



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.
14/313,969	06/24/2014	Keith Alan Miller	FCA-0701CIP2	2433
36787	7590	01/29/2019	EXAMINER	
BLYNN L. SHIDELER THE BLK LAW GROUP 3500 BROKKTREE ROAD SUITE 200 WEXFORD, PA 15090			KUHFUSS, ZACHARY L	
			ART UNIT	PAPER NUMBER
			3617	
			NOTIFICATION DATE	DELIVERY MODE
			01/29/2019	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):

patents@BLKLawGroup.com
cbelleci@BLKLawGroup.com
blynn@BLKLawGroup.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KEITH ALAN MILLER

Appeal 2018-002743¹
Application 14/313,969²
Technology Center 3600

Before HUBERT C. LORIN, NINA L. MEDLOCK, and
BRADLEY B. BAYAT, *Administrative Patent Judges*.

BAYAT, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner’s final decision rejecting claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ Our Decision references Appellant’s Appeal Brief (“App. Br.,” filed July 13, 2017) and Reply Brief (“Reply Br.,” filed January 16, 2018), the Examiner’s Answer (“Ans.,” mailed November 16, 2017), and Final Office Action (“Final Act.,” mailed December 13, 2016).

² Appellant identifies “JAC Operations Inc.” as the real party in interest. (App. Br. 3).

THE INVENTION

Claim 1, reproduced below with added emphasis, is illustrative of the claims on appeal.

1. A railroad double stack container well car comprising:
 - a plurality of spaced trucks;
 - at least one railcar body supported on a pair of the trucks, each body comprising a pair of spaced end structures, each end structure supported on one truck, and a well structure extending between the end structures, wherein the well structure comprises
 - (i) a pair of top chord members extending between the end structures;
 - (ii) a pair of side sills extending between the end structures;
 - (iii) a pair of end chords extending between the side sills, one at each end of the well structure;
 - (iv) *four corner container support members, each secured to one end chord and one side sill at four corners of the well structure and each having a lower planar load supporting structure, wherein each support member is a casting and each lower planar load supporting structure extending inwardly beyond the associated end chord and side sill; and*
 - (v) a plurality of side truss members extending between one side sill and one top chord on each side.

(App. Br. 24 (Claims Appendix)).

THE REJECTIONS

The following rejections are before us for review:

- I. Claims 1–17 are rejected under 35 U.S.C. § 103(a) as unpatentable over Tyлиз et al. (US 5,085,152, iss. Feb. 4, 1992) (“Tyлиз”) and Forbes (US 6,584,912 B2, iss. July 1, 2003).³
- II. Claims 1–20 are rejected under non-statutory double patenting as being unpatentable over claims 1–20 of Miller (US 7,954,437 B2, iss. June 7, 2011) and Tyлиз.

ANALYSIS

Rejection I

In rejecting claim 1, the Examiner finds that corner reinforcement members 111 of Tyлиз meet the claimed “four corner container support members . . . each having a lower planar load supporting structure.” (Final Act. 6). According to the Examiner, “Tyлиз does not specifically identify the corner container support member 111 as a ‘lower planar load supporting structure,’ but the planar bottom structure of corner reinforcing member 111 can be broadly interpreted as a ‘lower planar load supporting structure.’” (*Id.* at 7). The Examiner explains that

[c]orner reinforcing member 111 is a structure which helps “support” the load by reinforcing other members, and it is substantially “planar.” The claims do not recite that the container makes contact with the “lower planar load supporting structure”, nor do the claims recite that this structure is a square, raised surface.

³ Claims 18–20 are subject to a non-statutory double patenting rejection, but are otherwise considered allowable over the prior art of record. Final Act. 10.

(*Id.* at 11; *see also* Ans. 4–5).

Appellant argues that Tyлиз does not disclose “four corner container support members” as called for in claim 1. (App. Br. 10–18). According to Appellant, “corner reinforcing members 111 [of Tyлиз] clearly do not support the containers and do not teach or suggest the planar load supporting structure.” (*Id.* at 13).

Responding to Appellant’s arguments in the Answer, the Examiner states:

The broadest reasonable interpretation of the “corner container support members” may include either Tyлиз’s corner reinforcing members 111 or Tyлиз’s container support members 120. Both of these members provide support and are located near the corner of the container (container support members 120 are located on beams 90). The claim language does not require that the container makes contact with the “lower planar load supporting structure.” Thus, the Examiner’s interpretation of Tyлиз’s corner reinforcing members 111 as the “corner container support members” is reasonable.

Ans. 5.

During examination, claims are to be given their broadest reasonable interpretation consistent with the specification, and the language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (citations omitted). In interpreting claim language, we apply the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the specification. This means that the words of the claim must be given their plain meaning unless the plain meaning is inconsistent

with the specification. *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989). And “[w]hen the applicant states the meaning that the claim terms are intended to have, the claims are examined with that meaning, in order to achieve a complete exploration of the applicant’s invention and its relation to the prior art.” *Id.*

Here, the plain meaning of “container support member” is a member that supports a container. This plain meaning is consistent with Appellant’s disclosure. *See, e.g.*, Spec. ¶ 37 (“Each corner container support member is a steel casting that is positioned to support a container therein.”), ¶ 39 (“Each center container support member is a steel casting that is positioned to support containers therein.”). We agree that the Examiner’s interpretation is unreasonably broad in light of the plain meaning of the claim language and Appellant’s corresponding disclosure in the Specification. Under the Examiner’s interpretation, any part of a railroad car that “helps” support a load by reinforcing other members is a “container support member,” regardless of its position or function. Although the Examiner is correct that the claim does not require “contact” with a container (Ans. 5), we do not see how that alters the plain meaning of the term “container support.” The Examiner’s unreasonably broad interpretation of the claim language appears to be focused on the term “support” in a vacuum instead of each of the claim elements as recited within the context of the claim as a whole, which defines the structural configuration of the railroad car.

Because the Examiner’s finding in *Tylisz* relies upon an interpretation that is inconsistent with the plain language of claim 1, we are persuaded of Examiner error. As Appellant points out (App. Br. 13), there is no evidence that corner reinforcing members 111 of *Tylisz* support containers. *Tylisz*

discloses that “[t]he corner reinforcement member 111 connects the end beam 39 between the side walls 27 and 28 generally and specifically interconnects the members at the side sills 69.” (Tyлиз col. 3, ll. 19–22). Each corner reinforcing member 111 is also referred to as a “corner brace 111.” (*Id.* at col. 4, l. 37). Although the Examiner is correct (Ans. 4) that corner braces 111 are located in the corners of the car in Tyлиз, the Examiner does not direct us to any evidence that Tyлиз’s corner braces 111 are positioned to support a container, as required by claim 1. To the extent that the Examiner alternatively relies on container support 120 of Tyлиз to meet this disputed limitation (Ans. 5), the Examiner does not provide sufficient analysis to support the alternative position. For example, the Examiner does not explain how container support 120 of Tyлиз is “secured to one end chord and one side sill,” as required by claim 1.

In view of the forgoing, we do not sustain the rejection of independent claim 1. For the same reasons, we also do not sustain the rejection of dependent claims 2–17. *Cf. In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992) (“dependent claims are nonobvious if the independent claims from which they depend are nonobvious”).

Rejection II

Rejection II relies on the same deficient finding in Tyлиз discussed above. (Final Act. 4–5; *see also* Ans. 7). Independent claim 18 contains a similar limitation as claim 1 (App. Br. 27 (Claims Appendix)). For the same reasons discussed above with respect to the obviousness rejection of independent claim 1, we do not sustain the rejection of claims 1–20 on the ground of non-statutory double patenting.

DECISION

The Examiner's decision to reject claims 1–17 under 35 U.S.C. § 103(a) is reversed.

The Examiner's decision to reject claims 1–20 under non-statutory double patenting is reversed.

REVERSED