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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/617,628	02/09/2015	Mark T. Ucasz	PA-0027162-US	6791
11943	7590	10/17/2019	EXAMINER	
O'Shea Getz P.C. 10 Waterside Drive, Suite 205 Farmington, CT 06032			WANG, XIAOBEI	
			ART UNIT	PAPER NUMBER
			1784	
			NOTIFICATION DATE	DELIVERY MODE
			10/17/2019	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MARK T. UCASZ, BRUCE R. SAXTON,
DANIEL A. BALES, and WILLIAM J. BRINDLEY

Appeal 2019-000664
Application 14/617,628
Technology Center 1700

Before ROMULO H. DELMENDO, JAMES A. WORTH, and
MERRELL C. CASHION, JR., *Administrative Patent Judges*.

CASHION, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's final decision to reject claims 1, 4–10, 16–20, 22, and 23. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42 and as named in the Application Data Sheet filed February 9, 2015 (“United Technologies Corporation”). Appellant is also identified as the real party in interest. Appeal Br. 3.

The invention is generally directed to a method for servicing an airfoil of an engine. Spec. ¶ 4. Claim 1 illustrates the subject matter claimed and is reproduced below:

1. A method for servicing an airfoil of an engine, comprising:

removing a ceramic layer from the airfoil;

removing a first portion of a first bondcoat layer from the airfoil while leaving a second portion of the first bondcoat layer intact on the airfoil; and

applying a second bond coat layer on top of the second portion of the first bondcoat layer using a coating technique subsequent to the removal of the first portion of the first bondcoat layer,

wherein the ceramic layer is removed from the airfoil prior to the removal of the first portion of the first bondcoat layer from the airfoil, and

wherein a wall thickness of a metal base layer of the airfoil is retained during the removal of the first portion and the application of the second bondcoat layer.

Independent claim 10 is directed to an airfoil of an engine while independent claim 16 is directed to a method for servicing hardware associated with an engine.

Appellant requests review of the following rejections from the Examiner's Final Office Action:^{2,3}

I. Claims 1, 4–10, 16–20, 22, and 23 rejected under 35 U.S.C. § 112(a) as failing to comply with the written description requirement.

² The Examiner withdrew a rejection under 35 U.S.C. § 112(b). Ans. 7.

³ The rejection statements are modified to remove references to cancelled claims 2, 3, 11–15, and 21. *See* Appeal Br. 3; Advisory Action entered March 8, 2018; Amendment filed February 27, 2018.

II. Claims 1, 4–6, 9, 10, 16–19, 22, and 23 rejected under 35 U.S.C. § 102(a)(1)/(a)(2) as anticipated by Gupta (US 2010/0126014 A1, published May 27, 2010).

III. Claims 7 and 8 rejected under 35 U.S.C. § 103 as unpatentable over Gupta.

IV. Claim 20 rejected under 35 U.S.C. § 103 as unpatentable over Gupta and Rigney (US 2005/0106315 A1, published May 19, 2005).

OPINION

Rejection I (Lack of written description under 35 U.S.C. § 112(a))

After review of the respective positions the Appellant provides in the Appeal and Reply Briefs and the Examiner provides in the Final Action and the Answer, we reverse the Examiner’s rejection of claims 1, 4–10, 16–20, 22, and 23 under 35 U.S.C. § 112(a) for lack of written description. We add the following for emphasis.

The Examiner finds that there is no express support in the Specification, as originally filed, for the limitation in claim 1 of “applying a second bondcoat layer on top of the second portion of the first bondcoat layer.” Ans. 8. According to the Examiner, the Specification only describes that “a second bondcoat layer may be applied to the airfoil.” Ans. 8; Spec. ¶ 34. Appellant argues that the Specification describes the application of a second bondcoat layer to the airfoil using a cathodic arc technique. Appeal Br. 8 (*see n.2*). Thus, Appellant contends that this disclosure sufficiently describes the disputed claim language.

We agree with Appellant that there is reversible error in the Examiner's determination that the disputed language lacks adequate descriptive support.

Our reviewing court stated in *In re Kaslow*, 707 F.2d 1366, 1375 (Fed. Cir. 1983):

The test for determining compliance with the written description requirement is whether the disclosure of the application as originally filed reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter, rather than the presence or absence of literal support in the specification for the claim language.

See also Ariad Pharms., Inc. v. Eli Lilly & Co., 598 F.3d 1336, 1351 (Fed. Cir. 2010). "This inquiry . . . is a question of fact. . . . [T]he level of detail required [in the Specification as originally filed] to satisfy the written description requirement varies depending on the nature and scope of the claims and on the complexity and predictability of the relevant technology." *Id.* Whether the written description requirement is complied with is a question of fact, judged from the perspective of one of ordinary skill in the art as of the relevant filing date. *See Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1563–64 (Fed. Cir. 1991).

Here, the Specification describes a cathodic arc coating technique that coats desired surfaces of a component by rotating and otherwise manipulating the component to promote the formation of a uniform coating on these surfaces. Spec. ¶ 25; *see* Application Figure 2. This is also the exemplary technique disclosed for applying the second bondcoat during repairs. Spec. ¶ 34. One skilled in the art, upon reading this disclosure together with Application Figure 2, would understand that the application of

the second bondcoat using this technique would result in “applying a second bondcoat layer on top of [a] portion of the first bondcoat layer” because a large portion of the surface of the component is exposed in the coating section.

Thus, after careful review of the record before us, we determine that the Specification provides an adequate written description for the claimed subject matter including the disputed language identified by the Examiner.

Accordingly, we reverse the Examiner’s rejection of claims 1, 4–10, 16–20, 22, and 23 under 35 U.S.C. § 112 (a) as lacking written descriptive support for the reasons presented by Appellant and given above.

Prior Art Rejections II–IV (under 35 U.S.C. §§ 102(a)(1)/(a)(2) and 103)

For the prior art rejections, Appellant relies on the same line of arguments to address the anticipation rejection of independent claims 1, 10, and 16 and does not present separate arguments for any of the dependent claims rejected as anticipated or obvious by the cited art. *Id.* Accordingly, we select independent claim 1 as representative of the subject matter claimed and decide the appeal as to all prior art grounds of rejection based on the arguments presented for claim 1.

After review of the respective positions the Appellant provides in the Appeal and Reply Briefs and the Examiner provides in the Final Action and the Answer, we affirm the Examiner’s rejections of claims 1, 4–10, 16–20, 22, and 23 under 35 U.S.C. §§ 102(a)(1)/(a)(2) and 103 for the reasons the Examiner provides. We add the following for emphasis.

Claim 1

Claim 1 is directed to a method for servicing an airfoil of an engine by retaining a wall thickness of a metal base layer of the airfoil during repair of a damaged bondcoat layer. That is, the airfoil is repaired without damaging the metallic underlayer of the airfoil.

We refer to the Examiner's Final Action for a complete statement of the anticipation rejection of claim 1. Final Act. 4. Briefly, the Examiner finds that Gupta (1) describes the claimed repair method and (2) seeks to avoid wall thickness loss in the underlying metallic layer. Final Act. 4; Ans. 9; Gupta ¶¶ 7, 29.

Appellant argues that Gupta's Figures 2 and 3 show damage to the vane in the form of a crack "C" that penetrates a thermal barrier coating (TBC) top coat 24, a bond coat 22, and a wall of the vane 12. Appeal Br. 9. According to Appellant, Gupta describes repairing the crack repairs using conventional braze or welding processes. *Id.* Appellant contends that one skilled in the art would appreciate that at least a portion of the metal base layer 12 wall thickness is removed as part of the crack repair to facilitate the braze/welding Gupta describes. *Id.* Thus, Appellant asserts that Gupta does not describe the claimed invention. *Id.*

The arguments do not persuade us of reversible error in the Examiner's determination of anticipation for the reasons the Examiner presents. Ans. 9–11.

As the Examiner notes, Gupta discloses an embodiment where the first bondcoat is not entirely removed to avoid wall thickness loss. Ans. 10; Gupta ¶ 29. As the Examiner further notes, the embodiment illustrated in Gupta's Figures 4 and 6 (before and after repair) does not show a loss of

material/thickness from the metal layer. Ans. 10. Appellant points to no portion of Gupta that describes a loss of material or wall thickness in the metal layer of the component subject to repair or any other objective evidence that the repair process would entail removal of a portion of the cracked metal base layer. Ans. 11. Appellant, at most, has provided mere attorney arguments and such arguments of counsel cannot take the place of evidence. *See In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984); *In re Payne*, 606 F.2d 303, 315 (CCPA 1979).

Accordingly, we affirm the Examiner’s prior art rejections of claims 1, 4–10, 16–20, 22, and 23 under 35 U.S.C. §§ 102(a)(1)/(a)(2) and 103 for the reasons the Examiner presents and we provide above.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
1, 4–10, 16–20, 22, 23	§ 112(a)	Spec. ¶¶ 25, 34; Drawings, Fig. 2		1, 4–10, 16–20, 22, 23
1, 4–6, 9, 10, 16–19, 22, 23	§ 102(a)(1)/(a)(2)	Gupta	1, 4–6, 9, 10, 16–19, 22, 23	
7, 8	§ 103	Gupta	7, 8	
20	§ 103	Gupta, Rigney	20	
Overall Outcome			1, 4–10, 16–20, 22, 23	

Appeal 2019-000664
Application 14/617,628

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) (2017).

AFFIRMED