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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* VERNON DWAIN HUTCHINS

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Appeal 2018-009157  
Application 14/645,229  
Technology Center 3600

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Before MICHAEL L. HOELTER, ANNETTE R. REIMERS, and  
LISA M. GUIJT, *Administrative Patent Judges*.

REIMERS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant<sup>1</sup> appeals under 35 U.S.C. § 134(a) from the Examiner's  
decision to reject claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> 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 Vernon Dwain Hutchins. Appeal Brief (“Br.”) 2, filed Apr. 30, 2018.

### CLAIMED SUBJECT MATTER

The claimed subject matter “relates generally to an apparatus for a curtain” and more specifically, “a custom curtain hanger system.” Spec. 1:10–11, Figs. 1–3. Claims 1, 14, and 20 are independent.

Claim 1 is illustrative of the claimed subject matter and recites:

1. A custom curtain hanger system comprising:
  - a curtain hanger mount;
  - a curtain holder;
  - a hanger rod;
  - the curtain hanger mount comprising a hanger body, a first opening, a first receiving volume and an attachment mechanism;
  - the curtain holder comprising a holder body, a second opening and a second receiving volume;
  - the attachment mechanism being integrated into the hanger body;
  - the first opening traversing along the hanger body;
  - the first receiving volume being delineated by the hanger body and the first opening;
  - the second opening traversing along the holder body;
  - the second receiving volume being delineated by the holder body and the second opening;
  - the curtain holder being positioned within the first receiving volume;
  - the hanger rod being positioned within the second receiving volume;
  - the hanger body comprising an open end;
  - the curtain holder being capable of being inserted into the first receiving volume through the open end of the hanger body;
  - and
  - a cross-section of the holder body being approximately a cross-section of the hanger body.

## THE REJECTIONS

- I. Claims 1–20 stand rejected under 35 U.S.C. § 112(b) as indefinite.
- II. Claims 1–8, 10, 12–17, and 19 stand rejected under 35 U.S.C. § 102(a)(1) as anticipated by Kish (US 1,020,988, issued Mar. 26, 1912).
- III. Claims 9, 11, 18, and 20 stand rejected under 35 U.S.C. § 103 as unpatentable over Kish and Daniels (US 2011/0139381 A1, published June 16, 2011).

## ANALYSIS

### *Rejection I – Indefiniteness*

The Examiner finds that the phrase “a cross-section of the holder body being approximately a cross-section of the hanger body” renders independent claims 1, 14, and 20 indefinite because it is unclear “as to what the required configuration of the hanger body and the holder body is.” Final Act. 2.<sup>2</sup> The Examiner questions: (1) “[w]hat constitutes a cross-section ‘being approximately’ another cross-section”; (2) whether the cross-sections are required to be the same size, identical, or have the same general shape; (3) whether the cross-section of the holder body is required to be positioned within the cross-section of the hanger body; (4) whether “they [are] integral/unitary with each other”; and (5) whether “they [are] required to have overlapping/intersecting cross-sections.” *Id.*

Appellant contends that the independent claims are not indefinite with respect to the limitation at issue because of the disclosure at page 6, lines 18–22 of the Specification. Br. 17.

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<sup>2</sup> Final Office Action (“Final Act.”) dated Sept. 19, 2017.

A claim is properly rejected as being indefinite under 35 U.S.C. § 112, second paragraph if, after applying the broadest reasonable interpretation in light of the specification, the metes and bounds of a claim are not clear because the claim “contains words or phrases whose meaning is unclear.” *In re Packard*, 751 F.3d 1307, 1310 (Fed Cir. 2014).

Because the term “cross-section” is defined as “a cutting or piece of something cut off at right angles to an axis,”<sup>3</sup> the cross-section can thus relate to shape or size. The Examiner’s questions (1)–(5) as reiterated above concern breadth, rather than clarity. However, we note that breadth is not indefiniteness. *See SmithKline Beecham Corp. v. Apotex Corp.*, 403 F.3d 1331, 1341 (Fed. Cir. 2005).

The term “approximate” is defined as “nearly correct or exact.”<sup>4</sup> Thus, the term “approximately” is a term of degree. When a “word of degree” is used, the patent application must provide a standard for measuring that degree. *Enzo Biochem, Inc. v. Applera Corp.*, 599 F.3d 1325, 1332 (Fed. Cir. 2010), quoting *Seattle Box Co., Inc. v. Indus. Crating & Packing, Inc.*, 731 F.2d 818, 826 (Fed. Cir. 1984). The definiteness of a term of degree is problematic if its baseline for comparison is unclear to those of ordinary skill in the art. *Liberty Ammunition, Inc. v. United States*, 835 F.3d 1388, 1395 (Fed. Cir. 2016).

The Specification discloses that “the cross-section of the holder body **20** is *approximately* that of the hanger body **10**, such that when the holder

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<sup>3</sup> <https://www.merriam-webster.com/dictionary/cross%20section> (last accessed Aug. 30, 2019).

<sup>4</sup> <https://www.merriam-webster.com/dictionary/approximate> (last accessed Aug. 30, 2019).

body **20** is positioned into the first receiving volume **15**, the curtain holder **2** *is securely held in place within* the first receiving volume **15**.” Spec. 6:18–21 (italics added); *see also* Br. 17. Thus, the Specification provides a standard for measuring the degree of the claim phrase “a cross-section of the holder body being approximately a cross-section of the hanger body” because the term “approximately” is described in relation to the cross-sections of the holder body and the hanger body as being a holder body that “is securely held in place within” the receiving volume of the hanger body. As such, we determine that the meaning of phrase “a cross-section of the holder body being approximately a cross-section of the hanger body” is clear.

Accordingly, we do not sustain the rejection of claims 1, 14, and 20, and claims 2–13 and 15–19 depending therefrom under 35 U.S.C. § 112(b) as indefinite.

#### *Rejection II – Anticipation by Kish*

Appellant argues independent claims 1 and 14 as a group. *See* Br. 10–16. Appellant does not offer arguments in favor of claims 2–8, 10, 12, and 13 separate from those presented for independent claim 1, nor of claims 15–17 and 19 separate from those presented for independent claim 14. *See id.* We select claim 1 as the representative claim, and claims 2–8, 10, 12–17, and 19 stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner finds that Kish discloses a custom curtain hanger system having all the limitations of claim 1. Final Act. 3 (citing Kish Figs. 6, 8, 10). More particularly, the Examiner finds that Kish discloses that its custom curtain hanger system comprises a cross-section of a holder body

(resilient clamping member 34) being approximately a cross-section of a hanger body (section 16, hinge 18, and section 17), as claimed. Final Act. 3 (citing Kish Fig. 8).

Appellant points out that the Specification discloses that “a diameter of a cross-section of the holder body 20 is approximately equal to a diameter of a cross-section of the hanger body 10,” and that “the first distal edge 120 and the first edge 200 contacting against each other and the second distal edge 130 and the second edge 201 contacting against each other [are] achieved by the second opening 21 being variable in size.” Br. 14–15 (citing Spec. Fig. 2). Appellant contends that

[c]onversely, in Kish, the first distal edge and the first edge do not contact against each other, and the second distal edge and the second edge do not contact against each other, since a diameter of a cross-section of the holder body 34 is much smaller than a diameter of a cross-section of the hanger body 16. Consequently, in Kish, the holder body 34 is not snapped into place within the hanger body 16.

*Id.* at 16.

As an initial matter, claim 1 does not compare diameters of cross-sections, does not require a particular edge contacting another edge, does not recite an opening that is variable in size, and does not require a holder body configured to be snapped into place within a hanger body. *See* Ans. 6–8.<sup>5</sup> *See In re Self*, 671 F.2d 1344, 1348 (CCPA 1982) (“[A]ppellant’s arguments fail from the outset because . . . they are not based on limitations appearing in the claims.”). As discussed above, the Specification describes that “the cross-section of the holder body **20** is *approximately* that of the hanger body

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<sup>5</sup> Examiner’s Answer (“Ans.”), dated June 21, 2018.

**10**, such that when the holder body **20** is positioned into the first receiving volume **15**, the curtain holder **2** *is securely held in place within* the first receiving volume **15**.” Spec. 6:18–21 (italics added). We thus construe the limitation “a cross-section of the holder body being approximately a cross-section of the hanger body” as being cross-sections of a holder body and a hanger body having dimensions such that the holder body “is securely held in place within” the receiving volume of the hanger body. *See* Br. 19 (Claims App.).

Kish’s Figure 8 clearly shows a holder body (resilient clamping member 34) held in place within the receiving volume of a hanger body (section 16, hinge 18, and section 17). *See* Kish Fig. 8. The term “securely” is defined as “not liable to fail, yield, become displaced.”<sup>6</sup> Kish’s Figures 6–8 show resilient clamping member 34 being securely held in place within the volume formed by section 16, hinge 18, and section 17 because resilient clamping member 34 is not liable to fail, yield, or become displaced via its dimension and via rod 22, screws 29, and caps 30. *See* Kish Figs. 6–8. In other words, the cross-sections of Kish’s clamping member 34 and of the combination of section 16, hinge 18, and section 17 have dimensions such that clamping member 34 “is securely held in place within” the receiving volume formed by section 16, hinge 18, and section 17. As such, we agree with the Examiner that Kish discloses a custom curtain hanger system comprising a cross-section of a holder body being approximately a cross-section of a hanger body, as claimed.

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<sup>6</sup> <https://www.dictionary.com/browse/secure> (last accessed Aug. 30, 2019).

In summary, and based on the record presented, we are not persuaded the Examiner erred in rejecting independent claim 1 as anticipated by Kish. Accordingly, we sustain the Examiner's rejection of claim 1 as anticipated by Kish. We further sustain the Examiner's rejection of claims 2–8, 10, 12–17, and 19, which fall with claim 1.

*Rejection III – Obviousness over Kish and Daniels*

Concerning independent claim 20, Appellant relies on the same arguments discussed above for claims 1 and 14. *See* Br. 10–16. Appellant does not provide any substantive arguments for this rejection and appears to rely on arguments for parent claims 1 and 14, from which claims 9, 11, and 18 depend. *Id.* As we find no deficiencies in the Examiner's rejection of independent claims 1 and 14 as anticipated by Kish for the reasons discussed above, we likewise sustain the Examiner's rejection of claims 9, 11, 18, and 20 as unpatentable over Kish and Daniels.

DECISION

We REVERSE the decision of the Examiner to reject claims 1–20 under 35 U.S.C. § 112(b) as indefinite.

We AFFIRM the decision of the Examiner to reject claims 1–8, 10, 12–17, and 19 as anticipated by Kish.

We AFFIRM the decision of the Examiner to reject claims 9, 11, 18, and 20 as unpatentable over Kish and Daniels.

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No time period for taking any subsequent action in connection with this appeal may be extended according to 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED