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SCA Hygiene Products AB c/o Buchanan Ingersoll & Rooney, PC 1737 King Street, Suite 500 Alexandria, VA 22314			RANDALL, JR., KELVIN L	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERT KLING

Appeal 2018-005101
Application 14/004,197
Technology Center 3600

Before MICHAEL L. HOELTER, BRETT C. MARTIN, and
LEE L. STEPINA, *Administrative Patent Judges*.

HOELTER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner’s decision to reject claims 1, 3–12, 19, and 21, which constitute all the claims pending in this application.² Appellant’s counsel presented oral

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 “SCA Hygiene Products AB.” Appeal Br. 3.

² Claims 2 and 13–18 are allowed, claim 20 is objected to. *See* Non-Final Act. 1 (Office Action Summary), 5.

argument on December 19, 2019. We have jurisdiction under
35 U.S.C. § 6(b).

We REVERSE.

CLAIMED SUBJECT MATTER

The disclosed subject matter relates “to a dispenser for disposable hygienic articles such as wipes, towels, toilet paper or soap.” Spec. 1.³ Apparatus claim 1 is the sole independent claim; is illustrative of the claims on appeal; and, is reproduced below.

1. A dispenser for disposable hygienic articles, comprising:
 - a dispenser housing for containing said articles,
 - a fastener for fastening the dispenser to a fastening surface, the fastener including a suction unit disposed on an outside of the dispenser facing the fastening surface, and comprising operating means by which the suction unit is operable so as to establish or release a sub-atmospheric pressure between the suction unit and the fastening surface,
 - a mounting bracket to which the dispenser housing is attachable, the fastener being provided for fastening the mounting bracket to the fastening surface, and
 - means for releasing the dispenser housing from the mounting bracket,
 - wherein the means for releasing are accessible from inside the housing, and the operating means are only accessible after having the dispenser housing released from the mounting bracket.

³ Appellant’s substitute Specification dated September 10, 2013 lacks both paragraph and line numbering. We thus reference Appellant’s Specification via page number only.

EVIDENCE

Name	Reference	Date
Russell	US 2,263,956	Nov. 25, 1941
Holoff et al. (“Holoff”)	US 5,087,005	Feb. 11, 1992
Titas et al. (“Titas”)	US 7,997,522 B2	Aug. 16, 2011

REJECTIONS

Claims 1, 3–10, 12, 19, and 21 are rejected under pre-AIA 35 U.S.C. § 103(a) as unpatentable over Titas and Holoff.

Claim 11 is rejected under pre-AIA 35 U.S.C. § 103(a) as unpatentable over Titas, Holoff, and Russell.

ANALYSIS

*The rejection of claims 1, 3–10, 12, 19, and 21
as unpatentable over Titas and Holoff*

Sole independent claim 1 includes the limitation of “operating means by which the suction unit is operable so as to establish or release a sub-atmospheric pressure between the suction unit and the fastening surface.” Claim 1 further recites, “the operating means are only accessible after having the dispenser housing released from the mounting bracket.”

As to the configuration of the recited “operating means,” Appellant’s Specification states,

Regarding the particular structure of the suction unit and operating means, there are many different types thereof known in the art, also for heavy loads. In the frame of the present invention it is encompassed to use any kind of suction unit and operating means currently known or still to be developed.

Spec. 5.

The Examiner primarily relies on Titas for disclosing “operating means [that] are only accessible after having the dispenser housing (14) released from the mounting bracket (3).” Non-Final Act. 3. However, the Examiner acknowledges that Titas “fails to specifically teach means for releasing the dispenser . . . comprising operating means by which the suction unit is operable so as to establish or release a sub-atmospheric pressure” as recited. Non-Final Act. 3. The Examiner relies on Holoff for such teaching and identifies “operating means (24)” as being “operable so as to establish or release a sub-atmospheric pressure.” Non-Final Act. 4.

Appellant contends, “Holoff’s screw hole 24 does not release a sub-atmospheric pressure of the suction cup 14.” Appeal Br. 10. Instead, as per Appellant, “[t]he screw hole 24 simply receives a screw 76 which fixes the handle 10 to the suction cup 14 as shown in Figs. 2, 3 and 6 of Holoff.” Appeal Br. 10; *see also* Holoff 5:28–34. Furthermore, according to Appellant, “the screw hole 24 does not even reach the suctioned area under the base 20 of the suction cup 14 and is therefore incapable of releasing a sub-atmospheric pressure between the suction unit and the wall.” Appeal Br. 10; *see also* Reply Br. 2. Appellant replicates Figures 1, 3, and 6 of Holoff to further emphasize this point. *See* Appeal Br. 11, 12; Reply Br. 3, 4. According to Appellant, “Holoff’s suction cup 14 is released using a tab 26 located on the outer periphery of the suction cup 14, as shown in Fig. 1.” Appeal Br. 11; *see also* Reply Br. 3, Holoff 3:42–46.

The Examiner responds noting “that screw hole 24 is part of a functioning adjustment system” and that this system “allows for both *increasing and releasing* the pressure of a suction cup.” Ans. 4 (emphasis added). Indeed, Holoff teaches that when the center of suction cup 14

(collinear with the longitudinal axis of screw hole 24, *see* Holoff Fig. 2) is moved “away from the surface **12**, the vacuum between the suction cup and the surface is increased.” Holoff 6:34–39. However, claim 1 is silent as to any *increase* in vacuum pressure. Instead, claim 1 recites means “to *establish or release*” the vacuum, not to increase it. Emphasis added. Holoff is silent as to screw hole 24 being employed to either “establish or release” suction pressure. Regarding the establishment of the vacuum, Holoff simply states “[w]hen the suction cup is stuck to a surface” (Holoff 3:43–44) and “[a]ssume now that the suction cup has been pressed against the surface **12**, so that a partial vacuum is formed” (Holoff 6:5–7) without any indication that screw hole 24 is especially employed in doing so. Regarding the release of the vacuum, Holoff utilizes tab 26 for this purpose, not screw hole 24, despite the Examiner’s above assertion.⁴ The Examiner thus appears to be mis-reading the teachings of Holoff, and employing claim language that is not recited.

Additionally, Appellant explains that “tab 26 is accessible behind the handle 10, and thus does not constitute operating means which are only accessible after having the dispenser housing released from the mounting bracket, as claimed.” Appeal Br. 11; *see also* Reply Br. 3 (different emphasis employed). The Examiner responds that Titas was relied upon for disclosing “means for releasing [that] are accessible from inside the housing (see Fig. 7).” Ans. 5. However, as noted above, the Examiner has mischaracterized Holoff’s screw hole 24 as establishing or releasing a

⁴ “When the suction cup is stuck to a surface, the user can easily remove the suction cup by lifting the tab **26** to release the vacuum under the base **20**.” Holoff 3:42–46.

vacuum. Further, Appellant argues that “incorporating the suction cups of Holoff with Titas’ dispenser would not have resulted in the claimed configuration.” Reply Br. 4–5. This is because the Examiner is silent as to how Holoff’s tab 26 (so to release Holoff’s vacuum) would be accessible as claimed when combined with Titas.

Accordingly, for the reasons above and based on the record presented, the Examiner has not established that the combination of Titas and Holoff would have rendered claim 1 obvious. We reverse the Examiner’s rejection of claims 1, 3–10, 12, 19, and 21 as unpatentable over Titas and Holoff.

*The rejection of claim 11
as unpatentable over Titas, Holoff, and Russell*

The Examiner relies on the additional reference to Russell for disclosing support means “for adjusting a distance between the dispenser wall and the fastening surface” as recited. Non-Final Act. 5. The Examiner does not rely on Russell for curing the defect of the combination of Titas and Holoff noted above. Accordingly, for similar reasons, we do not sustain the Examiner’s rejection of claim 11 as being obvious over Titas, Holoff, and Russell.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 3–10, 12, 19, 21	103(a)	Titas, Holoff		1, 3–10, 12, 19, 21
11	103(a)	Titas, Holoff, Russell		11

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Application 14/004,197

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
Overall Outcome				1, 3–12, 19, 21

REVERSED