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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/837,575	08/27/2015	Frank Shaode ONG	COC.P72897A	7212

23575 7590 11/08/2018
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EXAMINER

ZEMEL, IRINA SOPJIA

ART UNIT	PAPER NUMBER
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1765

NOTIFICATION DATE	DELIVERY MODE
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11/08/2018

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte FRANK SHAODE ONG, STEFAN MUESSIG,
DARREN GAMBATESA, JAMES C. SMITH, RAYMOND FETE,
RICK PAPONETTI, and MARK A. BURY

Appeal 2018-001230
Application 14/837,575
Technology Center 1700

Before GEORGE C. BEST, JEFFREY R. SNAY, and
MERRELL C. CASHION, JR., *Administrative Patent Judges*.

CASHION, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1–20, which constitute all the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

The claimed invention is principally directed to a method of expanding expandable polymeric microspheres and a method of manufacturing a cementitious composition including expanding expandable polymeric microspheres. Spec. 1. Independent claim 1 is illustrative of the subject matter on appeal and is reproduced below:

1. A method of expanding expandable polymeric microspheres comprising contacting an aqueous slurry comprising unexpanded, expandable polymeric microspheres with steam proximate to and/or during manufacture of a cementitious composition.

Independent claims 9 and 11 are directed to methods of manufacturing a cementitious composition or cementitious article by expanding expandable polymeric microspheres as recited in claim 1.

Appellant¹ (*see generally* App. Br.) requests review of the following rejections from the Examiner's Final Action:

I. Claims 1–6 rejected under pre-AIA 35 U.S.C. § 102(b) as anticipated by Masuda (US 2009/0149559 A1, published June 11, 2009).

II. Claims 1–6 and 8 rejected under pre-AIA 35 U.S.C. § 102(b) as anticipated by Georgeau (US 4,005,033, issued January 25, 1977).

III. Claims 1–5 rejected under pre-AIA 35 U.S.C. § 102(b) as anticipated by Edgren (US 4,513,106, issued April 23, 1985).

IV. Claims 1–5 rejected under pre-AIA 35 U.S.C. § 102(b) as anticipated by Sasoi (WO 03/051793 A2, published June 26, 2003).

¹ Construction Research & Technology, GmbH is the Applicant/Appellant. Construction Research & Technology, GmbH is also identified as the real parties in interest. App. Br. 3. Appellant is a limited liability company organized under the laws of the country of Germany, and is a subsidiary of BASF SE, a corporation organized under the laws of the European Union. *Id.*

V. Claims 1–7 and 9–13 rejected under pre-AIA 35 U.S.C. § 103(a) as unpatentable over Masuda.

VI. Claims 1–6 and 8–20 rejected under pre-AIA 35 U.S.C. § 103(a) as unpatentable over Georgeau.

Appellant relies on the same line of arguments to address all anticipation rejections of independent claim 1 (Rejections I–IV) and of dependent claim 6 (Rejections I and II). *See generally* App. Br. Appellants also rely on this same line of argument to address the obviousness rejections of independent claims 1, 9, 11, and dependent claim 6 (Rejections V and VI). *Id.* Accordingly, we select claim 1 as representative of the subject matter for review on appeal and decide the appeal as to all grounds of rejection based on the arguments made by Appellant in support of patentability of claim 1.

OPINION²

Anticipation Rejections I–IV

After review of the respective positions provided by Appellant in the Appeal and Reply Briefs and the Examiner in the Final Action and the Answer, we AFFIRM the Examiner’s prior art rejections of claims 1–6 and 8 for the reasons presented by the Examiner. Because Appellant relies on the same line of argument in addressing all anticipation rejections, we focus our discussion on the anticipation rejection of claims 1 and 6 over Masuda for the purposes of this opinion with the understanding that the discussion

² We refer to the Examiner’s Non-Final Action of February 2, 2017 for the respective statements of the anticipation and obviousness rejections. *See* Final Act. 2–3.

applies equally to all anticipation rejections of these claims, as respectively presented by the Examiner. We add the following for emphasis.

Appellant does not dispute the Examiner's specific findings that Masuda describes the claimed process. Non-Final Act. 4–6; *see* App. Br. 6–8. Instead, Appellant argues the Examiner's interpretation of the recitation “proximate to and/or during manufacture of a cementitious composition” in claim 1 is unreasonable because the Examiner ignores that the contested language, as defined on page 7 of the Specification, adds meaning and life to the claim. App. Br. 7–8. According to Appellant, the cited portion of the Specification defines the contested language by disclosing that the expansion occurs at a time and place which substantially minimizes costs of providing expanded microspheres for inclusion in cementitious compositions. App. Br. 7–8. Appellant contends that the Examiner has not shown that Masuda describes this feature of claim 1. App. Br. 8.

We are unpersuaded of Examiner error for the reasons provided in the Final Action and the Answer. Moreover, in order to anticipate, a reference must identify something falling within the claimed subject matter with sufficient specificity to constitute a description thereof within the purview of § 102. *In re Schaumann*, 572 F.2d 312, 317 (CCPA 1978). It is well established that specific examples of the claimed subject matter are not necessary to establish anticipation. Rather, to anticipate, one skilled in the art must be able to “at once envisage” the claimed subject matter in the prior art disclosure. *In re Petering*, 301 F.2d 676, 681 (CCPA 1962). Further, in determining whether a reference anticipates the subject matter recited in a claim, “it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would

reasonably be expected to draw therefrom.” *In re Preda*, 401 F.2d 825, 826 (CCPA 1968).

Masuda discloses an exemplary process of making molded ceramic articles via extrusion molding from a mixture of expanded microspheres and ceramic material. Masuda ¶¶ 282–284. Given this disclosure and that Masuda discloses making a cementitious composition by mixing a base component with heat-expandable microspheres and/or hollow particulates (*id.* ¶ 182), a person of ordinary skill would have drawn a reasonable inference that Masuda envisages “contacting an aqueous slurry comprising unexpanded, expandable polymeric microspheres with steam proximate to and/or during manufacture of a cementitious composition” so the expansion of the microspheres occurs at a time and place desirable for inclusion in cementitious compositions, as argued by Appellant. Thus, Appellant has not adequately explained how the claimed invention distinguishes from this disclosure.

Accordingly, we affirm the Examiner’s anticipation rejections of claims 1–6 and 8 (Rejections I–IV) for the reasons presented by the Examiner and given above.

Obviousness Rejections V and VI

Because Appellant relies on the same line of argument used in the anticipation rejections to address the obviousness rejections of claims 1, 6, 9, and 11, we also affirm the Examiner’s obviousness (Rejections V and VI) for the reasons presented by the Examiner and given above.³

³ Appellant presented a separate argument for claim 11 concerning the prewetting of the microspheres. App. Br. 17. In response, the Examiner directed Appellant’s attention to page 8 of the Non-Final Action where the

DECISION

The Examiner's prior art rejections under 35 U.S.C. §§ 102(b) and 103(a) of claims 1–20 are affirmed.

TIME PERIOD

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

issue was addressed. Appellant did not rebut the Examiner's response in the Reply Brief. *See generally* Reply Br. Therefore, we find no error in the Examiner's response.