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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL KLEINDL, TAMIMLATIF,
PETER ROPERTZ, and MATTHIAS MAESS

Appeal 2019-001286
Application 14/410,078
Technology Center 3700

Before BENJAMIN D. M. WOOD, WILLIAM A. CAPP, and
JEREMY M. PLENZLER, *Administrative Patent Judges*.

WOOD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's April 11, 2018 Final Action rejecting claims 1–8 and 11. *See* Final Act. 1. Claim 12 has been canceled (*id.* at 2) and claim 9 has been allowed (*id.* at 7).² We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

¹ “Appellant” refers to the applicant as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Robert Bosch GmbH. Appeal Br. 2.

² Claim 10 has not expressly been rejected, canceled, or deemed allowed.

CLAIMED SUBJECT MATTER

The claims are directed to a piston fuel pump. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A piston-type fuel pump for an internal combustion engine, comprising:

a pump housing that includes an a [*sic*] cylindrical opening along a longitudinal axis and defining a radial direction transverse to the longitudinal axis;

a piston; and

a non-return outlet valve disposed within said opening that includes:

a valve element; and

a guide element that is configured to guide movement of the valve element along said longitudinal axis of said opening, and that is at least indirectly pressed radially into the opening of the pump housing, wherein the guide element defines a longitudinal axis that is coaxial with said longitudinal axis of said opening and includes;

a guide section configured to guide the valve element, the guide section disposed outside the entire valve element in said radial direction; and

a retention section separate from the guide section that is at least indirectly pressed in said radial direction into the opening of the pump housing.

REFERENCES

Name	Reference	Date
Parker	US 2,348,567	May 9, 1944
Schroeder	US 2011/0209687 A1	Sep. 1, 2011
JP '470 ³	JP 63-89470	June 10, 1988
Masayasu ⁴	JP 2000-065227	Mar. 3, 2000

³ All references to JP '470 are to its English-language translation.

⁴ All references to Masayasu are to its English-language translation.

REJECTIONS

Claims 1, 2, and 4–8 are rejected under 35 U.S.C. § 103 as unpatentable over Masayasu and Schroeder.

Claim 3 is rejected under 35 U.S.C. § 103 as unpatentable over Masayasu, Schroeder, and JP '470.

Claim 11 is rejected under 35 U.S.C. § 103 as unpatentable over Masayasu, Schroeder, and Parker.

OPINION

Claims 1, 2, and 4–8—Rejected As Unpatentable over Masayasu and Schroeder

Appellant argues claims 1, 2, and 4–8 as a group. Appeal Br. 5–8. We select claim 1 as representative, and decide the appeal of these claims on the basis of claim 1 alone. 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner finds that Masayasu teaches a fuel pump comprising a pump housing and a non-return outlet valve, the non-return outlet valve including the claimed valve element and guide element comprising a guide section and a retention section, but does not teach that the fuel pump is a piston-type fuel pump or that the retention section is at least indirectly pressed in a radial direction into the opening of the pump housing. Final Act. 4 (citing Masayasu, Figs. 3–5); Ans. 3–4 (citing Masayasu, Figs. 3, 5, 6). The Examiner further finds that Schroeder discloses a piston-type fuel pump and the retention section of a check valve radially pressed into the opening of the pump housing. Final Act. 4 (citing Schroeder ¶ 35, Fig. 1); Ans. 5 (citing Schroeder ¶ 35, Figs. 1, 7). The Examiner determines that it would have been obvious to one of ordinary skill in the art to use Schroeder's piston type pump as Masayasu's generic fuel pump "as a well-

known fuel pump capable of generating high pressures appropriate for fuel injection.” Final Act. 5. The Examiner also determines that it would have been obvious “to utilize press fit as a well-known method taught by Schroeder . . . for fixing and mounting valves in fuel pump housings which would reduce parts (such as the plate 86) and create a sealed mounting of the valve.” *Id.*

We have thoroughly reviewed each of Appellant’s arguments for patentability of claim 1, but are unpersuaded that the Examiner erred in determining that claim 1 is unpatentable over Masayasu and Schroeder. Accordingly, we will sustain the Examiner’s rejection for essentially those reasons expressed in the Final Action and Answer, and we add the following primarily for emphasis.

Appellant first argues that while “[i]t is correct that Schroeder discloses a sleeve (104) that is press-fit into the pump housing (58), . . . Schroeder does not disclose a press-fit retention section that is separate from a guide section configured to guide a valve element.” Appeal Br. 5–6. This argument is unpersuasive, however, because, as the Examiner notes, Masayasu rather than Schroeder is relied on for teaching a guide element comprising a guide section and a retention section separate from the guide section. Final Act. 4; Ans. 3–4, 7.

Appellant also disputes the Examiner’s reason to combine Masayasu and Schroeder, i.e., that one of ordinary skill in the art would have press-fit Masayasu’s retention section 81f to avoid having to use plate 86. Appeal Br. 6. According to Appellant:

Masayasu specifically contemplates using the plate (86) to pinch the holder (81) and the valve seat (84) into the bore. . . . The use of the plate allows the holder (81) and valve seat (84) to be

readily removed and replaced as needed, particularly with the projection (81e) available to grasp the holder (81). Masayasu specifically contemplates that the nature of the valve can be modified by “changing only the holder, the other components can be reversed [so] a stop valve can be constructed.” . . . A press-fit engagement between holder (81) and the bore in the housing (85) makes removal difficult, if at all possible, and will necessarily damage the wall of the bore when the holder is removed.

Id. (citing Masayasu ¶ 24).

This argument is not persuasive of Examiner error. First, Appellant appears to be misquoting the translation of Masayasu in the record. The translation of paragraph 24 of Masayasu in the record states: “Since the valve element guide part is formed in the holder holding a spring according to the check valve concerning this invention, other parts can constitute a check valve only from changing only a holder with the former and a same part.” Masayasu ¶ 24.⁵ In any event, even if Masayasu teaches that using plate 86 would permit easy modification of its valve into a “stop valve,” its replacement by press-fitting the holder still would have resulted in reducing the number of needed parts. As our reviewing court has stated, “a given course of action often has simultaneous advantages and disadvantages, and this does not necessarily obviate motivation to combine.” *Medichem v. Rolabo*, 437 F.3d 1157, 1165 (Fed. Cir. 2006); see *Winner Int'l Royalty*

⁵ The translation of Masayasu in the record is a machine translation. Masayasu (translation), third page. “A request by the applicant for the examiner to obtain a human language translation should be granted if the applicant provides evidence (e.g., a translation inconsistent with the machine translation) showing the machine translation does not accurately represent the document’s contents.” MPEP § 706.02 II. We have not found any request by Appellant for the Examiner to obtain a human translation of Masayasu.

Corp. v. Wang, 202 F.3d 1340, 1349 n.8 (Fed. Cir. 2000) (“The fact that the motivating benefit comes at the expense of another benefit, however, should not nullify its use as a basis to modify the disclosure of one reference with the teachings of another.”).

Appellant further argues that: (1) use of plate 86 “ensures that the proper amount of ‘pinch’ is applied to the valve seat and holder,” whereas “[a] press-fit is not so easily calibrated to ensure the proper amount of ‘pinch’”; and (2) using elastomeric seal ring 88 provides a better seal, and is easier to manufacture, than a press-fit seal. Appeal Br. 7. These arguments are based entirely on attorney argument rather than record evidence and are therefore unpersuasive. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997).

Appellant also asserts that Masayasu teaches a different embodiment that omits the “holder” but retains plate 86. Appeal Br. 7. Appellant thus suggests that one of ordinary skill in the art would have realized that although some parts could have been omitted, plate 86 was not one of those parts. *See id.* But the rejection at issue is not based on anticipation but on obviousness. Thus, it is not necessary for Masayasu to specifically teach the possibility of omitting plate 86 to sustain this rejection. *See In re Karlson*, 311 F.2d 581, 584 (CCPA 1963) (explaining that omitting an element and its function in a combination where the remaining elements perform the same functions as before involves only routine skill in the art). Further, the fact that Masayasu suggests the possibility of omitting some components does not teach away from the possible omission of different components. A prior-art reference that discloses alternatives does not, simply by preferring some alternatives, “teach away” from the non-preferred alternatives. *In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004).

For the above reasons, we sustain the Examiner’s rejection of claim 1, and its dependent claims 2 and 4–8, as unpatentable over Masayasu and Schroeder.

Claim 3—Rejected as Unpatentable over Masayasu, Schroeder, and JP ’470

Claim 3 depends from claim 1 and further recites “a holding ring that includes fuel passage openings, and that is pressed into the pump housing, wherein the guide element is pressed into the holding ring.” The Examiner acknowledges that the combination of Masayasu and Schroeder does not teach the claimed holding ring, but finds that “JP ’470 discloses a check valve having a holding ring 8 including plural passage openings 7 and the guide 12 being pressed 11 into the holding ring.” Final Act. 6; *see* JP ’470, Fig. The Examiner determines that it would have been obvious “to substitute a holding ring and guide such as taught by JP ’470 for the retention portion of the Masayasu . . . guide element in order to allow for the axial exhaust of the pumped fluid.” *Id.*

Appellant disputes, *inter alia*, that prongs 11 are pressed into the holding ring. Appellant asserts that “the prongs (11) appear to be bent outward to retain the guide (9) on the ring (8).” Appeal Br. 8. Appellant also disputes the Examiner’s rationale for combining JP ’470 with Masayasu and Schroeder. Appellant contends that “there is no explanation as to why a person of skill in the art would consider changing the radial output (4) of Masayusa to be an axial output.” *Id.* at 9.

In the Answer the Examiner asserts that “the English language translation of JP ’470 reference makes clear that the guide is pressed into the holding ring.” Ans. 15. The Examiner relies on the following passage from JP ’470:

A pulp chamber 6 is formed in the interior of the pulp frame 1 and communicates with the pressure detection opening 3 and has a closed mouth portion 5 at a rear end portion. In the rear end opening portion 5, a lily A caught-up 8 having a cuff opening 7 is crimped and attached, and this capping 8 has a number of holes 10 for attaching a cog-shaped guide 9. By thrusting the small diameter attaching portion 12 of the guide 9 having the crimped portion 11 at the tip of the insertion hole and adding the pretensioned crimp portion 11 of the small diameter attaching portion 12 Ride the guide to cap 8.

Ans. 15 (quoting JP '470, fifth page) (emphasis added by Examiner).

According to the Examiner, “[t]he statement that the crimp portions 11 are ‘pretensioned’ clearly teaches that these portions of the guide section 9 are pressed radially into the holding ring 8 beforehand and by design. Not tabs which are bent afterwards as argued by the Appellant.” *Id.* Appellant responds, *inter alia*, that “guide (9) . . . is not ‘pressed into the holding ring’ as required by claim 3” because “guide (9) is thrust completely through the hole so that the crimp portion (11) is outside the hole, as depicted in the drawing of JP '470.” Reply Br. 7.

We do not sustain this rejection. We agree with Appellant that JP '470's Figure appears to show crimped portion 11 entirely outside of the hole in ring 8 in which the small diameter attaching portion 12 of guide 9 is disposed. Thus, crimped portion 11 cannot be radially press-fit inside the hole. Instead, crimped portion 11 appears to be splayed outward to hold portion 12 in place. The Examiner does not adequately explain how the statement in JP '470 that crimped portion 11 is “pretensioned” “clearly teaches” that portion 12 of guide section 9 is radially press-fit into ring 8.

Claim 11—Rejected as Unpatentable over Masayasu, Schroeder, and Parker

Appellant relies on dependency from claim 1 for the patentability of claim 11. Because we sustained the Examiner’s rejection of claim 1 as unpatentable over Masayasu and Schroeder, we likewise sustain the Examiner’s rejection of claim 11 as unpatentable over Masayasu, Schroeder, and Parker.

CONCLUSION

The Examiner’s rejections are affirmed-in-part, as follows:

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 2, 4–8	103	Masayasu, Schroeder	1, 2, 4–8	
3	103	Masayasu, Schroeder, JP ’470		3
11	103	Masayasu, Schroeder, Parker	11	
Overall Outcome:			1, 2, 4–8, 11	3

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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART