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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JONATHAN E. LEVINE, DREW S. BRIGGS,
MARTEN ANDERSSON, and THOMAS C. WILSON

Appeal 2018-005657
Application 14/821,643¹
Technology Center 2600

Before TERRENCE W. McMILLIN, KARA L. SZPONDOWSKI, and
SCOTT B. HOWARD, *Administrative Patent Judges*.

HOWARD, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Final Rejection of claims 1–23, which constitute all of the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

¹ Appellants identify New Audio LLC as the real party in interest. App. Br. 2.

THE INVENTION

The disclosed and claimed invention is directed to “audio headsets, which are wearable devices that convey sound to one or both of a user’s ears.” Spec. ¶ 1.²

Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A headset, comprising:

a headpiece;

an earpiece;

a yoke rotatably connected to the earpiece, wherein the yoke at least partially defines a channel including a constriction at which a transverse cross-sectional area of the channel is non-circular;

an arm extending between the yoke and the headpiece, wherein the arm is rotatable relative to the yoke about an axis, and wherein the arm includes a foot at least partially disposed within the channel, the foot being shaped to move through the constriction when the arm has a first rotational position about the axis relative to the yoke and to be blocked from moving through the constriction when the arm has any rotational position about the axis relative to the yoke within a range of rotational positions not including the first rotational position; and

a plug at least partially disposed within the channel, wherein the plug restricts rotation of the arm about the axis relative to the yoke to a subrange of the range of rotational positions thereby preventing movement of the foot out of the channel and corresponding separation of the arm from the yoke,

² We refer to the Specification filed Aug. 7, 2015 (“Spec.”); Final Office Action mailed May 18, 2017 (“Final Act.”); Appeal Brief filed Nov. 20, 2017 (“App. Br.”); Examiner’s Answer mailed Apr. 18, 2018 (“Ans.”); and the Reply Brief filed May 9, 2018 (“Reply Br.”).

the subrange of the range of rotational positions extending at least 10 degrees about the axis.

App. Br. 17.

REFERENCES

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

Blair et al. ("Blair")	US 8,737,668 B1	May 27, 2014
Hung	US 5,035,005	July 30, 1991

REJECTION

Claims 1–23 stand rejected under 35 U.S.C. § 103 as being unpatentable over Blair and Hung.

ANALYSIS

We have reviewed the Examiner's rejection in light of Appellants' arguments that the Examiner erred. In reaching this decision, we have considered all evidence presented and all arguments made by Appellants. We are persuaded by Appellants' arguments regarding the pending claims.

The Examiner finds "Blair teaches a headset that doesn't incorporate a plug" and "Hung teaches a headset that utilizes a plug, and was motivated to incorporate the plug to restrict motion of to a certain angular rotations, as well as, prevent of the foot out of the channel and correspondingly separation of the arm from the yoke." Ans. 3–4. According to the Examiner, one of ordinary skill in the art would be motivated to combine Blair and Hung "to control the angular rotation, and/or provide a more

secure method of preventing separation of the foot from the channel, thereby preventing inadvertent disassembly of the device during use.” Ans. 3–4.

Appellants argue “a person of ordinary skill in the art would not have been motivated to combine these features as the Examiner alleges.” App. Br. 14. According to Appellants, while “it may be possible to redesign the joint of Blair to include a retaining cap [cap 30 of Hung] instead of the disclosed retaining ring 105, this redesign would provide no apparent benefit.” App. Br. 15.

We are persuaded by Appellants’ argument. “In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness.” *In re Rijckaert*, 9 F.3d 1531, 1532 (Fed. Cir. 1993) (citing *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992)). Rejections based on obviousness must be supported by “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006), *cited with approval in KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). Based on the current record and the Examiner’s findings, we agree with Appellants that the Examiner did not provide a sufficient reasoning as to why the person of ordinary skill in the art would have taken specific teachings from the use of a cap to “enclos[e] the open end 130 of the casing” (i.e., plug to close an open channel and restrict movement), taught in Hung with the apertures 114, 116 or retaining ring 105, through which the arm extends (i.e., closed channels that do not require a plug to restrict movement), taught in Blair. Hung col. 2, ll. 28–29; *see* Blair Figs. 29, 31, col. 14, ll. 38–40. Because the closed channel of Blair performs the function of Hung’s plug, based on the

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current record, the Examiner has not identified a sufficient reason why a person of ordinary skill in the art would combine the references.

Accordingly, we are constrained on the record before us to reverse the Examiner's § 103 rejection of independent claim 1, along with the § 103 rejection of independent claims 13 and 18, which recite limitations commensurate in scope to the disputed limitation discussed above, and dependent claims 2–12, 14–17, and 19–23. *See* App. Br. 16.

DECISION

For the above reasons, we reverse the Examiner's decision rejecting claims 1–23.

REVERSED