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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SHUNMUGAM BASKAR,
MICHAEL J. GARDYNIK, CHRISTOPHER POPE,
CHRISTINA DUNG NGUYEN, and
VENKATASAMY VELUCHAMY

Appeal 2018-005422
Application 14/967,464
Technology Center 3700

Before: JENNIFER D. BAHR, JAMES P. CALVE, and
BRENT M. DOUGAL, *Administrative Patent Judges*.

DOUGAL, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ appeals under 35 U.S.C. § 134(a) from a final rejection of claims 1–4 and 7–10. 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(a). Appellant identifies the real party in interest as Ford Global Technologies, LLC. Appeal Br. 1.

CLAIMED SUBJECT MATTER

The claims are directed to an adjustable and flexible hood panel support. Claims 1 and 9 are independent. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. An apparatus comprising:

first and second pairs of legs attached to spaced locations on right and left sides of an engine compartment and connected at an upper portion of the legs; and

a support bar connected to the upper portion of the first and second pairs of legs extends transversely across the engine compartment and configured to support a hood, the support bar defining a hood striker receiving area and a pair of landing pads.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Racicot	US 4,253,210	Mar. 3, 1981
Hodges	US 5,556,084	Sept. 17, 1996
Gagnon	US 2012/0242022 A1	Sept. 27, 2012

REJECTIONS

Claims 1–3 and 7–10 are rejected under 35 U.S.C. § 102(a)(2) as being anticipated by Gagnon.

Claim 4 is rejected under 35 U.S.C. § 103 as being unpatentable over Gagnon and Hodges.

Claim 8 is rejected under 35 U.S.C. §103 as being unpatentable over Gagnon and Racicot.

OPINION

Independent claims 1 and 9 both require: “first and second pairs of legs attached to spaced locations on right and left sides of an engine compartment.” The Examiner finds that the apparatus of Gagnon is capable of being attached to *spaced locations* on the sides of an engine compartment, but that the claim does not require the apparatus to be connected to the engine compartment. Ans. 6–7; Final Act. 3, 7. The Examiner also finds that the attachment is only an intended use of the claimed apparatus and an “engine compartment” is not required by the claim. Ans. 7.

In contrast, Appellant argues that “the claims require that the apparatus is *actually* ‘attached to spaced locations on right and left sides of an engine compartment.’” Appeal Br. 3. Thus, it is argued, as the “apparatus of Gagnon is [not] itself connected to sides of the engine compartment,” it does not anticipate claims 1 and 9. *Id.*

Appellant also points to the above mentioned limitation and the claimed limitation of “a support bar . . . extends transversely across the engine compartment,” as evidence that the “engine compartment” is positively claimed and not merely related to the intended use. Reply 2–3.

We agree with Appellant that an engine compartment is required by claims 1 and 9. Though the engine compartment is not claimed in a straightforward manner, we determine that the claims require that the first and second pairs of legs be attached to an engine compartment and that the support bar extends transversely across the engine compartment. As such, an engine compartment is a required element of the claims, and it is necessary that the pairs of legs and support bar of the prior art be so positioned with respect to the engine compartment in order to satisfy all of

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the limitations of the claims, just as an accused infringing product also must include these features in order to infringe the claims.

For this reason, we do not sustain the rejection of independent claims 1 and 9, or the rejections of the dependent claims which all depend on the same reasoning.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1-3, 7-10	102(a)(2)	Gagnon		1-3, 7-10
4	103	Gagnon, Hodges		4
8	103	Gagnon, Racicot		8
Overall Outcome				1-4, 7-10

REVERSED