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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GARTH BIELKE and ALAN JEFFREY MOSLEY

Appeal 2019-000834
Application 14/057,800
Technology Center 3700

Before JENNIFER D. BAHR, MICHAEL L. HOELTER, and
JAMES P. CALVE, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision rejecting claims 1–10, 12, 14, and 16. 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(a). Appellant identifies the real party in interest as Minigrip LLC. Appeal Br. 3.

CLAIMED SUBJECT MATTER

Appellant's invention is directed to "freezer bags with landing rails to reduce the contact of the bag walls to other surfaces, particularly while frozen." Spec. ¶ 1. Claim 1, reproduced below, is the only independent claim and is illustrative of the claimed subject matter.

1. A reclosable bag, including:
 - front and rear walls;
 - wherein portions of edges of the front and rear walls are joined together thereby forming a storage volume and a mouth;
 - a first zipper with a first zipper profile attached to an interior of the front wall and a second zipper profile attached to an interior of the rear wall, wherein the first and second zipper profiles can interlock thereby closing the mouth of the bag;
 - an upper section landing rail on an exterior upper section of both the front wall and the rear wall of the bag;
 - a mid-section landing rail on a mid-section of the exterior wall of the bag;
 - a lower section landing rail on an exterior lower section of both the front wall and the rear wall of the bag;
 - wherein the landing rails extend horizontally across the bag continuously from one edge to the other edge parallel to the mouth of the bag; and
 - wherein the landing rails are rails to separate at least a portion of the front and rear walls from adjacent frozen surfaces.

REFERENCES

The prior art relied upon by the Examiner is:

Wolters	US 1,739,625	Dec. 17, 1929
De Laney	US 2,136,043	Nov. 8, 1938
Segati	US 5,174,458	Dec. 29, 1992
Berich	US 6,877,898 B2	Apr. 12, 2005
Cheung	US 2006/0165316 A1	July 27, 2006
Taheri	US 2008/0285897 A1	Nov. 20, 2008
Smith	US 2011/0311169 A1	Dec. 22, 2011

REJECTIONS

- I. Claims 1, 8, 9, and 12 stand rejected under 35 U.S.C. § 103 as being unpatentable over Taheri in view of Wolters or De Laney or Segati. Final Act. 2.
- II. Claims 14 and 16 stand rejected under 35 U.S.C. § 103 as being unpatentable over Taheri in view of Wolters or De Laney or Segati, as applied to claim 1, and further in view of Berich. Final Act. 6.
- III. Claims 1–3 and 8–10 stand rejected under 35 U.S.C. § 103 as being unpatentable over Berich in view of Taheri, and Wolters or De Laney or Segati. Final Act. 10.
- IV. Claims 4 and 5 stand rejected under 35 U.S.C. § 103 as being unpatentable over Berich in view of Taheri, and Wolters or De Laney or Segati, as applied to claim 3, and further in view of Smith. Final Act. 14.
- V. Claims 6 and 7 stand rejected under 35 U.S.C. § 103 as being unpatentable over Berich in view of Taheri, and Wolters or De Laney or Segati, as applied to claim 1, and further in view of Cheung. Final Act. 16.

OPINION

Rejections I and III

In contesting these rejections, Appellant argues all of the claims together. *See* Appeal Br. 6–21. Thus, we decide the appeal of Rejections I and III on the basis of independent claim 1, and the dependent claims subject to these rejections stand or fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv) (permitting the Board to select a single claim to decide the appeal as to a single ground of rejection of a group of claims argued together).

The Examiner’s rejections rely on a combination of Wolters, De Laney, or Segati with either Taheri alone or with both Berich and Taheri. Final Act. 2, 10. However, because we determine that the Examiner provides sufficient reasoning to establish that either Taheri alone, or a combination of Berich and Taheri, renders obvious the subject matter of claim 1, we need not consider the additional teachings of Wolters, De Laney, or Segati, or Appellant’s arguments with respect to these references. In affirming a multiple reference rejection under 35 U.S.C. § 103, the Board may rely on fewer than all of the references relied on by the Examiner in an obviousness rationale without designating it as a new ground of rejection. *In re Bush*, 296 F.2d 491, 496 (CCPA 1961).

The Examiner determines, and Appellant does not dispute, that Taheri, or a combination of Berich and Taheri, discloses or renders obvious a reclosable bag as recited in claim 1, including, in pertinent part, an upper section landing rail and a lower section landing rail, but that “Taheri fails to specifically teach providing a mid-section landing rail on a mid-section of the exterior wall of the bag.” Final Act. 3–4, 10–11. However, the Examiner finds:

Taheri discloses an extrusion process for producing a plastic bag having a zipper closure. Taheri states that molten material is extruded through an annular opening of a die assembly to produce a tubular film, where the annular opening of the die assembly typically includes profile openings to provide the interlocking profiles of the zipper closure. However, because these profile openings make the annular opening asymmetrical, the molten material moves more easily through the regions of the annular opening near the profile openings to the detriment of the regions of the [annular] opening that are distanced from the profile openings. Accordingly, the regions of the annual opening that are distanced from the profile openings can have a thickness that is unintentionally thinned and that can easily break or crack, particularly under extreme temperature conditions (paragraphs 4, 6, 56, 57).

As a result, Taheri discloses including ribs (40) in the region of the bag that forms the bottom end to reinforce this region without compromising the foldability or flexibility of this region, such that the bag is made more resistant to stress cracking caused, for example, by the mechanical stress imparted in the process of extruding the film or in freezing the contents of the bag in later use (paragraph 30).

Ans. 3–4. The Examiner then reasons that:

Taheri focuses on the region of the bag where the impact due to extrusion process is greatest, i.e., the bottom end of the bag. However, all of the regions of the annular opening that are distanced from the profile openings, including the regions of the annular opening through which the tubular film that forms the upper section of the bag and the mid-section of the bag, are impacted. Accordingly, there exists sufficient teaching, suggestion, and motivation within Taheri itself to have employed ribs at any section of the bag that has a thickness that is unintentionally thinned and/or that is susceptible to cracking or breaking.

Id. at 4.

In response, Appellant argues that “[n]owhere does Taheri indicate that the mid-section of the bag is unintentionally thinned or susceptible to cracking, which is why Taheri does not place ribs at the mid-section.” Reply Br. 1.²

Appellant’s argument is not persuasive because it appears to insist on an explicit teaching, suggestion, or motivation in the cited art to establish obviousness; however, such a requirement has been foreclosed by the Supreme Court. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 415, 419 (2007) (stating that a rigid insistence on teaching, suggestion, or motivation is incompatible with its precedent concerning obviousness). The Court noted that an obviousness analysis “need not seek out precise teachings directed to the specific subject matter of the challenged claim, for [an examiner] can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *Id.* at 418. Instead, the relevant inquiry is whether the Examiner has set forth “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006), *cited with approval in KSR*, 550 U.S. at 418.

Taheri does not expressly teach that the mid-section of the bag is unintentionally thinned. *See* Taheri ¶ 4 (expressly mentioning that “the bottom end of the bag can have a thickness that is unintentionally thinned and that can easily break or crack”). Taheri does teach, however, that the presence of the profile opening in the annular opening favors flow of

² Page numbers appear at the bottom of the pages of the Reply Brief, starting with the second page numbered “1.” We use this pagination appearing at the bottom of the pages in referring to pages of the Reply Brief herein.

material “through the regions of the annular opening near the profile openings to the detriment of the regions of the annular opening that are distanced from the profile openings.” Taheri ¶ 4. Taheri recognizes that this impact is greatest at the region that forms the bottom of the bag and is most concerned about reinforcing this region, especially because simply increasing the thickness of the film in this region can be problematic. However, persons of ordinary skill in the art would readily appreciate from Taheri’s disclosure about movement of material through the annular opening that unintentional thinning could also take place at other regions that are distanced, albeit perhaps less distanced, from the zipper profiles. As the Examiner points out, this would include the mid-section of the bag. *See* Ans. 4.

Taheri teaches that the rib profile openings widen an otherwise narrower portion of the annular opening to better balance the flow of molten material through the annular opening. Taheri ¶ 57. Moreover, Taheri teaches that, in the illustrated embodiment, the rib profile openings increase in density at distances that are further from the closure profile openings, but emphasizes that “the profile openings can be alternatively arranged and profile openings can be omitted or added.” *Id.* Thus, Taheri’s teachings are not limited to the particular arrangement of ribs 40 illustrated by Taheri. We also note that Appellant’s Specification discloses that “[l]anding rail 52 is formed at a *somewhat lower portion* of the mid-section of front wall 10,” which would be significantly distanced from the zipper profiles. Spec. ¶ 14. Taheri’s teaching regarding an increasing density of ribs with increased distance from the zipper profiles supports the Examiner’s determination that

Taheri provides ample suggestion or motivation to provide a rib (landing rail) at such a location, which is distanced from the zipper profiles.

For the above reasons, the Examiner's articulated reason for modifying Taheri's bag (or the bag of Berich as modified by Taheri) to provide one or more additional ribs (i.e., landing rails) on a mid-section of the exterior wall of the bag, as recited in claim 1, has rational underpinnings. Thus, we sustain the rejection of claim 1, as well as claims 8, 9, and 12, which fall with claim 1, as unpatentable over Taheri in view of Wolters or De Laney or Segati, on the basis of the teachings of Taheri itself. We also sustain the rejection of claim 1, as well as claims 2, 3, and 8–10, which fall with claim 1, as unpatentable over Berich in view of Taheri, and Wolters or De Laney or Segati, on the basis of the teachings of Berich and Taheri. *See In re Bush*, 296 F.2d at 496 (permitting the Board to rely on fewer than all of the references relied on by the Examiner in an obviousness rationale without designating it as a new ground of rejection).

Rejections II, IV, and V

Appellant does not present any additional arguments contesting these rejections. *See* Appeal Br. 6–21; Reply Br. *passim*. Thus, for the reasons discussed above, we sustain the rejection of claims 14 and 16 as unpatentable over Taheri in view of Wolters or De Laney or Segati, and further in view of Berich; the rejection of claims 4 and 5 as unpatentable over Berich in view of Taheri, and Wolters or De Laney or Segati, and further in view of Smith; and the rejection of claims 6 and 7 as unpatentable over Berich in view of Taheri, and Wolters or De Laney or Segati, and further in view of Cheung.

DECISION

The Examiner's decision rejecting claims 1–10, 12, 14, and 16 under 35 U.S.C. § 103(a) is AFFIRMED.

CONCLUSION

In summary:

Claims Rejected	Basis	Affirmed	Reversed
1, 8, 9, 12	§ 103 Taheri, Wolters or De Laney or Segati	1, 8, 9, 12	
14, 16	§ 103 Taheri, Wolters or De Laney or Segati, Berich	14, 16	
1–3, 8–10	§ 103 Berich, Taheri, Wolters or De Laney or Segati	1–3, 8–10	
4, 5	§ 103 Berich, Taheri, Wolters or De Laney or Segati, Smith	4, 5	
6, 7	§ 103 Berich, Taheri, Wolters or De Laney or Segati, Cheung	6, 7	
Overall Outcome		1–10, 12, 14, 16	

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

AFFIRMED