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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PATRICK D. WADE

Appeal 2018-005222[1]
Application 14/832,591[2]
Technology Center 3600

Before NINA L. MEDLOCK, BEVERLY M. BUNTING, and KENNETH G. SCHOPFER, *Administrative Patent Judges*.

SCHOPFER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the rejection of claims 1–6, 8, and 10–22. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

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[1] Our decision references the Appeal Brief ("Appeal Br.," filed Oct. 30, 2017), the Reply Brief ("Reply Br.," filed Apr. 23, 2018), the Examiner's Answer ("Ans.," mailed Feb. 23, 2018), and the Non-Final Office Action ("Non-Final Act.," mailed May 31, 2017).

[2] According to Appellant, "[t]he real party in interest in this appeal is Patrick D. Wade, the inventor." Appeal Br. 3.

BACKGROUND

The Specification discloses that "[t]his invention relates to soil reclamation and, more specifically, in one or more embodiments, to methods and systems for processing dredge spoils to reclaim soil there from." Spec. ¶ 2.

CLAIMS

Claims 1, 8, and 14 are the independent claims on appeal. Claim 1 is illustrative of the appealed claims and recites:

> 1. A method for processing dredge spoils, comprising:
>
> filtering dredge spoils in filtration equipment;
>
> receiving dredge spoils from the filtration equipment in a land based mobile feed tank;
>
> pumping the dredge spoils from the land based mobile feed tank to an agitation tank;
>
> agitating the dredge spoils in the agitation tank;
>
> pumping the dredge spoils from the agitation tank to a dewatering system, wherein the dredge spoils are dewatered to generate dewatered dredge spoils;
>
> grinding the dewatered dredge spoils in a grinder; and
>
> mixing an additional material with the dewatered dredge spoils to produce a reclaimed soil selected from a group consisting of topsoil, compost, and bedding soil, wherein the additional material comprises sand and an organic additive.

Appeal Br. 11.

REJECTIONS

1. The Examiner rejects claims 1–4, 6, 8, 10, 11, and 13 under 35 U.S.C. § 103(a) as unpatentable over Kelly.[3]

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[3] Kelly et al., US 2003/0121863 A1, pub. July 3, 2003.

2. The Examiner rejects claims 5, 12, and 14–22 under 35 U.S.C. § 103(a) as unpatentable over Kelly in view of Chesner.[4]

DISCUSSION

We are persuaded of reversible error in the rejection of the independent claims because the Examiner has not established that the art of record renders obvious the addition of sand and organic materials to dredge spoils to obtain a reclaimed soil.

With respect to claim 1, for example, the Examiner finds that Kelly discloses a method for processing dredge spoils. Non-Final Act. 3. The Examiner finds that Kelly teaches producing a reclaimed soil product comprising topsoil, compost, or bedding soil because Kelly discloses a "solid portion can be used as a liner, protective cover, a daily cover, or final cap over a landfill, for strip mine reclamation, paving material for parking lots, airfield construction, road base or the like." *Id.* (citing Kelly ¶ 14). The Examiner acknowledges that Kelly does not specifically disclose adding sand and organic additive to the dredge spoils, but the Examiner finds that Kelly incorporates a reference, Studer,[5] "that teaches the method of treating dredge spoils to form structural article [sic] and further discloses adding a plurality of additives into the dredge materials." *Id.* The Examiner determines that it would have been obvious "to use sand and organic additives, since it has been held to be within the general skill of a worker in the art to select known material such as the additives claimed on the basis of

[4] Chesner et al., US 2003/0230009 A1, pub. Dec. 18, 2003.
[5] Studer, US 6,293,731 B1, iss. Sept. 25, 2001.

its suitability for the intended use as a matter of design choice." *Id.* at 3–4 (citing *In re Leshin*, 277 F.2d 197 (CCPA 1960)).

We are persuaded of error in the rejection for the reasons that follow.

First, we determine that the Examiner does not explain adequately how the art of record discloses producing a reclaimed soil. The Examiner finds that Kelly discloses a solid portion that "can be used as a liner, protective cover, a daily cover, or final cap over a landfill, for strip mine reclamation, paving material for parking lots, airfield construction, road base or the like." Non-Final Act. 3 (quoting Kelly ¶ 14). Based on this disclosure in Kelly, the Examiner finds that "Kelly's end product can be used at least for bedding soil." Non-Final Act. 10. But the Examiner does not explain how any of these uses constitute a reclaimed soil product including a bedding soil. Rather, we agree with Appellants that Kelly indicates that the solid portion is used "to form a structural article." *See Id.* at ¶ 13. In fact, Studer teaches that dredge spoils may be used to create "structural fill material, which may be used as a cap for a landfill, as the site for the construction of a building or as a paving material for parking lots, airfield construction, road base or other Department of Transportation projects." Studer col. 3, ll. 1–5. The Examiner does not explain why such structural fill materials would be considered reclaimed soil.

Because the Examiner does not explain how the art of record discloses producing a reclaimed soil, we also determine that the Examiner erred in relying on *In re Leshin* to support the conclusion of obviousness for the independent claims. Studer discloses that certain additives may be used as appropriate based on the "function of the type, composition, moisture content and contamination level of the dredged materials 28, as well as the

desired characteristics of the end products." Studer col. 6, ll. 19–41. The Examiner relies on this disclosure to determine that one of ordinary skill in the art "would have known to use additives such as sands and organic matter as taught by [Studer] since the additives are dependent on the use of the reclaimed soil." Ans. 3. The Examiner also asserts that Studer discloses using natural soil as an additive and that "most natural soil [sic] are known to contain sand and organic matter." *Id.*

However, Studer does not specifically disclose adding sand and organic additives together for any specific purpose, and as discussed, the Examiner has not established that either Kelly or Studer discloses using additives to form reclaimed soil. Thus, we agree with Appellants that this is not a situation in which one material is substituted for another based on a known suitability for a specific purpose. Rather, the proposed combination of art would require the addition of material to create a product not specifically disclosed in the art. The Examiner does not provide evidence or reasoning to show that one of ordinary skill in the art would have had a reasonable expectation of success in forming a product not disclosed in the art, i.e. the reclaimed soil, based on the art of record. *See In re Merck & Co., Inc.,* 800 F.2d 1091 (Fed. Cir. 1986). Thus, the Examiner has not provided an adequate reason with rational underpinning to support the conclusion of obviousness with respect to independent claims 1 and 8. *KSR Int'l. Co. v. Teleflex, Inc.*, 550 U.S. 398, 418 (2007).

For these reasons, we are persuaded of error in the rejections of claims 1, 8, and 14, for which the Examiner relies on the reasoning addressed above. Accordingly, we do not sustain the rejection of claims 1, 8, and 14.

For the same reasons, we do not sustain the rejections of dependent claims 2–6, 10–13, and 15–22.

CONCLUSION

We REVERSE the rejections of claims 1–6, 8, and 10–22.

REVERSED