



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/760,287	07/10/2015	Hilmar Fickert	40047-244US1	6402
69713	7590	01/30/2020	EXAMINER	
OCCHIUTI & ROHLICEK LLP			CARRILLO, BIBI SHARIDAN	
50 Congress Street			ART UNIT	
Suite 1000			PAPER NUMBER	
Boston, MA 02109			1711	
			NOTIFICATION DATE	
			DELIVERY MODE	
			01/30/2020	
			ELECTRONIC	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

INFO@ORPATENT.COM

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HILMAR FICKERT

Appeal 2018-008788
Application 14/760,287
Technology Center 1700

Before KAREN M. HASTINGS, MICHAEL P. COLAIANNI, and
JANE E. INGLESE, *Administrative Patent Judges*.

COLAIANNI, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 26–33. We have jurisdiction under 35 U.S.C. § 6(b). Oral arguments were heard in this appeal on January 23, 2020.

We REVERSE.

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 KHS GmbH. Appeal Br. 1.

Appellant's invention is directed to methods for the treatment of kegs, and in particular, managing energy usage during keg treatment (Spec². 1:9–10; Claim 26).

Claim 26 is representative of the subject matter on appeal:

26. A method for treating an interior of a keg using a keg treatment machine, said method comprising
a first treatment-step,
a second treatment-step, and
a heat-recovery step selected from the group consisting of a first heat-recovering step, a second heat-recovering step, and a third heat-recovering step,
wherein said second treatment-step follows said first treatment step sequentially in time,
wherein said heat-recovery step occurs during operation of said keg-treatment machine,
wherein said first treatment-step occurs after said keg has been emptied of filling-product residue,
wherein said first treatment-step comprises treating said interior with a first liquid treatment-medium,
wherein said first liquid treatment-medium comprises mixed water at a first temperature,
wherein said second treatment-step comprises treating said interior of said keg with a second treatment-medium,
wherein said second treatment-medium comprises water at a second temperature,
wherein said second temperature is higher than said first temperature,
wherein said first heat-recovering step comprises exclusively using, in said second treatment-step, heat energy that has been recovered from first treatment medium that has been used in said first treatment-step,
wherein said second heat-recovering step comprises using heat energy that has been recovered from first treatment-medium

² We refer to the Specification filed January 6, 2017.

that has been used in said first treatment-step to carry out pre-heating of treatment-medium conducted to a first tank, and wherein said third heat-recovering step comprises using, for said second treatment-step, heat energy recovered from waste gas that has been used during said first treatment-step.
Italic emphasis added to highlight limitations in dispute.

Appellant appeals the following rejection:

Claims 26–33 are rejected under 35 U.S.C. § 112(a) as failing to comply with the written description requirement.

Appellant argues the claims 26, 27, 28, 30, 31, and 33 separately (Appeal Br. 5–12). The Examiner, however, withdrew the rejection claims 28, 31, and 33 (Ans. 5). The rejection of claims 28, 29, and 31–33 will stand or fall with claim 26, from which each claim depends. Claims 26, 27, and 30 will be separately addressed.

Appellant also argues that the Examiner’s objection under 35 U.S.C. §132(a) to the addition of the sentence “Providing different treatment media at **different temperatures** consumes a great deal of energy” as new matter should be considered on appeal because it relates to matters involving the rejection of claims (Final Act. 3–4; Appeal Br. 3–4; Reply Br. 6). Appellant cites *In re Hengehold*, 440 F.2d 1395, 1403 (CCPA 1971) as support for this position (Reply Br. 6).

The Board may consider the merits of an objection for new matter under § 132 where the objection is “determinative of the rejection.” *Hengehold*, 440 F.2d at 1403. In this case, the merits of whether the disputed sentence constitutes new matter in the context of the background section of the Specification is unrelated to the Examiner’s §112(a) rejection. The § 112(a) written description rejection is based upon support for the three

recited heat-recovering steps, which is not specifically tied to Appellant's single sentence addition to the background section of the disclosure. Because the resolution of the new matter objection is not "determinative of the rejection," we refrain from exercising our authority to consider this petitionable matter. *See Manual of Patent Examining Procedure* (MPEP) § 1201. ("The line of demarcation between appealable matters for the Board and petitionable matters for the Director of the U.S. Patent and Trademark Office (Director) should be carefully observed. The Board will not ordinarily hear a question that should be decided by the Director on petition, and the Director will not ordinarily entertain a petition where the question presented is a matter appealable to the Board.").

FINDINGS OF FACT & ANALYSIS

CLAIM 26

The Examiner's findings regarding the written description rejection are located on pages 6 to 7 of the Final Action. The Examiner finds that the claim 26 limitations directed to a first, second, and third heat recovering step constitute new matter (Final Act. 6). The Examiner construes claim 26 as requiring that the "first treatment step" refers to reference number 3.2 in Figure 1 and the "second treatment step" corresponds to reference number 3.5 in Figure 1 (Ans. 8). Appellant does not contest this claim construction³

³ Appellant refers to reference number 3.4 as the "second treatment step" (Reply Br. 2). However, Appellant's renumbered position 3.4 and 3.5 during prosecution in a substitute Specification filed July 10, 2015. It appears that Appellant misstates the second treatment step at position 3.4 in Figure 1. Our understanding is supported by Appellant's statement that the "[a person] that follows where the energy carried by the water at $T=T6$ goes

(Reply Br. 2). The Examiner finds that Appellant's citation to page 11, lines 11–14 in the Specification does not support the three heat recovery steps (Ans. 8–9). The Examiner finds that there is no teaching or suggestion in the portion of page 11 cited by Appellant that heat energy recovered from the first treatment medium is used in the second treatment step (Ans. 8–9). The Examiner makes similar finding regarding the second and third heat recovering steps (Ans. 9–11).

Appellant argues that Figure 1 supports that the water used in the heating device 9 can be traced back to the treatment position 3.2, which is the first treatment step (Reply Br. 2). Appellant contends that tracing the water path in Figure 1 shows that the energy flow makes its way to hot water tank 4.2 and ultimately to the second treatment step 3.5 (Reply Br. 2). Appellant argues that Figure 1 shows that the only recovered heat energy that is used in the second treatment step is the heat recovered from the first treatment medium (Reply Br. 2–3). Appellant contends that this understanding would be consistent with the recitation that the first heat-recovery step includes “exclusively using” heat energy that was recovered from the first treatment medium (Reply Br. 3). Appellant argues that the additional heat from an outside source must be added at heater 9 in order for temperature T2 to be greater than T1 (Reply Br. 3). Appellant explains that the additional heat from the outside would not be considered recovered heat, such that the only source of recovered heat comes from the first treatment

would see that it eventually makes its way to hot-water tank 4.2 and ultimately to the treatment position 3.4, which would be where the ‘second treatment step’ occurs” (Reply Br. 2). Station 3.4 as relabeled does not have a connection to the water line, but station 3.5 does. *See*, Figure 1.

media (Reply Br 3). Appellant contends that the use of the heat exchanger 8 where waste gases from the tanks 4.1 and 4.2, exterior keg cleaning station 3.1 and media tanks as shown in Figure 2 are conveyed to it via ventilator 11 (e.g., blower), may not be used (Reply Br. 3). Appellant argues that ventilator 11 is not required to be turned on during operation of the heat recovery (Reply Br. 3). Appellant contends that when the ventilator is not used then the sole source of recovered heat is from the first treatment media as required by the first heat recovering step (Reply Br. 3). Appellant contends that the claim language “said first heat-recovering step comprises” permits the use of additional heat from an outside source, but limits the recovered heat used to only that provided by the first treatment media (Reply Br. 4).

Appellant further contends that the second heat-recovering step is supported by Figure 1 that shows that the treatment medium used in the treatment position 3.2 is conducted eventually to mixed water tank 4.1 via pipe connections 17.1, 14, and 24 (Reply Br. 5). Appellant contends that the heat energy from the first treatment medium is ultimately used to heat water that is fed to tank 4.1 as shown in Figure 1 (Reply Br. 5).

Appellant argues that third heat recovery step is supported by Figures 1 and 2 that show that waste gas heat provides heat to treatment medium that will ultimately be used in the “second treatment step” (Reply Br. 5). Appellant argues that Figure 2 shows that the tank 4.1, which provides treatment medium to the first treatment step 3.2, provides waste gas to the heat exchanger 8 (Reply Br. 5–6).

To satisfy the written description requirement, a patent specification must describe the claimed invention in sufficient detail that one skilled in the

art can reasonably conclude that the inventor had possession of the claimed invention. *See, e.g., Moba, B.V. v. Diamond Automation, Inc.*, 325 F.3d 1306, 1319 (Fed. Cir. 2003). An applicant shows possession of the claimed invention by describing the claimed invention with all of its limitations using such descriptive means as words, structures, figures, diagrams, and formulas that fully set forth the claimed invention. *Lockwood v. Amer. Airlines, Inc.*, 107 F.3d 1565, 1572 (Fed. Cir. 1997). In the present case, we find that the preponderance of the evidence favors Appellant's argument that the Specification provides written descriptive support for the claimed subject matter. We agree with Appellant's response in the Reply Brief that Figures 1 and 2 in combination with the Specification provide written descriptive support for the first, second, and third heat recovery steps as recited in claim 26. The Examiner points out that the portions cited by Appellant do not match with claim limitations in dispute, but the Examiner does not explain how Figure 1 fails to provide written descriptive support for the disputed claim limitations. Our review of Figure 1 and the supporting written description in the Specification finds that Appellant has shown possession of the three heat recovery steps as recited in claim 26.

In particular, we find that the three heat recovery steps are recited in claim 26 as a Markush group. Accordingly, the claim may be satisfied by any one or all of the heat recovery steps. This construction supports Appellant's argument that when the third heat recovery step does not occur, then the first heat recovery step is met. We reverse the Examiner's § 112(a) rejection of claims 26, 28, 29, and 31–33.

CLAIM 27

Claim 27 depends from claim 26 and recites:

wherein said third heat recovering step comprises passing said treatment-medium through a first heat exchanger, wherein said first heat-exchanger comprises a cyclone heat-exchanger, and passing said first treatment-medium that has been used in said first treatment step through said cyclone heat-exchanger.

The Examiner finds that claim 27 lacks written descriptive support because it is “unclear how the third recovery step, comprises passing the treatment medium through the first heat exchanger (reference number 6 in Figure 1) since the third heat recovery step refers to element 8 in Figure 1 (Ans. 11–12).

Although the Examiner finds that it is “unclear” how the third recovery step comprises passing treatment medium through a cyclone heat exchanger, we note that Figure 1 depicts that the treatment medium 13 is fed to heat exchanger 8 via heat exchanger 7, and cyclone heat exchanger 6 and the first treatment medium 17.1 is fed to the cyclone heat exchanger to transfer heat from the first treatment medium to the fresh treatment medium (Spec. 9:8–13). In other words, the heat transfer at cyclone heat exchanger 6 may be considered part of the third heat-recovery step.

We reverse the Examiner’s § 112(a) rejection of claim 27.

CLAIM 30

Claim 30 depends from claim 28 and recites:

wherein said third heat recovering step comprises passing treatment medium from said second heat exchanger through a third heat-exchanger, passing waste air through said third heat-

exchanger, and causing heat transfer between said waste air and said treatment medium.

Appellant contends that originally filed claim 5 supports that the subject matter of claim 30 (Appeal Br. 10).

The Examiner finds that originally filed claim 5 does not teach “causing heat transfer between said waste air and said treatment medium” (Ans. 12).

We find that Appellant’s Figure 1 shows that the treatment media originating at 13 makes its way through the heat exchangers 7 and 8. Figure 2 shows that the waste gases in waste air line 12 provide heat to the heat exchanger 8. In other words, Appellant’s Figures and description show that the treatment medium passes through heat exchanger 8 where waste gases provide heat to the treatment medium (Spec. 8:16–19).

We reverse the Examiner’s § 112(a) rejection of claim 30.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
26–33	112(a)	Written Description		26–33

REVERSED