C. § 102(b) as anticipated by Techter. Final Act. 2.
- II. Claims 2, 3, and 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Techter and Okada. *Id.* at 2–3.

- III. Claims 4 and 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Techter and Kirn. *Id.* at 3–4.
- IV. Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Techter, Kirn, and Hon. *Id.* at 4.
- V. Claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Techter, Kirn, and Clowers. *Id.* at 4–5.

ANALYSIS

All the claims recite a circular saw that includes a circular saw blade with a diameter, where the saw is capable of providing a depth of cut, and where “a ratio of the saw blade diameter to the depth of cut [is] about 2.4 to 1.” Appeal Br., Claims App. In other words, the claimed circular saw is asserted to be capable of providing a “deeper” cut than prior art circular saws, which Appellant contends have not been capable of achieving such a ratio of saw blade diameter to depth of cut as that recited in the claims.

In all the rejections on appeal, the Examiner relies on Techter as disclosing a circular saw capable of providing a ratio of a saw blade diameter to a depth of cut as claimed. *See* Final Act. 2–5; Ans. 2–4. Actually, the Examiner states that Techter is capable of providing a ratio of 2 (as opposed to the recited ratio of “about 2.4”), relying on Figures 6A and 6B of Techter, and explaining that the blade diameter is 8.25 inches and “*half of the blade* is below the shoe as shown in Fig. 6A.” Final Act. 2 (emphasis added). In the Answer, the Examiner clarifies that Figures 6A and 6B of Techter depict “the blade being located such that the bolt 19 is immediately adjacent the footplate 24,” such that “the blade must be located *almost half-way* past the footplate (minus the [diameter] of the bolt).”

Ans. 5 (emphasis added). Picking “a reasonable diameter size of the bolt,” and offsetting the center of the blade by such amount, the Examiner concludes that Techter is capable of making a depth of cut of 3.4375 inches to result in the claimed ratio of 2.4. *Id.*

Appellant persuasively asserts, however, that Techter’s disclosure does not support a conclusion that its saw is capable of making a depth of cut of 3.4375 inches in order to achieve the recited ratio of 2.4. *See* Appeal Br. 9–11; Reply Br. 2–4. In particular, we agree with Appellant that Figure 6A of Techter is depicting a problematic condition that would occur in the absence of Techter’s invention, rather than a workable condition (namely, bolt 19 and washer 21 would protrude below footplate 24 and would contact the workpiece to be cut), which is why the Examiner’s initial asserted ratio of 2 is unsupported.³ *See* Appeal Br. 10–11; Reply Br. 2–3; *see also* Techter, Fig. 6B (where rotation about hinge point 30 raises bolt 19 and washer 21 above footplate 24, but the resulting extent of the blade (maximum possible depth of cut) is reduced).

Given the disclosure in Techter, we agree with Appellant that the largest extent of the blade extension disclosed is 3 inches. *See* Appeal Br. 9–11; Reply Br. 2–4 (citing Techter, Figs. 3A and 5, where the scale on the adjustment bracket in Figure 3A only goes from 0 to 3 inches). Admittedly, Techter characterizes 3 inches as the “minimum distance” required to perform the cut disclosed, but the Examiner does not identify,

³ One of ordinary skill in the art would readily appreciate that less than half of the blade diameter would be functionally available for cutting since some mounting structure (such as a connecting bolt, an output spindle, etc.) must be disposed above the footplate so as not to interfere with a workpiece to be cut.

nor do we discern, any disclosure of any appreciable blade depth beyond 3 inches, let alone about a 15% increase to 3.4375 inches. Thus, the Examiner's finding that Techter discloses the asserted ratio of 2.4 is also unsupported. We note that any notion of whether it may have been obvious to one of ordinary skill in the art to shift disposition of a blade to provide a deeper cut (and thereby approach the claimed ratio) is outside the scope of the rejection before us for review.

Accordingly, as to the rejections before us relying on Techter as disclosing the claimed ratio of about 2.4, because the rejections are premised on a finding that is not supported by a preponderance of the evidence, we do not sustain them.

DECISION

We REVERSE the Examiner's decision rejecting claim 1 under 35 U.S.C. § 102(b) as anticipated by Techter.

We REVERSE the Examiner's decision rejecting claims 2, 3, and 8 under 35 U.S.C. § 103(a) as being unpatentable over Techter and Okada.

We REVERSE the Examiner's decision rejecting claims 4 and 6 under 35 U.S.C. § 103(a) as being unpatentable over Techter and Kirn.

We REVERSE the Examiner's decision rejecting claim 7 under 35 U.S.C. § 103(a) as being unpatentable over Techter, Kirn, and Hon.

We REVERSE the Examiner's decision rejecting claim 9 under 35 U.S.C. § 103(a) as being unpatentable over Techter, Kirn, and Clowers.

REVERSED