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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BRENT McCURDY and MICHAEL MAURIZI

Appeal 2018-005112
Application 14/674,855
Technology Center 1700

Before N. WHITNEY WILSON, DEBRA L. DENNETT, and JANE E. INGLESE, *Administrative Patent Judges*.

WILSON, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellant[1] appeals under 35 U.S.C. § 134(a) from the Examiner's August 29, 2017 decision finally rejecting claims 19–25 and 27–34 ("Final Act."). We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We reverse.

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[1] We use the word "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42. Appellant identifies DuBois Chemicals, Inc. as the real party in interest (Appeal Br. 3).

CLAIMED SUBJECT MATTER

Appellant's disclosure relates to a chemical component mixing apparatus used in connection with a fluid source to create a concentrated solution mixture and method for using the apparatus (Abstract). The mixing apparatus includes a mixing station which includes an injector assembly including a venturi chamber with a suction port in fluid communication with it (*id.*). Details of the claimed method are set forth in claim 19, which is reproduced below from the Claims Appendix to the Appeal Brief (*emphasis added*):

> 19. A method for mixing a concentrated liquid chemical detergent solution for use with a car wash application-level delivery system, comprising:
>
> receiving a base fluid into a mixing station having an injector assembly that includes at least one venturi chamber having at least one suction port in fluid communication with the at least one venturi chamber;
>
> regulating the pressure of the base fluid to less than 40 psi;
>
> providing a source of at least one super concentrate liquid chemical detergent component in fluid communication with the injector assembly via a first tube;
>
> providing a receiving container for collection of a final concentrated liquid chemical detergent solution that is in fluid communication with the injector assembly via a second tube;
>
> mixing the at least one super concentrate liquid chemical detergent component with the base fluid in the at least one venturi chamber to create a concentrated liquid chemical detergent solution, wherein a flow of the base fluid through the at least one venturi chamber of the injector assembly draws the at least one super concentrate liquid chemical detergent component through the at least one suction port and into the flow of the base fluid; and

> dispensing the concentrated liquid chemical detergent solution into the receiving container, *wherein the dispensed concentrated liquid chemical detergent solution is suitable for use with the car wash application-level delivery system to produce an application-level dilution of the chemical detergent component*.

REJECTIONS

1. Claims 19–23, 27, 30, 31, and 33 are rejected under 35 U.S.C. § 102(b) as anticipated by Kimsey.[2]

2. Claims 24, 25, 28, 29, 32, and 34 are rejected under 35 U.S.C. § 103(a) as unpatentable over Kimsey.

DISCUSSION

Appellant does not argue any claims separately (*see*, Appeal Br. 11–13). Accordingly, our analysis will focus on the anticipation rejection of claim 19. The remaining claims will stand or fall with claim 19. 37 C.F.R. § 41.37(c)(1)(iv).

"A prior art reference anticipates a patent claim under 35 U.S.C. § 102(b) if it discloses every claim limitation." *In re Montgomery*, 677 F.3d 1375, 1379 (Fed. Cir. 2012) (citing *Verizon Servs. Corp. v. Cox Fibernet Va., Inc.*, 602 F.3d 1325, 1336–37 (Fed. Cir. 2010)). In this instance, Appellant contends that Kimsey "fails to teach a method for mixing detergent solutions where the resulting dispensed solution is suitable for use with a car wash application-level delivery system to produce an application-level dilution of the chemical detergent component" (Appeal Br.

[2] Kimsey, US 2007/0084515 A1, published April 19, 2007.

6). In particular, Appellant argues that Kimsey does not teach a method of producing a concentrated solution which may in turn be used to prepare an application-level concentrated solution, because the solution produced by Kimsey is ready for use (Appeal Br. 7–9). Appellant argues that the claim language "wherein the dispensed concentrated liquid chemical detergent solution is suitable for use with the car wash application-level delivery system to produce an application-level dilution of the chemical detergent component" means that the method must produce a solution which can be used to produce an application-level dilution (i.e. a concentrated solution) (Appeal Br. 8). According to Appellant, Kimsey's method simply produces an application-level dilution, and, thus, does not anticipate the claimed method (Appeal Br. 8–9).

The Examiner finds that "Kimsey explicitly discloses their dispensed solution is suitable for 'use' as an input to a car wash application-level delivery system for further dilution" (Ans. 10, citing Kimsey, ¶¶ 15 and 25). Paragraph 25 of Kimsey states, in part:

> Of course, it is to be understood that the particular proportions of the cleaning compositions to each other or to the amount of water flowing through the proportional mixing apparatus 20 may be varied according to the intended use and specific formulations desired by selection of the desired metering orifice to provide the intended proportions of the first and second cleaning compositions in the final mixed composition.

(Kimsey, ¶ 25). Thus, Kimsey specifically teaches that the final composition produced by its apparatus can have any desired concentration. While Kimsey's disclosure could encompass the claimed limitation ("wherein the dispensed concentrated liquid chemical detergent solution is suitable for use with the car wash application-level delivery system to produce an

application-level dilution of the chemical detergent component"), it does not specifically recite or disclose the limitation that the claimed method produces a product which can be used to produce an application level dilution.[3]

Thus, we agree with Appellant that the Examiner's finding that Kimsey anticipates claim 19 is reversibly erroneous, and we reverse the anticipation rejection of claims 19–23, 27, 30, 31, and 33. The obviousness rejection of claims 24, 25, 28, 29, 32, and 34 does not make findings or set forth reasoned conclusions as to why it would have been obvious to modify Kimsey in the manner necessary to sustain the rejection. Accordingly, we also reverse that rejection.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	References(s)/Basis	Affirmed	Reversed
19–23, 27, 30, 31, 33	102(b)	Kimsey		19–23, 27, 30, 31, 33
24, 25, 28, 29, 32, 34	103(a)	Kimsey		24, 25, 28, 29, 32, 34
Overall Outcome				19–25 and 27–34

REVERSED

[3] On the record before us, the Examiner has not made findings or set forth reasoning which would support an obviousness rejection.