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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GEOFFREY YORK and ESAK SHADUDIN

Appeal 2018-009055
Application 14/929,475
Technology Center 1700

BEFORE BRADLEY R. GARRIS, KAREN M. HASTINGS, and
DONNA M. PRAISS, *Administrative Patent Judges*.

HASTINGS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ requests our review under 35 U.S.C. § 134(a) of the Examiner's decision rejecting claims 23, 24, 26–31, 33, 35–37, and 40–45 under 35 U.S.C. § 103 as unpatentable over the combined prior art of Hansen (US 2008/0187638 A1; published Aug. 7, 2008) and Ishikawa (JP 2008-307846 A; Dec. 25, 2008; as translated).²

¹ We use the word “Appellant” to refer to the “Applicant” as defined in 37 C.F.R. § 1.42(a). Appellant is Kraft Foods R&D, Inc., while Kloninklijke Douwe Egberts B. V. is identified as the real party in interest (Appeal Br. 3).

² Appellant canceled claims 12, 17–19, 38, and 39 in an amendment entered by the Examiner (Advisory Action mailed March 13, 2018).

We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM.

CLAIMED SUBJECT MATTER

Claim 23 is illustrative of the subject matter on appeal (emphasis added to highlight key disputed limitations):

23. A beverage cartridge comprising:
- an outer member including a first material and a second material, *the second material being encased within the first material*;
 - a closed end portion of the outer member;
 - an open end portion of the outer member opposite the closed end portion, the open end portion including an opening;
 - an annular wall of the outer member extending intermediate the closed and open end portions, wherein the first and second materials are present in the annular wall;
 - a flange of the outer member open end portion extending about the opening and radially outward from the annular wall, *wherein only the first material is present in the flange*;
 - an interior of the outer member;
 - a filter in the interior of the outer member; and
 - a lid welded to the flange of the outer member where only the first material is present.

Independent claim 33 is also directed to a beverage cartridge similar to that of claim 23 (Claims Appendix). Appellant relies upon the same arguments for claim 33 as for claim 23 (Appeal Br. 13).

OPINION

Upon consideration of the evidence of record and each of Appellant's contentions as set forth in the Appeal Brief, as well as the Reply Brief, we determine that Appellant has not demonstrated reversible error in the

Examiner's rejections (*e.g.*, *generally* Ans.). *In re Jung*, 637 F.3d 1356, 1365–66 (Fed. Cir. 2011) (explaining the Board's long-held practice of requiring Appellant(s) to identify the alleged error in the Examiner's rejection.). We sustain the rejections for the reasons expressed by the Examiner in the Final Office Action and the Answer.

We add the following primarily for emphasis.

It has been established 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); *see also In re Fritch*, 972 F.2d 1260, 1264–65 (Fed. Cir. 1992) (a reference stands for all of the specific teachings thereof as well as the inferences one of ordinary skill in the art would have reasonably been expected to draw therefrom).

Appellant contends that the prior art leads away from the claimed invention because it was known to be difficult to co-injection mold a complex shape such as Hansen's Fig. 2 (Appeal Br. 10–11; Reply Br. 5–8). Appellant also argues that the Examiner has failed to establish a reason why one would have modified outer member 2 of Hansen's beverage container to have the gas barrier layer, but not have it extend through Hansen's flange 35 (Appeal Br. 12; Reply Br. 9). We do not find these arguments persuasive for the reasons set forth by the Examiner (Ans. 8–10).

Notably, claim 23 (as well as claim 33) is directed to the product apparatus of a beverage cartridge. It is also devoid of any product-by-process limitations. Notably, Ishikawa discusses other known methods to make multilayered container walls (*e.g.* Ishikawa translation ¶¶ 3–10).

Indeed, Appellant's Specification states that methods other than co-injection molding were known to make multilayer laminates of different materials (Spec. ¶ 13). Thus, Appellant's arguments regarding how the cartridge product may or may not be made are immaterial, absent evidence that one of ordinary skill in the art could not have made it by *any* method (*see also*, Ans. 8, 9).

Appellant's arguments that the Examiner has failed to establish any reason to not have the gas barrier material in the flange of Hansen are not persuasive of error as they fail to consider the applied prior art as a whole and the inferences that one of ordinary skill would have made. There is no dispute with the Examiner's finding that the benefit of a gas impermeable polymeric material/barrier as exemplified by Ishikawa within the wall of a polymeric beverage container is to maintain the freshness of its contents (e.g., coffee grounds) (Briefs generally). As pointed out by the Examiner, Ishikawa at Fig. 2 clearly exemplifies that such a gas barrier material may **not** be present in the flange of the beverage container (Ans. 9, 10).

Thus, Appellant has not shown error in the Examiner's position that it would have been obvious for one of ordinary skill to have made the beverage container of Hansen such that the flange of Hansen had "only the first material" present in the flange as recited in claims 23 and 33. *See KSR*, 550 U.S. at 417 (the predictable use of known prior art elements performing the same functions they have been known to perform is normally obvious; the combination of familiar elements is likely to be obvious when it does no more than yield predictable results); *Ball Aerosol and Specialty Container, Inc. v. Limited Brands, Inc.*, 555 F.3d 984, 993 (Fed. Cir. 2009) (under the flexible inquiry set forth by the Supreme Court, the PTO must take account

of the “inferences and creative steps,” as well as routine steps, that an ordinary artisan would employ).

Accordingly, we sustain the Examiner’s rejection of independent claims 23 and 33, as well as all claims dependent thereon, noting that no claims are separately argued (Appeal Br. 12, 13).

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
23, 24, 26–31, 33, 35–37, 40–45	103	Hansen, Ishikawa	23, 24, 26–31, 33, 35–37, 40–45	

TIME PERIOD FOR RESPONSE

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