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EXAMINER

BRADFORD, CANDACE L

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RORY FRICK and KIRK NELSON

Appeal 2018-005557
Application 13/856,853¹
Technology Center 3600

Before MICHAEL C. ASTORINO, PHILIP J. HOFFMANN, and
TARA L. HUTCHINGS, *Administrative Patent Judges*.

ASTORINO, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), the Appellants appeal from the Examiner's decision rejecting claims 1–14. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We REVERSE.

¹ “Inventor Rory Frick listed in the application is a real part[y] in interest in the pending appeal. Inventor Kirk Nelson has assigned his interest to Assignee Universal Ladder, LLC, which also has an interest in the appeal.” Appeal Br. 1 (filed Oct. 4, 2017).

STATEMENT OF THE CASE

Subject Matter on Appeal

The Appellants' "invention relates to the field of ladders and scaffolding, particularly ladders with platform steps and accessories that attach thereto." Spec. ¶ 1.

Claims 1 and 7 are the independent claims on appeal. Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A ladder to allow a user to access heavy equipment from the ground, the ladder convertible from a ladder configuration to a storage configuration, including:

A first and second ladder frame, each having a first end and a second end, each ladder frame including two rails connected by a plurality of support rods,

A plurality of steps, each step rotatably connected to a first support rod selected from the plurality of support rods on the first ladder frame and to a second support rod selected from the plurality of support rods on the second ladder frame, each step having a length perpendicular to the first support rod, the distance between the first and second support rods connected by each step being substantially equal to the length of each step,

The first end of the second ladder frame being pivotably connected to the heavy equipment,

The first and second ladder frames maintaining a parallel relationship as the ladder is converted from the ladder configuration to the storage configuration.

Rejections

I. Claims 1 and 7 are rejected under 35 U.S.C. § 112(b) or 35 U.S.C. § 112 (pre-AIA), second paragraph, as being indefinite.² Final Act. 4–5.

² The Examiner has withdrawn the rejection of independent claims 1 and 7 as indefinite for reasons particular to claim 1's and 7's recitation, "the distance between the first and second support rods connected by each step

II. Claims 1–14 are rejected under (pre-AIA) 35 U.S.C. § 103(a) as being unpatentable over Howlett (GB 2426029A, pub. Nov. 15, 2006), Loix (US 4,053,028, iss. Oct. 11, 1977), and Fuqua et al. (WO 2009/025642 A1, pub. Feb. 26, 2009) (hereinafter “Fuqua”). Final Act. 5–10.

ANALYSIS

Rejection I

The Examiner rejects independent claims 1 and 7 because it is unclear if “[a] first and second ladder frame, each having a first end and a second end, each ladder frame including two rails connected by a plurality of support rods,” as recited in the claims, calls for a lateral pair or a fore/aft pair of rails. *See* Final Act. 5. The Appellants argue that the foregoing recitation of claims 1 and 7 are definite. *See* Appeal Br. 5–7; Reply Br. 1–2. The Appellants contend that “just because the invention as claimed is broad and may cover more than one possible construction does not make it indefinite.” Appeal Br. 7.

We agree with the Appellants. In this case, the Examiner’s concern is directed to a matter of breadth, not indefiniteness. *See In re Gardner*, 427 F.2d 786, 788 (CCPA 1970). Thus, we do not sustain the Examiner’s rejection of claims 1 and 7 as indefinite.

Rejection II

The Examiner’s rejection of independent claims 1 and 7 relies on a finding that Howlett’s angle brackets 20, 22 correspond to the claimed

being substantially equal to the length of each step.” *See* Ans. 3; *see also* Final Act. 4 (rejecting claims 1 and 7 because “the distance” lacks sufficient antecedent basis and “the distance . . . connected” is unclear.).

“plurality of support rods.” *See* Final Act. 6, 8; *see also* Howlett 8 (“Each tread is attached at each end to an angle bracket 20, 22 best seen in Fig 7.”). We also note that the Examiner’s rejection does not rely on either Loix or Fuqua to teach a support rod. The Appellants argue that Howlett’s angle brackets 20, 22 are not “support rods.” Appeal Br. 9. Appellants contend that Howlett’s angle brackets 20, 22 “are commonly known as angles or angle irons” and “[a]ngles are not rods under any reasonable interpretation of the claim language.” *Id.* In response, the Examiner offers a dictionary definition of the term “rod,” i.e., “a thin straight piece of bar or metal.” Ans. 5, 7 (citing www.freedictionary.com). The Examiner determines that this definition reads on Howlett’s angle brackets 20, 22. *See id.* at 4–5, 7.

We agree with the Appellants. We appreciate that the Examiner provided a definition for the term “rod.” In this case, however, we view the term “angle bracket” as a term of art and determine that one of ordinary skill in the art would understand that Howlett’s angle brackets 20, 22 do not correspond to the claimed “plurality of support rods.” *See also* Appeal Br. 9; Reply Br. 4. Thus, we do not sustain the Examiner’s rejection of independent claims 1 and 7, and dependent claims 2–6 and 8–14, as unpatentable over Howlett, Loix, and Fuqua.

DECISION

We REVERSE the Examiner’s decision rejecting claims 1–14.

REVERSED