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14/697,760	04/28/2015	David Crowther	GINS 0135 PUS2	5477

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID CROWTHER

Appeal 2018-007510[1]
Application 14/697,760
Technology Center 2800

Before KAREN M. HASTINGS, CHRISTOPHER C. KENNEDY, and DEBRA L. DENNETT, *Administrative Patent Judges*.

DENNETT, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

This is in response to a Request for Rehearing ("Req. Reh'g"), dated September 30, 2019, of our Decision, mailed August 1, 2019 ("Decision"), wherein we affirmed the Examiner's § 103(a) rejection of claims 34–60 and 65–77.

[1] We use the word "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as GII Acquisition, LLC, d/b/a General Inspection, LLC. Appeal Br. 1.

We have reconsidered our Decision, in light of Appellant's comments in the Request for Rehearing, and we find no error in the disposition of the disputed § 103(a) rejection.

In a request for rehearing, an appellant is charged with stating the points believed to have been misapprehended or overlooked by the Board. 37 C.F.R. § 41.52. We review the points of the Decision contested by Appellant and determine whether we, in fact, made an error in fact finding or applying the law, and further determine whether any error changes the outcome of the Decision when viewing all the evidence and arguments anew in light of the preponderance of the evidence standard. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992) ("patentability is determined on the totality of the record, by a preponderance of evidence with due consideration to persuasiveness of argument"); *Gardner v. TEC Sys., Inc*., 725 F. 2d 1338, 1344 (Fed. Cir. 1984) (any error concerning nonessential facts is harmless and not a basis for reversal).

We have reviewed the arguments set forth by Appellant in the Request for Rehearing. Appellant argues that the Board "misapprehended what is disclosed within the prior art." Req. Reh'g 2. Appellant contends that "the claim limitations require that both the upper and lower ends of the fastener be held, [and] that "the fastener be held in a vertical orientation." *Id.* Appellant further argues that "the Board's assertion that Reeves and Mufti collectively teach holding a fastener at both the upper and lower ends in a vertical orientation is erroneous." *Id.* These arguments are not persuasive.

With regard to Appellant's first point, Appellant argues that "there is no mention in Mufti of *securing both ends* of the fastener." *Id.* However, as

discussed in our Decision, "[n]on-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references." Dec. 8 (quoting *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986)). Reeves discloses holding a pipe (fastener) at opposite ends, e.g., by motor driven rollers (75), which support the pipe and restrict its movement. *See* Reeves Fig. 7.

Appellant argues that in Reeves "it is necessary to only clamp the first end of the pipe to be inspected . . . and leave the second end . . . exposed." Req. Reh'g. 2–3. To the extent that Appellant is arguing that "holding" in the claims requires clamping in place at both ends, we do not find support for such an interpretation in the claims or Specification. *See generally* Spec., Claims App.

With regard to Appellant's second point—that the fastener be held in a vertical orientation—we note that claim 34 recites "hold[ing] the fastener in a *generally* vertical orientation," and claim 48 recites "holding the fastener . . . in a *generally* vertical orientation." Claims App. 1, 3 (emphases added). Despite Appellant's contention, neither claim requires that the fastener be held in a *vertical* direction. *See id.* As noted in our Decision, the Examiner found that the orientation of objects is a matter of perspective, and determined that the orientation serves no particular purpose in the claimed invention. Dec. 5 (citing Final Act. 12). We agree with the Examiner's finding and conclusion.

Moreover, Appellant acknowledges that Mufti discloses orienting a fastener "within a few degrees of vertical." Req. Reh'g. 2; *see also* Mufti Fig. 2. The *generally vertical* orientation of the fastener in claims 34 and 48

does not serve to distinguish the claims from the prior art cited by the Examiner.

No persuasive merit is present in Appellant's arguments made in the Request for Rehearing. Thus, we decline to modify our decision to affirm the Examiner's § 103(a) rejection of the appealed claims.

This Decision on the Request for Rehearing incorporates our Decision and is final for the purposes of judicial review. *See* 37 C.F.R. § 41.52(a)(1).

CONCLUSION

In conclusion, based on the foregoing, this Request for Rehearing is denied with respect to making changes to the final disposition of the rejections therein.

Outcome of Decision on Rehearing:

Claims	35 U.S.C §	Reference(s)/Basis	Denied	Granted
34–60, 65–77	103(a)	Reeves, Mufti	34–60, 65–77	

Final Outcome of Appeal after Rehearing:

Claims	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
34–60, 65–77	103(a)	Reeves, Mufti	34–60, 65–77	

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)(v)(2010).

DENIED