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GLOBAL IP COUNSELORS, LLP David Tarnoff 1233 20TH STREET, NW Suite 600 WASHINGTON, DC 20036-2680			VALENTI, ANDREA M	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID LINK

Appeal 2018-004789
Application 13/913,625
Technology Center 3600

Before STEFAN STAICOVICI, EDWARD A. BROWN, and
ANNETTE R. REIMERS, *Administrative Patent Judges*.

BROWN, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 8, 10, and 26–30.² Appellant's representative presented oral argument on December 13, 2019. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Dorskocil Manufacturing Company, Inc. Appeal Br. 3.

² Claims 1–7, 9, 11–18, 25, and 31 are cancelled, and claims 19–24 are withdrawn from consideration. Appeal Br. 13–14 (Claims App.).

CLAIMED SUBJECT MATTER

Claim 8 is the sole independent claim on appeal, and reads:

8. An animal door system for an animal enclosure, the system comprising:

a door having a plurality of interconnected vertical and horizontal wire rods that define an outer periphery of the door;

a frame including an opening having an inner periphery and including a plurality of wire panels, each of the wire panels having a plurality of interconnected vertical and horizontal wire rods, the door being sufficiently large to cover the opening, the outer periphery of the door overlapping the inner periphery of the opening in a closed position of the door; and

a hook fixedly attached to the frame such that the hook is disposed outside the inner periphery of the opening and at least partially within the outer periphery of the door when the door is in the closed position, the hook including an entry facing in an upward direction,

the plurality of horizontal wire rods of the door being wrapped around a vertical wire rod of the frame for laterally pivoting the door in a horizontal direction to open and close the door and enabling the door to slide in the upward direction to an upward position and in a downward direction to a downward position such that the entry of the hook is capable of receiving a horizontal wire rod of the door when the door is in the closed position and in the downward position to strengthen the animal door system and the hook is fabricated from a wire rod that is curved to form a blunt tip of the hook.

Appeal Br. 13 (Claims App.).

REJECTION

Claims 8, 10, and 26–30 are rejected under 35 U.S.C. § 103(a) as unpatentable over Link (US 6,883,463 B2, issued Apr. 26, 2005), Precision Pet Products (Precision Pet Products Inc., “Wire Crates, Exercise Pens and

Accessories,” 2 pages, “published at least as early 2007”), and Schweitzer (US 2,860,886, issued Nov. 18, 1958).

ANALYSIS

In rejecting claim 8, the Examiner finds that Link discloses a wire animal crate comprising, *inter alia*, a door 52 including an outer periphery, and a frame including an opening having an inner periphery, where the door’s outer periphery overlaps the frame’s inner periphery in a closed position of the door. Final Act. 3 (citing Link Figs. 1, 4). The Examiner concedes that Link does not disclose a hook attached to the frame, as claimed. *Id.*

The Examiner finds that Precision Pet Products teaches an animal door system for an animal enclosure, comprising a door, a frame, and a hook having “a downward entry” and being disposed at least partially within the outer periphery of the door when the door is in a closed position. *Id.* According to the Examiner, the “PPP [Precision Pet Products] picture of [the] crate has a hook fixed on the top center of the door that receives . . . a horizontal wire rod of the top portion of the front cage panel[.]” *Id.* The Examiner concludes that it would have been obvious to one of ordinary skill in the art, in view of this teaching of Precision Pet Products, to modify Link’s wire animal crate by placing the hook to extend upward from the top horizontal member of the door and be disposed outside (above) the inner periphery of the opening and within the outer periphery of the door when closed. *Id.* at 4.

The Examiner also concedes, however, that Link, as modified by Precision Pet Products, does not teach that the hook is an upright hook and

also receives a horizontal wire rod of the door when the door is in the closed position, as claimed. *Id.* The Examiner relies on Schweitzer as teaching that “it is known to place a hook with an upright entry on a frame face and a door/closure with a horizontal wire member received in the upright entry of the frame hook.” Ans. 8. The Examiner concludes that it would have been obvious to a skilled artisan to further modify Link with the teachings of Schweitzer. Final Act. 5. The Examiner reasons that this modification: (1) is a simple substitution of one known hook element/orientation for another to obtain predictable results; (2) involves “[m]erely reversing the parts so that the hook on the door which receives the horizontal wire of Link as modified by PPP is reversed so that the hook is on the horizontal wire and receives the top outer periphery horizontal member of the door”; and (3) is an obvious engineering design choice that involves shifting/reversing the location of the hook from the door to the frame and reversing the orientation of the hook from upward entry to downward entry. *Id.*

Appellant contends, *inter alia*, that the applied combination does not disclose or suggest the claim limitation

the plurality of horizontal wire rods of the door being wrapped around a vertical wire rod of the frame for laterally pivoting the door in a horizontal direction to open and close the door *and enabling the door to slide in the upward direction to an upward position and in a downward direction to a downward position.*

Appeal Br. 10 (emphasis added) (hereinafter “contested limitation”).

Regarding Appellant’s position, the Examiner finds that, in Precision Pet Products, “the door is vertically slideable about the vertical wire rod of the frame enabling the door to slide in the upward direction to an upward position and in a downward direction to a downward position,” where the

entry of the hook is capable of receiving a horizontal wire rod when in the closed position and in the downward position. Final Act. 4. In the Answer, the Examiner submits that the operation of Precision Pet Products “*requires* that the door slide up and down for the hook to receive a horizontal member in the entry of the hook when the door is slid downward.” Ans. 7 (emphasis added). The Examiner further submits that the hook “engages the horizontal wire after the door slides up, rotates to a closed position, and slides down.” *Id.* The Examiner explains that Link is modified by Precision Pet Products “with a hook on the door that engages the front face wire of the enclosure when the door slides up and down via horizontal members wrapped around a vertical member.” *Id.*

Accordingly, the Examiner’s essential position is that Precision Pet Products inherently (i.e., necessarily) discloses the contested limitation. However, Precision Pet Products provides no express description of either the structure or operation of the illustrated crate. And, we are unable to determine with sufficient certainty, based only on the illustration of the wire crate, whether the wire crate has a structure that “*requires* that the door slide up and down for the hook to receive a horizontal member in the entry of the hook when the door is slid downward,” as the Examiner finds. Ans. 7 (emphasis added). Even assuming this is a *possible* operation of the illustrated wire cage, this is insufficient as “[i]nherency . . . may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.” *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999) (citations and internal quotation marks omitted). Accordingly, we are not persuaded that Precision Pet Products inherently discloses the contested limitation. As the

Examiner's proposed modification of Link is premised on Precision Pet Products disclosing this limitation, the underlying factual basis for the rejection of claim 8 is not supported by a preponderance of the evidence.

Moreover, even assuming the door of Precision Pet Products slides up and down, as the Examiner finds, the Examiner does not adequately explain how the gate of Link, as modified by Precision Pet Products, likewise slides up and down, as called for by claim 8. The Examiner modifies Link's wire animal crate to include the hook of Precision Pet Products' animal crate in the orientation taught by Schweitzer, and does not appear to further rely on any sliding characteristics of the door (gate) of Precision Pet Products' animal crate in the rejection. *See* Final Act. 3–5. In other words, it is unclear from the Examiner's stated findings whether door 52 of Link's animal crate slides up and down, as called for by claim 8, such that when door 52 is modified to include the hook of Precision Pet Products' animal crate in the orientation taught by Schweitzer, the resulting door (gate) of Link, as modified by Precision Pet Products and Schweitzer, likewise slides up and down. Thus, the Examiner's conclusion that it would have been obvious to modify Link in view of Precision Pet Products and Schweitzer to result in the claimed animal door system is not supported by an adequate factual basis. *See In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967) (holding that “[t]he legal conclusion of obviousness must be supported by facts. Where the legal conclusion is not supported by facts it cannot stand.”)

In conclusion, for the foregoing reasons, we do not sustain the rejection of claim 8, or dependent claims 10 and 26–30, as unpatentable over Link, Precision Pet Products, and Schweitzer.

DECISION SUMMARY

Claim(s) Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
8, 10, 26–30	§ 103(a)	Link, Precision Pet Products, Schweitzer		8, 10, 26–30

REVERSED