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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL MÖLLER and SVEN ROHDE

Appeal 2019-000285
Application 15/372,994
Technology Center 1700

Before MICHAEL P. COLAIANNI, GEORGE C. BEST, and
DEBRA L. DENNETT, *Administrative Patent Judges*.

COLAIANNI, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ appeal under 35 U.S.C. § 134 the final rejections of claims 1–4, 8, 10, 15–20, 22, 26, 28, and 29. Claims 6, 9, and 21 are withdrawn. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

We AFFIRM.

The invention is directed to a thermally insulating spacer profile made of a plastics material for façade or glass roof constructions and elements for windows and doors. Spec. ¶ 2. Spacer profiles are said to fill gaps between

¹ According to the Appeal Brief, the real party in interest is “Ensinger GmbH.” Br. 1.

adjacent glass panes or panels of façade and glass roof constructions. *Id.*
at 3.

Claim 1 is illustrative:

1. A thermally insulating spacer profile made of a plastics material, comprising: a basic body extending in a longitudinal direction of the spacer profile with an outer contour which is substantially rectangular or trapezoid-shaped in a cross-section perpendicular to the longitudinal direction;

wherein the basic body comprises a first transverse wall and a second transverse wall which are connected to one another by a single side wall element and are held at a pre-set spacing h ;

wherein the side wall element comprises at least one portion which is arranged substantially perpendicularly to the first transverse wall or the second transverse wall;

wherein the side wall element ends with a first end at a first edge region of the first transverse wall and with a second end at a first edge region of the second transverse wall;

wherein the side wall element forms a path for thermal conduction from the first transverse wall to the second transverse wall, said path having a length approximately

1.1 or more times the spacing h ;

and comprising a strip-like anchoring protrusion which is held on the first transverse wall and which extends from the basic body in a direction opposite to the second transverse wall; and

wherein the spacer profile comprises, in cross-section, on at least one of the first and second transverse walls and/or on at least one of the portions of the side wall element, a profiling which is configured as a screw guide.

Appellants appeal the following rejections:

1. Claims 1–4, 8, 10, 19, 22, and 26 are rejected under 35 U.S.C. § 103 as unpatentable over Lafond (US 5,658,645, issued Aug. 19, 1997) in view of DE 29900770 U1 (published June 10, 1999, and relying on a

- translation dated Oct. 11, 2016, “’770”), and Givoni et al. (US 8,650,827 B2, issued Feb. 18, 2014, “Givoni”).
2. Claim 15 is rejected under 35 U.S.C. § 103 as unpatentable over Lafond in view of ’770, Givoni, and Siodla et al. (US 2008/0256893 A1, published Oct. 23, 2008, “Siodla”).
 3. Claim 16 is rejected under 35 U.S.C. § 103 as unpatentable over Lafond in view of ’770, Givoni, and Bouquot et al. (US 2014/0245675 A1, published Sept. 4, 2014, “Bouquot”).
 4. Claim 17 is rejected under 35 U.S.C. § 103 as unpatentable over Lafond in view of ’770, and Rawlings (US 2011/0011028 A1, published Jan. 20, 2011).
 5. Claim 18 is rejected under 35 U.S.C. § 103 as unpatentable over Lafond in view of ’770, Givoni, and Kessler (US 4,113,905, issued Sept. 12, 1978).
 6. Claim 20 is rejected under 35 U.S.C. § 103 as unpatentable over Lafond in view of ’770, Givoni, and Schmidlin (US 4,471,589, issued Sept. 18, 1984).
 7. Claims 28 and 29 are rejected under 35 U.S.C. § 103 as unpatentable over Lafond in view of ’770, Givoni, and Hortrich (US 2012/0028027 A1, published Feb. 2, 2012).

With regard to all rejections, Appellants’ arguments focus on the subject matter of independent claim 1 only. Br. 3–8. Accordingly, any claim not argued separately will stand or fall with our analysis of claim 1 under rejection (1).

FINDINGS OF FACT & ANALYSIS

REJECTION (1)

The Examiner's findings and conclusions with respect to claim 1 are located on pages 2 to 4 of the Final Action.

Figure 7 of Lafond, which illustrates an end view of an insulation spacer strip, is reproduced below.

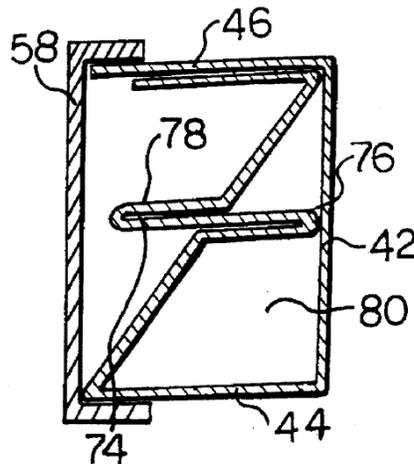


Fig. 7

Figure 7 illustrates features of cap 58, engaging members 44 and 46, base 42, a support member having partitioning members 74 and 76, desiccated material area 78, and hollow air containing area 80.

The Examiner finds that Lafond teaches a thermally insulating spacer profile made of a plastic material, wherein the body comprises a first transverse wall (i.e., element 44) and a second transverse wall (i.e., the element parallel to element 46). Final Act. 2; *see* Lafond Fig. 7. The Examiner finds, *inter alia*, that Lafond's first and second transverse wall elements are connected by a single side wall element, which holds the wall elements at the requisite pre-set spacing *h*. Final Act. 2-3; *see* Lafond Fig. 7. The Examiner further finds that Lafond's side wall element comprises two portions, which are arranged substantially perpendicularly to the first

and second transverse walls and that the side wall element has a length overlapping the length of 1.1 or more times the spacing *h*. Final Act. 3, *see* Lafond Fig. 7.

The Examiner finds that Lafond's body discloses or suggests the remaining limitations recited in claim 1 except that Lafond is silent regarding: (i) "the profile comprising a strip-like anchoring protrusion which is held on the first transverse wall and which extends from the basic body in a direction opposite the second transverse wall," Final Act. 3, and (ii) "the spacer profile comprising in cross-section, on at least one of the first and second transverse walls and/or on at least one of the portions of the side wall element[,] a profiling which is configured as a screw guide." *Id.* at 4.

With regard to missing limitation (i), the Examiner finds that '770's strip-like anchoring protrusion element 15 discloses or suggests the claimed features. *Id.* at 3. The Examiner concludes that it would have been obvious to incorporate '770's strip-like anchoring protrusion (i.e., element 15) in Lafond's profile "to provide for engaging the profile with another element, as Lafond suggests additional reinforcing means on the profile." *Id.* (citing '770 4–5, Figs. 5, 6; Lafond 3:14–19).

Regarding missing limitation (ii), the Examiner relies on Givoni's profiling, which is configured as a screw guide. Final Act. 3. The Examiner concludes that it would have been obvious to incorporate Givoni's profiling, which is configured as a screw guide, in Lafond's spacer profile "to provide for a screw attachment of the profile to another element." *Id.* at 4 (citing Givoni 3:63–67, 4:1–15; Figs. 4, 7, 8).

Appellants argue that Lafond's support member, which is alleged by the Examiner to teach the claimed single side wall element, cannot disclose

or suggest ““at least one portion which is arranged substantially perpendicularly to the first transverse wall or the second transverse wall.””

Br. 5. Appellants contend that the support member’s “portion of side wall at 76 and across from it, as shown [in Fig. 7],” are not encompassed by the requisite substantially perpendicular arrangement because “these portions are *curved throughout*.” *Id.*

We are not persuaded by these arguments.

The Examiner persuasively finds that, although Lafond’s side wall element at 76 and between 74 and 78 are depicted as curved sections, there are portions therein that are arranged substantially perpendicular to either the first transverse wall or the second transverse wall. Ans. 12 (citing Lafond Figs. 7, 4 (“[a] portion of curved part 62 is perpendicular to element 44 and element . . . parallel to element 46.”)). Absent any special definitions, we give claim terms their ordinary and customary meaning, as would be understood by one of ordinary skill in the art at the time of the invention. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007); *see also TriVascular, Inc. v. Samuels*, 812 F.3d 1056, 1062 (Fed. Cir. 2016) (“Under a broadest reasonable interpretation, words of the claim must be given their plain meaning, unless such meaning is inconsistent with the specification and prosecution history.”). The Examiner’s claim construction is reasonable in view of Appellants’ disclosure, which does not attribute any special meaning to the claim term “portion.”

Appellants argue that Lafond’s support member cannot disclose or suggest ““a *single* side wall element,”” which connects a first transverse wall and a second transverse wall because Lafond’s supporting member includes a plurality of elements. Br. 6. Appellants contend that Lafond’s plurality of

elements are distinguished from the claimed invention because they provide support, while increasing the thermal conduction capacity of the spacer element. *Id.* at 6–7.

We are not persuaded by these arguments because they are directed to limitations not recited in claim 1, which does not preclude additional elements or functions for the single side wall element. As the Examiner finds, Lafond’s depiction shows that the supporting member comprised of a plurality of elements is formed from a single side wall element. Ans. 13, citing Lafond Figs. 4, 7.

Appellants argue that the Examiner’s proposed modification of Lafond’s spacer profile to incorporate Givoni’s screw guide configuration would have been “detrimental to the function of Lafond, as the protrusions would [have] ke[pt] two glass panes spaced apart from the transverse walls (engaging members 44 and 46),” which “closely abut the glass panes.” Br. 7, citing Lafond Figs. 2, 3.

Appellants’ arguments are not persuasive because Lafond explicitly discloses that “the spacer element may include additional reinforcing means.” Lafond 3:16. In our view, one of ordinary skill in the art would have gleaned from the applied prior art that Givoni’s screw guide would have provided Lafond’s spacer profile additional reinforcing means. *In re Preda*, 401 F.2d 825, 826 (CCPA 1968) (“[I]n considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom.”).

Appellants’ arguments, furthermore, are allegedly supported by Lafond’s Figures 2 and 3. We note, however, that the Examiner did not rely

on these Figures. *See* Final Act. 3. Unlike Figures 4, 6, and 7, Figures 2 and 3 do not depict a spacer profile with the requisite portions therein arranged substantially perpendicular to either the first or the second transverse walls. Thus, a preponderance of the evidence favors the Examiner's conclusion that the claimed subject matter would have been obvious in view of Lafond, '770, and Givoni. Appellants' arguments do not persuade us that the Examiner reversibly erred.

On this record, we affirm the Examiner's § 103 rejection (1) above.

REJECTIONS (2) to (7)

On this record, we affirm the Examiner's § 103 rejections (2) to (7).

DECISION

The Examiner's decision is affirmed.

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). *See* 37 C.F.R. § 41.50(f).

ORDER

AFFIRMED