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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte UWE ZOLLER, CHRISTOPH WEIS, and
HERMANN GREETHER

Appeal 2018-005495
Application 14/796,138
Technology Center 3700

Before JOHN C. KERINS, WILLIAM A. CAPP, and
GEORGE R. HOSKINS, *Administrative Patent Judges*.

CAPP, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ seeks our review under 35 U.S.C. § 134(a) of the final rejection of claims 1–20 as unpatentable under 35 U.S.C. § 103(a) over Brady (US 2,014,063, iss. Sept. 10, 1935). We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ We use the word “Appellant” to refer to “Applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies Neoperl GmbH as the Applicant and real party in interest. Appeal Br. 3.

THE INVENTION

Appellant's invention relates to water faucet outlets. Spec. ¶ 4.
Claim 1, reproduced below with paragraph indentation added, is illustrative of the subject matter on appeal.

1. A sanitary installation element (106), which is arranged in a water line, embodied as a jet regulator, comprising
a body portion;
a funnel-shaped filter sieve (14) having filter openings;
a jet splitter (2), arranged downstream from the filter sieve (14), having

a plurality of openings which divide an inflowing water flow into a multiplicity of individual jets, and having

an admixing device (4) with at least one throttling or closing element (5), the at least one throttling or closing element (5) moves, under pressure of the inflowing water, from a first position to a second position counter to a restoring force,

wherein under a first water pressure, the at least one throttling element (5) is in the first position, providing a clear throughflow cross section defined by a central funnel opening (13) at a base portion of the funnel-shaped filter sieve, the funnel opening leading to a bypass duct (12) of the jet splitter thereby bypassing the filter openings and the jet splitter openings, and

wherein under a second water pressure, greater than the first and greater than the restoring force, the at least one throttling element (5) moves to a second closed position, closing off the clear throughflow cross section, thereby creating a flow path through the filter openings and the jet splitter opening.

OPINION

Appellants argue claims 1–20 as a group. Appeal Br. 7–11. We select claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner finds that Brady discloses the invention substantially as claimed except for having multiple openings that divide inflowing flow into multiple independent jets. Final Act. 2–3. The Examiner concludes that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Brady to have more than one opening. *Id.* at 3. According to the Examiner, a person of ordinary skill in the art would have done this to dispense fluid on both sides of the device and increase outflow capacity. *Id.*

Appellant first argues that Brady lacks a jet splitter, a point that is already conceded by the Examiner. Appeal Br. 8.

In response, the Examiner states that, although Brady does not split the water flow downstream of filter screen 16 and direct the resulting separated flows to multiple outlets, the Examiner’s proposed modification of Brady’s casing 17 would have resulted in Brady having two outlet 18 - type openings to become a jet splitter. Ans. 2.

The modified element 17 of Brady is being considered a jet splitter because it splits the fluid into two separate jets, one comes out opening 18 and the other comes out the second opening added by the examiner in the 103 modification.

Id.

In reply, Appellant argues that it is inappropriate for the Examiner to find obviousness over a single prior art reference. Reply Br. 2. Appellant faults the Examiner for relying on common knowledge of the person of ordinary skill to supply an element that is missing from the prior art. *Id.* (citing *Arendi S.A.R.L. v. Apple Inc.*, 832 F.3d 1355, 1362 (Fed. Cir. 2016)). Appellant criticizes the Examiner for advancing nothing more than “conclusory statements” in support of the proposed modification.

[A] person of skill in the art would not simply start making additional holes in a device without reason . . . Here, the Examiner has combined Brady only with the knowledge of a person of skill in the art, which specific knowledge had never been explained.

Id. at 4–5.

Appellant advances an overly restrictive view of the *Arendi* decision. In the more recent case of *Koninklijke Philips N.V. v. Google LLC*, 948 F.3d 1330, 1338 (Fed. Cir. 2020), the Federal Circuit distinguished *Arendi* and upheld a PTAB decision that certain claims were obvious over the prior art in light of the general knowledge of a skilled artisan.

[I]t does not follow that we ignore the skilled artisan’s knowledge when determining whether it would have been obvious to modify the prior art . . . the inquiry into whether any “differences” between the invention and the prior art would have rendered the invention obvious to a skilled artisan necessarily depends on such artisan’s knowledge.

Id. at 1337.

Brady is directed to a faucet filter. Brady, col. 1, ll. 1–12. Brady features a valve comprised of plunger 21 that is disposed in either of two positions relative to valve seat 20. *Id.* col. 2, ll. 26–41. In a first position, the valve is open, thereby allowing water to flow out of outlet 19. *Id.* In a second position, the valve is closed thereby preventing flow out of outlet 19 and directing flow through screen 16 and out of discharge outlet 18, which is formed in outer casing 17. *Id.* In operation, the opening and closing of the valve is accomplished by water pressure acting on element 11. *Id.*

The issue before us is whether it would have been obvious to add an outlet port to Brady absent some explicit teaching in a cited reference showing that it was known to provide faucets with more than one outlet

orifice. Appellant provides no evidence that adding a second outlet orifice to a water faucet requires more than ordinary skill. Furthermore, Appellant provides no evidence that adding a second orifice produces unexpected results. Thus, Appellant's sole argument, in a nutshell, is that a person of ordinary skill in the art would not have had any reason to add a second orifice to Brady. This argument is not persuasive.

It is well settled that a claimed invention may be obvious even when the prior art does not teach each claim limitation, so long as the record contains some reason that would cause one of skill in the art to modify the prior art to obtain the claimed invention. *Beckson Marine, Inc. v. NFM, Inc.*, 292 F.3d 718, 728 (Fed. Cir. 2002). In other words, a claim can be obvious even where all of the claimed features are not found in specific prior art references, where there is a showing of a reason to modify the teachings of the prior art to achieve the claimed invention. *See Randall Mfg. v. Rea*, 733 F.3d 1355, 1361–62 (Fed. Cir. 2013); *see also Broadcom Corp. v. Emulex Corp.*, 732 F.3d 1325, 1334 (Fed. Cir. 2013). For this reason, “we do not ignore the modifications that one skilled in the art would make to a device borrowed from the prior art.” *In re ICON Health & Fitness, Inc.*, 496 F.3d 1374, 1382 (Fed. Cir. 2007).

In the instant case, the failure to cite a reference that explicitly teaches a faucet with a least two outlet orifices is not indicative of Examiner error. The Supreme Court explains that the obviousness analysis “need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). This follows from recognizing that a person

of ordinary skill is also a person of ordinary creativity, not an automaton, and is presumed to know something about the art apart from what the references disclose. *Id.* at 421; *In re Jacoby*, 309 F.2d 513, 516 (CCPA 1962).

The diversity of inventive pursuits and of modern technology counsels against . . . overemphasizing the importance of published articles and the explicit content of issued patents. In many fields there may be little discussion of obvious techniques or combinations, and market demand, rather than scientific literature, may often drive design trends.

KSR, at 402.

Here, the fact that the prior art may already perform adequately does not preclude a skilled artisan from seeking to improve upon it. *See Dystar Textilfarben GmbH & Co. v. C.H. Patrick Co.*, 464 F.3d 1356, 1368 (Fed. Cir. 2006) (the desire to enhance commercial opportunities by improving a product or process is universal—and even common-sensical). A person of ordinary skill in the art would understand that, depending on the particular product application and its desired performance, a beneficial advantage may be obtained in either concentrating or dispersing flows of water into either more or fewer fluid streams. In the instant case, the Examiner finds that dispersing the water outlets over a broader area of the faucet surface is reason enough to add a second outlet. Final Act. 3. This is an adequate rationale to support the proposed modification of the rejection. *See In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (requiring an obviousness conclusion to be based on explicit articulated reasoning with rational underpinning), *cited with approval* in *KSR*, 550 U.S. at 418.

Appellant next argues that modifying Brady as proposed would accomplish nothing more than eliminating closing element 21. Reply Br. 4.

We disagree. As we understand the rejection, Brady's plunger 21 and valve seat 20 would remain in place as depicted, for example, in Figure 1. Brady, Fig. 1. The proposed modification would merely add a second discharge outlet 18 in the outer casing 17 of Brady such as, for example, at the right side of Figure 1. *Id.* Water would flow around plunger 21 and through screen 16 on the right side of Figure 1 in the same manner as illustrated on the left side of Figure 1.

Appellant next argues that Brady fails to bypass the filter and jet splitter opening. Appeal Br. 9. According to Appellant, water flows through filter screen 16 and out of discharge outlet 18 whether or not plunger 21 is seated in valve seat 20. *Id.*

In response, the Examiner explains that, in the rejection, outlet 19 is considered to be a bypass duct. Ans. 2. The Examiner explains that fluid that flows through opening 19 does not flow through the filter openings 16 or the jet splitter openings. *Id.* Therefore, according to the Examiner, such fluid bypasses the filter. *Id.* at 2–3.

Opening 19 of Brady acts just like the bypass duct 12 of the present invention . . . In figure 1 of Brady, the bypass duct (19) is open with the throttling and closing element (21) being in the upper position. Fluid now flows through the filter openings (16) and the jet splitter openings (18 and the added second opening) as well as the bypass duct (19). The fluid flowing through 19 bypasses the filter openings and the jet splitter openings. Fluid that is in the bypass duct does not flow through the screen and the jet splitter even though some outgoing fluid still flows through the screen and jet splitter . . . the claim does not require all the fluid to bypass the screen and jet splitter, just the fluid in the bypass duct.

Id. at 3.

In reply, Appellant argues that the raw water outlet 19 of Brady “never bypasses” discharge outlet 18. Reply Br. 5–6.

Appellant’s argument is tantamount to a blanket, unsubstantiated assertion that, notwithstanding whether plunger valve 20/21 is open or closed, no water passes through raw water outlet 19. This position is not supported by the record before us. Brady teaches the following:

When water is caused to flow through the faucet 4, the initial low pressure is not sufficient to force the plunger valve to its seat; therefore the raw water flows around the plunger valve and against the filter screen 16 to remove sediment therefrom and cause it to pass out through the raw water outlet 19 . . .

When the faucet is closed the reduction in pressure permits the plunger valve to rise from its seat 20, and the flow of water during the opening movement of this valve washes all sediment which may have been deposited on the filter screen during the previous filter operation.

Brady, col. 2, ll. 29–47. Outlet 19 is disposed downstream of outlet 18. *Id.* Fig 1. In order for water to reach outlet 19, water flows past screen 16 and outlet 18, without passing through them (i.e., “by-passing” them), and then flows through outlet 19. *Id.* Brady’s plunger 21, valve seat 20, and raw water outlet 19 operate in a manner that is substantially similar to closing element 5, by-pass duct 12, and central funnel opening 13 of Appellant’s invention and they both flush dirt and other particles trapped by filter elements 16 in Brady and sieve 14 in Appellant’s invention. Brady, Fig. 1, col. 2, ll. 29–47; Appellant’s Spec. ¶ 67, Figs. 21–24.

In view of the foregoing discussion, we determine the Examiner’s findings of fact are supported by a preponderance of the evidence and that the Examiner’s legal conclusion of unpatentability is well-founded. We sustain the Examiner’s unpatentability rejection of claims 1–20.

CONCLUSION

Claims Rejected	§	Reference	Affirmed	Reversed
1-20	103	Brady	1-20	

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED